IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA, EX REL MATTHEW WILLIAMS, and MATTHEW WILLIAMS Plaintiffs, v. MUSES PARTNERS, LLC, ADERHOLD PROPERTIES, INC., CORO MUSE TIC, LLC, Defendants.	)	Civil Action No. 1:22-cv-03561-AT

DEFENDANTS MUSES PARTNERS, LLC AND ADERHOLD PROPERTIES, INC.'S BRIEF IN SUPPORT THEIR MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

COME NOW DEFENDANTS MUSES PARTNERS, LLC AND ADERHOLD PROPERTIES, INC. (hereinafter, "Muse Defendants"), by and through undersigned counsel, and pursuant to Fed. R. Civ. P. 12(b)(6) hereby moves to dismiss the claims asserted against them and showing this Court the following:

INTRODUCTION

Plaintiff-Relator Matthew Williams ("Plaintiff"), on behalf of the United States Government, filed the instant action alleging, without sufficient factual basis, that Defendants violated the False Claims Act, a federal statute making individuals

liable to the government for presenting false or fraudulent claims for payment to the U.S. government. The claims allegedly arise out of Plaintiff's tenancy at the Lofts of Muses in Downtown Atlanta from March 2018 through 2021, for which Defendants and Plaintiff received housing payments from Atlanta Housing Authority ("AHA) to pay for his rent. Plaintiff additionally brings causes of action for breach of contract, illegal water billing, breach of the Georgia Security Deposit Act, unjust enrichment, breach of the Fair Business Practices Act, and Breach of the Unfair or Deceptive Practices Toward the Elderly Act.

The Complaint is a classic shotgun pleading, relying on conclusory and threadbare allegations that fail to satisfy the pleading standards of Rule 8 and Rule 9(b). Plaintiff does not adequately plead the essential elements of any claim. The Complaint lacks the specificity required to provide Defendants fair notice of the claims against them and fails to state a claim upon which relief can be granted. Accordingly, all counts should be dismissed.

ARGUMENT AND CITATION TO AUTHORITY

I. Motion to Dismiss Standard

To survive a Rule 12(b)(6) motion to dismiss, the Plaintiffs' Complaint must "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (*quoting Bell*

Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007)). A claim is facially plausible when the Court can reasonably infer from the factual content pleaded that the defendant is liable for alleged misconduct. *Id.* Plausibility requires more than a "sheer possibility that the defendant has acted unlawfully" and "unadorned" accusations that "the-defendant-unlawfully-harmed-me" are insufficient. *Id.; see also Chaparro v. Carnival Corp.,* 693 F.3d 1333, 1337 (11th Cir. 2012). "[M]ere conclusory statements do not suffice." *Iqbal*, 556 U.S. at 678 (Punctuation omitted).

In considering a motion to dismiss, the court "shall begin by identifying conclusory allegations that are not entitled to an assumption of truth." *Randall v. Scott*, 610 F.3d 701, 709 (11th Cir. 2010). Then, the court shall assume the veracity of the well-pleaded factual allegations that remain, and "determine whether they give rise to an entitlement of relief." *Iqbal*, 556 U.S. at 679. The well-pleaded allegations must push the claim "across the line from conceivable to plausible." *Twombly*, 550 U.S. at 570. Courts should limit their "consideration to the well-pleaded factual allegations, documents central to or referenced in the complaint, and matters judicially noticed." *La Grasta v. First Union Sec., Inc*., 358 F.3d 840, 845 (11th Cir. 2004) (citations omitted).

Additionally, a complaint brought under the FCA must be pleaded in accordance with the heightened pleading requirements of Federal Rule of Civil

Procedure 9(b) ("Rule 9(b)"), in which the plaintiff must allege with particularity the circumstances constituting fraud or mistake. *Hopper v. Solvay Pharms., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009); *United States ex rel. Clausen v. Lab Corp. of Am.*, 290 F.3d 1301, 1309-10 (11th Cir. 2002). To satisfy Rule 9(b), the Complaint must set forth facts as to time, place, and substance of the Defendants' alleged fraud, specifically the details of the Defendants' allegedly fraudulent acts, when they occurred, and who engaged in them. *Hopper, 588 F.3d at 1324* (*citing Clausen, 290 F.3d at 1310*). Although dismissal is a "severe sanction", plaintiffs must offer specific facts demonstrative of fraud, not just tenuous inferences or conclusory allegations, to survive a motion to dismiss. *Clausen*, 290 F.3d at 1310. Instead, the Complaint takes the form of an improper shotgun pleading, which have been consistently condemned by the Eleventh Circuit over the years. *See, e.g., Jackson v. Bank of Am., N.A.*, 898 F.3d 1348, 1357-58 (11th Cir. 2018). None of the Counts of the Complaint are defendant-specific; the first sentence of each Count repeats and re-alleges all prior allegations, resulting in the final cause of action "simply amount[ing] to an amalgamation of all Counts of the Complaint.'" *See id.*.

Plaintiff's allegations in the Complaint do not satisfy Rules 8 and 9(b)'s pleading requirements to sufficiently state claims against Defendants upon which relief can be granted, requiring dismissal of the Complaint pursuant to Rule 12(b)(6).

II. Count I Fails to Satisfy Rule 9(b)'s Stringent FCA Pleading Requirements for Fraud.

In Count I, Plaintiff asserts a violation of the "Presentment Clause" of the False Claims Act, 31 U.S.C. § 3729(a)(1) ("FCA"). The FCA's Presentment Clause, imposes liability on any person who "knowingly presents, or causes to be presented, to an officer or employee of the United States Government ... a false or fraudulent claim for payment or approval." 31 U.S.C. § 3729(a)(1). The FCA only imposes liability for false claims made to the government, or an employee/agent of the United States. *See* 31 U.S.C. § 3729(a)(2)(A). To state a claim pursuant to §3729(a)(1), a plaintiff must show that: 1) the defendant presented a claim for payment to the United States; 2) the claim was false or fraudulent; 3) the defendant knew the claim was false or fraudulent; and 4) the claim caused economic loss to the United States. *See U.S. v. Aguillon*, 628 F.Supp.2d 542, 546 (D. Del. 2009).

Each element of the Plaintiff FCA's claim must be pleaded with particularity, except that the pleading of intent is governed by Rule 8's general pleading standards. *See Clausen*, 290 F.3d at 1313 n.23; *Iqbal*, 556 U.S. at 686. A plaintiff's allegations satisfy Rule 9(b)'s heightened pleading requirements when they articulate: (1) precisely what statements were made in what documents or oral representations or what omissions were made, and (2) the time and place of each such statement and the person responsible for making (or, in the case of omissions, not making) same,

and (3) the content of such statements and the manner in which they misled the government, and (4) what the Defendants obtained as a consequence of the fraud. *See Clausen*, 290 F.3d at 1310 (emphasis added).

Here, Plaintiff has failed to meet the requisite pleading standards set by the federal rules. As shown below, the Plaintiff failed to support each element of the FCA claim by failing to allege particular facts that the Defendants presented a claim to the government, that the claim was fraudulent, or that the Defendants knew the claim was fraudulent, and so the FCA claim should be dismissed.

A. Plaintiff fails to allege that the Defendants presented a claim to the government.

An essential element of an FCA claim under the Presentment Clause is a defendant's actual presentment of a claim to the Government. *See Hopper, at* 1324. "The submission of a [false] claim is ... the sine qua non of a False Claims Act violation." *United States, ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1357 (11th Cir. 2006). "[W]ithout the presentment of such a claim, while the practices of an entity that provides services to the Government may be unwise or improper, there is simply no actionable damage to the public fisc as required under the False Claims Act." *Hopper*, 588 F.3d at 1325 (quoting *Clausen*, 290 F.3d at 1311 (internal quotation marks omitted)).

The actual presentment of a claim must be pleaded with particularity. *Id.* at 1327. This heightened pleading standard is met when specific facts and details are articulated as to the who, what, when, where, and how of the presentment of fraudulent claims to the Government. *Id.* (*citing Corsello*, 428 F.3d at 1014). Conclusory and speculative statements regarding presentment of a false claim to the Government, without more, ultimately fail to state an FCA claim under the Presentment Clause by falling short of Rule 9(b)'s pleading standard. *Id*. at 1325.

The Complaint here fails to provide any of the who, what, when, where, and how of any presentment to the government. First, the Complaint does not identify who, if anyone, presented a claim to the government. Instead, the Complaint improperly lumps all Defendants together and does not identify individual who was taking action. To further punctuate the failure to plead with the requisite particularity, Plaintiff states in paragraph 28 of the Complaint, "[b]ecause both entities' names appear on the relevant legal documents, this Complaint refers to the former owner and former property management company [i.e. Defendants] collectively as Mr. Williams's 'landlord'." Plaintiff's use of "Defendants" and "landlord" throughout the Complaint, and in particular Count I, prevents identifying who took action to meet the particularity requirements of Rule 9(b).

Next, Plaintiff's sole allegation related to presentment is "Defendants knowingly requested and accepted 43 separate housing assistance payments totaling $65,523 while demanding and receiving additional monthly payments from Mr. Williams above the contract rent." Comp, ¶ 65. This conclusory allegation is devoid of any of the required information about the who, what, when, where, and how of any presentment that was made. Instead of providing meaningful and necessary factual support, the Plaintiff – who as relator is required to have specialized insider knowledge about the fraud – merely concludes that because the Plaintiff participated in a program where a portion of his rent was provided by the government, the Defendants must have presented false claims to the government. However, just alleging that the Defendants received payment does not allege Defendant made any presentation to the government. Since "the central question in such a [FCA] claim is whether the defendant ever presented…a false or fraudulent claim to the government," *Hopper*, 588 F.3d at 1326, Plaintiff's failure to show a single instance of presentment with particularity is fatal to the claim and it must be dismissed.

B. The Complaint Fails to Plead Defendants made a False or Fraudulent Claim with the Required Specificity of Rule 9(b).

"It seems to be a fairly obvious notion that a False Claims Act suit ought to require a false claim." *U.S. ex rel. Hebert v. Dizney*, 295 Fed.Appx. 717, 722 (5th Cir. 2008), quoting *U.S. ex rel. Alfatooni v. Kitsap Phys. Serv.*, 314 F.3d 995, 997

(9th Cir. 2002). In lieu of providing any false claim, however, the Complaint focuses on alleged breaches of contract to support the FCA claim. In doing so, the Complaint fails to sufficiently plead that the contract violations were fraudulent claims being submitted to the government.

FCA plaintiffs must plead "facts as to time, place, and substance of the defendant's alleged fraud…" *Clausen*, 290 F.3d at 1310. Merely alleging a breach of contract or regulatory noncompliance is not enough. Rather, Plaintiff must plead factual allegations that "*an actual false claim* for payment [was] being made to the government." *Klusmeier v. Bell Constructors, Inc.*, 469 Fed. Appx. 718, 721 (11th Cir. 2012) (emphasis in original); *United States ex. Rel Atkins*, 470 F.3d at 1357.

In *Klusmeier*, the Eleventh Circuit affirmed the dismissal with prejudice of an FCA action, where plaintiffs alleged contract breaches but failed to show those breaches led to the presentment of any false claims. *Id.* at 719. There, plaintiffs claimed their company committed FCA violations related to contract payments. *Id.* Each month, the defendant company submitted requests for payment to the government, certifying work was completed according to contractual terms. *Id.* Plaintiffs alleged that the company falsely certified that it had properly completed work to secure government payment. *Id.* The court held that although the plaintiffs alleged numerous contract violations, they failed to establish "that the contract

violations actually resulted in the submission of false claims" in violation of the FCA. *Id.* at 721. The court also noted that the plaintiffs "lack[ed] the type of knowledge" which normally forms the basis of an FCA complaint, because observing a contract violation is not equivalent to knowing whether fraudulent claims were submitted to the government "related to those contract violations." *Id.*

Here, Plaintiff broadly states that the Defendants overcharged him in violation of contractual agreements, Comp. ¶¶ 36-50, and that Defendants signed a lease renewal without AHA approval. Comp. ¶ 48. Plaintiff states, "[f]or each month that Defendants accepted the excess payment from Mr. Williams, Defendants also made a claim for the housing assistance payment that the companies received from AHA," which Defendants "had no right to." Comp. ¶¶ 63-64.[1] Plaintiff then concludes that "each of the 43 housing assistance payments from AHA…constituted a separate false claim or presentation against the United States." Comp. ¶ 66.

Even accepting Plaintiff's allegations as true, Plaintiff has still failed to plead Defendants made a false or fraudulent claim. Passively accepting a monthly payment via autopay is not equivalent to making a knowingly false statement or affirmative misrepresentation to the government. Plaintiff does not plead that Defendants

[1] As shown in greater detail, *infra*, the predominant source of Plaintiff's alleged breach of contract claims relate to the billing of water and sewage services provided by an unaffiliated third-party, and not Defendants at all.

certified compliance with the lease terms or government regulations at the time of payment, nor do they identify a false statement in any voucher or payment request.

The Complaint also completely fails to identify any time, place, or substance details of the supposed fraudulent claims or statements, which does not meet the threshold of Rule 9(b), and fails to alert the Defendants to the precise misconduct with which they are charged. *Klusmeier*, 469 Fed. Appx. at 720. Instead, the Complaint broadly alleges that because Defendants later renewed the lease with the tenant – something that occurs in the regular course of a 60-plus residential unit building – every monthly housing payment they accepted must have constituted a false claim. That is insufficient. More importantly, even though the Plaintiff bases his entire Complaint on alleged breaches of contract, he does not address that the relevant contracts provides for the remedy of repayment of any overpayment to the Plaintiff. However, no request for repayment was ever made by the Plaintiff or anyone else; instead, this Complaint against the Defendants for fraudulent claims allegedly stemming out of both the Plaintiff and the Defendants' neglect to tell that they had agreed to new annual lease agreements after the initial lease ran. Like *Klusmeier*, 469 Fed. Appx. 718, the Court should dismiss the conclusory, insufficient claims in the Complaint because it does not show how contractual violations led to the submission of false claims.

C. The Complaint Fails to Sufficiently Allege Fraudulent Intent

Plaintiff's FCA claim in Count I must also be dismissed because the Complaint fails to adequately allege that the Defendants acted with the requisite knowledge. Under the FCA, a defendant must act "knowingly", meaning with "actual knowledge, deliberate ignorance, or reckless disregard." *United States ex rel. Phalp v. Lincare Holdings, Inc.*, 857 F.3d 1148, 1155 (11th Cir. 2017) (punctuation omitted). The FCA does not punish "innocent mistakes or simple negligence." *Id.*[2] Under Rule 9(b), scienter may be "averred generally", *however*, the plaintiff may not simply make a bald assertion that the defendant had fraudulent intentions. *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1068 (5th Cir. 1994). To properly plead scienter, the plaintiff must have *specific facts to support a strong inference of fraud*, making it reasonable to believe the defendant knew the representation was false. *Id.* (citation omitted); *see also United States v. Strock*, 982 F.3d 51, 66 (2d Cir. 2020). The complaint must also plead facts supporting scienter "as to each defendant." *Strock*, 982 F.3d at 66.

Although proving intent is a necessary component of an FCA claim, Plaintiff offers no specific factual allegations to support it; instead, the Complaint relies

[2] This is because "Congress did not intend to turn the False Claims Act, a law designed to punish and deter fraud, into a vehicle either punishing honest mistakes or incorrect claims submitted through mere negligence…" *Id.* (citation omitted).

solely on conclusory statements. Threadbare recitals of the intent element, without factual support, are not entitled to a presumption of truth. *Iqbal*, 556 U.S. at 678. Once the conclusory allegations are set aside, there are no factual allegations remaining on Defendants' intent or state of mind. Because Plaintiff fails to allege intent in more than conclusory terms, and because the allegations are insufficient as a matter of law without the proper factual basis, dismissal is warranted on Count I, for the FCA claims.

There are no factual allegations about the Defendant's state of mind, internal communications, purposefully hiding the renewal leases from the AHA, or knowledge of overcharging at the time of payment. This is because Defendants had no affirmative intent to harm or defraud. Rather, any incidents of Plaintiff being overcharged were most plausibly the result of human or computer error, good faith misunderstandings of necessary disclosures in government subsidized housing programs, and/or the passive nature of automated payment systems, none of which are sufficient to satisfy FCA knowledge requirements. Moreover, Plaintiff was complicit in "Defendants" alleged failure to get preapproval from the AHA for an increase in monthly rent after the Plaintiff's first year at the property. Putting aside that in the normal course of landlord-tenant relationships parties are free to contract rent increases after the end of a lease term, and it is not fraudulent to do so, Plaintiff

alleges that the Defendants, but not himself, had somehow developed the necessary intent to defraud the government when *both* the Plaintiff and Defendant continued to receive the same amount from the government benefit as they had received previously after they negotiated an extension. Also, as soon as both the Plaintiff and Defendant were allegedly told by the AHA that they needed to get approval for the next lease increase, and AHA would not agree to the requested increase, Defendants did not extend the lease or seek any payment.

The alleged overcharging before this, even if proven, does not become fraud without knowledge—and no such facts are pleaded here. Simple mistakes do not amount to fraud, nor do they amount to FCA violations. *United States ex rel. Phalp*, 857 F.3d at 1155 (noting the FCA does not punish innocent mistakes or simple negligence). Accordingly, Count I should be dismissed for failure to plead the scienter element of an FCA violation.

III. Plaintiff fails to state a claim for Breach of Contract in Count II.

"The elements for a breach of contract claim in Georgia are the (1) breach and the (2) resultant damages (3) to the party who has the right to complain about the contract being broken." *McAlister v. Clifton*, 313 Ga. 737, 742 (2022). Proof of damages is an essential element to a claim for breach of contract, and a failure to prove damages is fatal to a plaintiff's claim. *See Niloy & Rohan, LLC v. Sechler*,

335 Ga. App. 507, 510 (2016). In Count II, the Plaintiff alleges that Defendants breached the lease agreement for three reasons: 1) Plaintiff was billed for water and sewage service fees, 2) on a limited number of occasions, Plaintiff was charged for valet trash on the itemized bill, and 3) the Defendant terminated the Lease contract early. In each instance, the Plaintiff fails to allege an actionable breach of contract or damages sufficient to sustain a claim.

First, in paragraphs 73, 75, 77, and 78 of the Complaint, Plaintiff alleges that "landlord" breached the lease agreements by having him "pay a monthly service fee" and for "be[ing] charged far more than the actual cost of water/sewage in the City of Atlanta for most of his tenancy." In the section related to Count III, *supra*, Defendants provide explicit detail as to why under the governing statutes Defendants are not liable for the acts of the unaffiliated third-party provider, Multifamily Utility Company("Multifamily"), for billing water and sewage costs to Plaintiff. Those arguments are equally applicable here and are incorporated herein by reference. However, as it relates to a breach of the lease agreements, Plaintiff does not identify any term in the agreements that Defendants allegedly breached related to water and sewer. The Lease specifically states that the Plaintiff will pay for water and sewage charges and that a third-party provider, Multifamily, would bill him for his water and sewage use. *See* Comp, Exh. 2 [Doc. 4-2]. The invoices attached to the

Complaint show that Plaintiff was billed by the third-party provider, Multifamily, for his water and sewage use. *See* Comp, Exh. 7 [Doc. 4-7]. By doing what they are authorized (and explicitly required) to do in the agreements, Defendants cannot have breached the terms of the agreement. As such, the Plaintiff does not state a breach of the lease when the Defendants had the third-party provider, Multifamily, bill Plaintiff for water and sewage usage and charge for its services.

Next, the Plaintiff alleges that "in March 2019, just before his lease renewal, the landlord began charging Mr. Williams a $14 'community management fee' but stopped charging the valet trash fee." Comp. ¶38. The Leases clearly disclose that Plaintiff will be charged a community service fee (which is charged to all residents). The Lease was signed by Plaintiff and approved by AHA. Plaintiff alleges that the first few invoices (again, sent by Multifamily) incorrectly include a valet trash charge instead of the community service fee. *See* Comp. Exh. 7 [Doc. 4-7]. On one of the statements, there is a handwritten note that marks out valet trash fee and writes ("CSF") and reduces the amount due on the invoice by one dollar (the difference between the $15 valet trash fee and the $14 community service fee). *Id.* at p. 3. It is clear from the allegations and the documents attached to the Complaint, that corrections were made to the invoices to correct the issue and make it consistent with the Lease. Furthermore, Plaintiff does not allege that he was damaged; instead, it

appears from the documents attached to the Complaint that the error was identified, the issue corrected, and credits given where necessary.

Finally, in paragraph 79 of the Complaint, Plaintiff claims that he is entitled to actual costs, liquidated damages, and emotional damages due to his homelessness because Defendants "had no legal justification for terminating his lease early."[3] However, the Lease Addendum, Sections 9.a.4 and 9.b.6 states that Defendants may terminate the lease for "Good Cause" including the "Owner's desire to rent the HCRA Unit for a higher amount." *See* Comp. Exh. 2 [Doc. 4-2]. When the AHA did not authorize the increase in rent, the Defendants were authorized to terminate (or rather not extend) the lease term.

Plaintiff's position that Defendants breached the contract by not abiding by the terms regardless of the AHA determination that they would not agree to a rent increase is diametrically contrary to the position taken by the Plaintiff in Count I as relator and shows the fundamental flaw in the claim. In that claim, Plaintiff generally alleges that the Defendants violated the FCA by entering into contracts with him for more than the original authorized amount of the lease after the end of the first-year term of the lease. Essentially, Plaintiff alleges that the Defendants, as

[3] The general rule under the Restatement (Second) of Contracts and in the Eleventh Circuit is that "emotional damages for breach of contract will not lie…" *Sheely v. MRI Radiology Network, P.A.*, 505 F.3d 1173, 1200 (11th Cir. 2007).

the landlord, and Plaintiff, as tenant, were not free to contract for the lease, and the Defendants' agreement with the Plaintiff (in the same way it is done with every other tenant) was done with the requisite intent to defraud the U.S. Government. Conversely, in this count, Plaintiff takes the position that the Defendants should be held liable for not agreeing to keep leasing to Plaintiff in the same manner that he avers Defendants breached the contract with the AHA and violated the FCA.

IV. Plaintiff fails to state a claim for Illegal Water Billing in Count III.

In Count III of the Complaint, Plaintiff seeks to recover from Defendants based on "Illegal Water Billing" under OCGA 12-5-180.1. This claim fails to state a claim for a number of reasons.

First, Defendants did not perform any of the billing or submetering actions for water and sewage services at the premises that Plaintiff alleges were inaccurate. As identified in the Lease, the unaffiliated third party, Multifamily, was to provide the submetering services to Plaintiff as a tenant at Muses. The invoices attached to the Complaint show that Multifamily read and issued invoices for the submetering related to water and sewage usage by the Plaintiff. *See* Comp. Exh. 7 [Doc. 4-7].

The law as provided by OCGA 12-5-180.1 absolves an owner from liability for the billing actions taken by a third-party water metering company. Specifically, OCGA 12-5-180.1 (e)(5) states that "[t]he owner or operator who seeks

reimbursement for water and waste-water usage…shall be relieved of liability for actions or inactions that occur as a result of billing or meter-reading errors by an unaffiliated third-party billing or meter-reading company." *See* OCGA 12-5-180.1 (e)(5). Since the invoices show that Multifamily read and billed for the Plaintiff's water usage, Defendants are absolved of liability as a matter of law.

Second, contrary to Plaintiff's conclusory allegations that the "landlord" failed to disclose that water would be provided by a third party, the Complaint and attached exhibits directly contradict this. The Lease shows that the Defendants gave notice to the Plaintiff. Not only does the Housing Assistance Payments Contract and Lease specifically require Plaintiff to be responsible for water charges (*See* Comp, Exh. 2 [Doc. 4-2]), in paragraph 34 of all the leases, Multifamily is identified as the third party who will bill Plaintiff for the water and sewer. *See* Comp, Exh. 5 [Doc. 4-5] ("Resident will be billed by Muti-Family [sic] billing for water/sewage…"). Moreover, despite the Complaint's averment in Paragraph 82 that "[t]hroughout Mr. Williams tenancy, the landlord failed to disclose the terms of the charges…", the monthly invoices attached to the Complaint specifically itemize water and sewer charges from the beginning of Plaintiff's term through the end. Comp., Exh. 4-7.

Finally, Plaintiff failed to provide nonconclusory allegations that the amounts billed by Multifamily were not reasonable fees for establishing, servicing, and

billing water and sewer under the statute. OCGA 12-5-180.1(b) allows a landlord to charge tenants separately for water and waste-water service plus "a reasonable fee for establishing, servicing, and billing for water and waste-water service." As proof of "unreasonable and illegal fees", Plaintiff alleges that Defendants charged a "$5.00 account setup charge (one-time fee)" and "$5.60 [monthly] service charge". Comp, ¶ 33. Putting aside the invoice with those charges was sent by Multifamily, not Defendants, Plaintiff has not alleged that a one-time $5.00 account setup fee or $5.60 monthly service charge were not reasonable fees for "establishing, servicing, and billing for water and waste-water service." On the contrary, those charges appear to be precisely the type of fees expressly allowed by the statute. Also, tellingly, as Complaint Exhibit 9 shows, the monthly service charged by Multifamily is lower than the $6.56 base charge used by the Department of Watershed Management. Count III must be dismissed as Plaintiff is left making conclusory averments what would be "reasonable charges" for water and sewage.

V. Count IV for Breach of O.C.G.A. § 44-7-30 Should be Dismissed.

If this Court dismisses the federal claims against Defendants—the only claims which are the basis for original jurisdiction—then this Court should decline to exercise supplemental jurisdiction over this remaining state law claim and Count IV

should therefore be dismissed without prejudice.[4] While there is inadequate factual support for the claim, at best the security deposit being disputed here is $400. *See* Comp, Exh. 5 [Doc. 4-5]. Principles of judicial economy, convenience, and fairness weigh in favor of the Court exercising discretion to decline jurisdiction, and the Eleventh Circuit "strongly encourages" dismissal. *See e.g., Mergens v. Dreyfoos*, 166 F.3d 1114, 1119 (11th Cir. 1999). Accordingly, this claim should be dismissed.

VI. Plaintiff Fails to State a Claim for Unjust Enrichment in Count V.

In Count V, Plaintiff claims that the "landlord" was "unjustly enriched by its acts of overcharging Mr. Williams for rent and other fees while collecting regular monthly payments from the AHA through the Section 8 Voucher program." Comp, ¶ 88. However, Plaintiff's claim for unjust enrichment fails as a matter of law.

First, unjust enrichment is an equitable remedy and is only available when there is no contract governing the matter in dispute. *Sitterli v. Csachi*, 344 Ga. App. 671, 673 (2018). If a valid contract exists, claims for unjust enrichment are precluded. *Id.* As is shown by the signed lease agreements attached to the Complaint, Plaintiff and Defendants agreed to the rent amounts and fees that were charged to the Plaintiff and the amount charged as rent was consistent with the lease.

[4] *See* Comp. ¶ 14 noting the state law claims are brought only under supplemental jurisdiction, not diversity jurisdiction or federal question jurisdiction.

Next, assuming, *arguendo*, that there is no contract, "a claim for unjust enrichment exists where a plaintiff asserts that the defendant induced or encouraged the plaintiff to provide something of value to the defendant; that the plaintiff provided a benefit to the defendant with the expectation that the defendant would be responsible for the cost thereof; and that the defendant knew of the benefit being bestowed upon it by the plaintiff and either affirmatively chose to accept the benefit or failed to reject it." *Id.* (quoting *Campbell v. Ailion*, 338 Ga. App. 382, 387 (2016)).

Here, Plaintiff does not allege any facts to support the elements of an unjust enrichment claim. There are no allegations that Defendants induced or encouraged the Plaintiff to provide something of value to the Defendants. There are no allegations that Plaintiff provided a benefit to the Defendants with the expectation that the Defendants would be responsible for the cost thereof. In fact, the allegations appear to allege the opposite, that Plaintiff expected Defendants to provide him with benefits free of charge that other occupants at Muses had to pay for. Without this expectation, the claims fails. *See id.; Jones v. White*, 311 Ga. App. 822, 828 (2011) (unjust enrichment requires party conferring benefit to act with expectation that the party receiving the benefit is responsible for the cost). Likewise, there are no allegations that Defendants knew of any benefit that was being bestowed upon it by the Plaintiff, so it could not have affirmatively chosen to accept the benefit or failed

to reject it. Without such necessary supportive factual allegations, the claim for unjust enrichment must be dismissed.

VII. Plaintiff Fails to State a Claim for Claim for Counts VI and VII

In Count VI, the Plaintiff seeks to hold the unspecified "Defendants" liable for a claim for violation of the Fair Business Practices Act for the same actions that he claims were a breach of contract. However, putting aside the shotgun nature of the pleadings, and the defenses to the breach of contract claims that are equally applicable to this claim, the Complaint fails to provide allegations that the Defendants' actions affect the consuming public generally to support a claim under the Fair Business Practices Act ("FBPA").

In *Leslie v. 1125 Hammond, LP*, the Georgia Court of Appeals provided a thorough explanation why the FBPA does not apply to claims for private wrongs that do not affect the consuming public generally. 368 Ga. App. 793, 798-99 (2023). According to the Georgia Court of Appeals,

> The stated intent of the FBPA is to protect the public from acts and practices which are injurious to consumers, not to provide an additional remedy for private wrongs which do not and could not affect the consuming public generally. Thus, the scope of the FBPA is limited to acts in the conduct of consumer transactions and consumer acts or practices in trade or commerce.

Id. (citing *Henderson v. Gandy*, 270 Ga. App. 827, 829-830 (2004)).

Even if the Plaintiff were a "consumer" regarding his lease with the Defendants, the alleged deceptive practice had no potential for harm to the general consuming public. Thus, the allegedly wrongful act of the Defendants was not made in the context of the consumer marketplace and cannot be a breach of the FBPA. *Id.* at 798-99 ("Unless it can be said that the defendant's actions had or has potential harm for the consumer public the act or practice cannot be said to have 'impact' on the consumer marketplace and any act or practice which is outside that context, no matter how unfair or deceptive, is not directly regulated by the FBPA.")

Here, this case involves the Defendants' alleged failure to abide by the Housing Assistance Payments contract and the lease agreement with Plaintiff are specific to Plaintiff alone. Likewise, the Lease does not involve any promises or representations that were held out to the general consumer public at large. Since they do not involve harm to the consuming public generally, they do not invoke the FBPA. *See id.* at 799.

Likewise, in Count VII Plaintiff seeks an additional civil penalty of $10,000 against Defendants for "Breach of Unfair or Deceptive Practice Toward the Elderly Act." In support of Claim VII, Plaintiff provides one conclusory allegation, to wit: "Mr. Williams is an individual with a disability and seeks the additional civil penalty of $10,000." This allegation is wholly conclusory and fails to assert any factual basis

for a claim on its own. Plaintiff does not identify any disability that he has, nor does Plaintiff provide any nexus between his disability and the injury that he allegedly suffered as a result of any alleged deceptive act under the FBPA. As provided above, the Plaintiff failed to state a claim upon which relief can be granted for Count VI related to the FBPA, so the Plaintiff's claim for ancillary damages associated with that claim also fail. For the foregoing reasons, Plaintiff has failed to state a claim against Defendants and Claims VI and VII must be dismissed.

WHEREFORE, for the foregoing reasons, Defendants respectfully request that the Court dismiss the Complaint as to Plaintiff pursuant to Rule 12(b)(6) of the Federal Rule of Civil Procedure for failure to state any claims upon which relief can be granted.

Respectfully submitted, this 1st day of May, 2025.

SCHULTEN WARD TURNER & WEISS, LLP

/s/ J. Zachary Zimmerman

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CERTIFICATE OF COMPLIANCE AS TO FONT SIZE

Pursuant to the Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia, this is to certify that the foregoing complies with the font and point selections approved by the Court in Local Rule 5.1C. The foregoing was prepared on computer using Times New Roman font (14 point).

SO CERTIFIED, this 1st day of May, 2025.

SCHULTEN WARD TURNER & WEISS, LLP

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the within and foregoing *Defendants Muses Partners, LLC and Aderhold Properties, Inc. Motion to Dismiss and Memorandum in Support* with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to all counsel of record, including the following:

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SO CERTIFIED, this 1st day of May, 2025.

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