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

UNITED STATES OF AMERICA, EX REL MATTHEW WILLIAMS, and MATTHEW WILLIAMS,	)	
Plaintiffs,	)	CIVIL ACTION
vs.	)	FILE NO. 1:22-CV-03561-AT
MUSES PARTNERS LLC, and ADERHOLD PROPERTIES, INC.	)	
Defendants.	)	

PLAINTIFF MATTHEW WILLIAMS' RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS PLAINTIFF'S COMPLAINT

I. Introduction

This is an action for unlawful "side payments" in the Housing Choice Voucher Program (formerly known as "Section 8"). As the HUD Office of Inspector General has long advised, "requiring tenants to pay rent in excess of what is authorized by the [voucher] contracts" is an unlawful practice abusive both to the program itself and the low-income persons the voucher program serves, and has been found actionable under the False Claims Act, among other laws.[1] This excessive rent, or "side payments," commonly takes the form of additional rental

[1] U.S. Dept. of Housing & Urban Dev.t (HUD), OIG Fraud Alert: Bulletin on Charging Excess Rent in the Housing Choice Voucher Program, 73 FR 39712 (July 10, 2008); *see also, e.g., Price v. Peters,* 66 F.Supp.3d 1141, 1148 (C.D. Ill. 2013) (storage shed fees); *U.S. ex rel. Richards v. R&T Invs. LLC,* 29 F.Supp 3d 553, 556 (W.D. Pa. 2014) (water bills); *U.S. ex rel.Gionson v. NVWM Realty, LLC,* No.218CV01409GMNGWF, 2019 WL 2617816, at *2 (D.Nev. June 25, 2019) (sewer & trash), *U.S. ex rel. Holmes v. Win Win Real Est., Inc.,* No. 213CV02149APGGWF, 2015 WL 6150594, at *4 (D.Nev. Oct. 19, 2015) (HOA and property management fees).

charges for utilities, amenities, or other services ancillary to the housing.[2] In this case, Defendants unlawfully imposed excessive rent charges in the form of monthly water, sewer, valet trash, community management fees, and service charges.

Relator-Plaintiff Matthew Williams ("Mr. Williams") is a low-income individual with disabilities who, using his housing choice voucher, leased a home from Defendants Muses Partners, LLC and Aderhold Properties, Inc. ("Defendants") for an approved contract rent of $1,650 per month. Mr. Williams paid a portion of the rent himself, and the Atlanta Housing Authority (AHA), the local agency that administers his voucher, paid the balance using federal housing assistance payments funds. Under the AHA contract with the Defendants, Mr. Williams was responsible for paying his actual water and sewer usage each month, in addition to his portion of the rent. Mr. Williams was not supposed to be charged for valet trash, community management fees, a security deposit, or service charges. Nonetheless, Mr. Williams believed he was required to pay those extra fees and did pay them most months he lived at the property.The total charges varied each month but started at $60.47 in July 2018.

Collecting monthly fees beyond the actual water and sewer usage violated the Housing Assistance Payments contract that Defendants signed with the Atlanta

[2] HUD, OIG Fraud Bulletin: Landlord Overcharging Section 8 Tenant Fraud Scheme (Oct. 19, 2022), https://www.hudoig.gov/sites/default/files/2022-10/Landlord%20Overcharging%20Section%208%20Tenant%20Fraud%20Scheme.pdf

Housing Authority, in which Defendants certified that the companies would receive only the approved $1,650 per month rent plus reimbursement for water and sewer. By making that certification and receiving federal housing assistance payments despite knowing that Defendants were receiving additional side payments each month from Mr. Williams, Defendants made false claims and representations to the federal government through which the companies improperly received federal funds.

For the reasons that follow, Defendants' Motion should be denied in its entirety.

II. Discussion

A. Defendants fail to satisfy the standard for a Motion to Dismiss.

A complaint should be dismissed under Rule 12(b)(6) only where it appears that the facts alleged fail to state a "plausible" claim for relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); Fed. R. Civ. P. 12(b)(6). Only a possibility of recovery is required to survive a motion to dismiss for failure to state a claim, even if extremely "remote and unlikely." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556 (2007). In ruling on a motion to dismiss, the court must accept the facts pleaded in the complaint as true and construe them in the light most favorable to the plaintiff. See *Quality Foods de Centro Am., S.A. v. Latin Am. Agribusiness Dev. Corp., S.A.*, 711 F.2d 989, 994-95 (11th Cir. 1983); *Sanjuan v. American Bd. of Psychiatry &*

Neurology, Inc., 40 F.3d 247, 251 (7th Cir. 1994) (noting that at the pleading stage, the plaintiff "receives the benefit of imagination").

B. Plaintiff has stated a claim under the False Claims Act.

Generally, a complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). Allegations in *qui tam* actions are subject to the heightened pleading standard of Rule 9(b)[3], but courts "should always be careful to harmonize the directives of [R]ule 9(b) with the broader policy of notice pleading." *Friedlander v. Nims*, 755 F.2d 810, 813 n.3 (11th Cir. 1985).[4] Under notice pleading, the plaintiff must give the defendant fair notice of his claim and the grounds upon which it rests. See *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citing *Twombly*, 550 U.S. at 555). A False Claims Act complaint satisfies Rule 9(b) if it sets forth "facts as to time, place, and substance of the defendant's alleged fraud," specifically "the details of the defendants' allegedly fraudulent acts, when they occurred, and who engaged in them." *Hopper v. Solvay Pharms., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009) (quoting *United States ex rel. Clausen v. Lab'y Corp. of Am.*, 290 F.3d 1301, 1310 (11th Cir. 2002)).

Defendants fail to satisfy the standards for a motion to dismiss, because the Complaint meets the standards required by Rule 9(b). It lays out each and every

[3] See *United States ex rel. Clausen v. Lab. Corp. of Am., Inc.*, 290 F.3d 1301, 1309–10 (11th Cir. 2002)
[4] *abrogated on other grounds by Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541 (11th Cir. 2002) (en banc)

payment that Defendants extracted from Mr. Williams that was not covered under the AHA contract, and explains that under the False Claims Act, each time Defendants did this, they violated the Act. As the Complaint states succinctly in Paragraph 63, "For 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."

1. The Complaint is well-pled, and is not a "shotgun pleading."

"Rule 9(b) serves two purposes: 'alerting defendants to the precise misconduct with which they are charged and protecting defendants against spurious charges of immoral and fraudulent behavior.' " *United States ex rel. 84Partners, LLC v. Nuflo, Inc.*, 79 F.4th 1353, 1360 (11th Cir. 2023) (quoting *Clausen*, 290 F.3d at 1310). 109 F.4th 1297.

Defendants have staked their Motion in part on the claim that the Complaint is a "shotgun pleading." In support of this proposition, Defendants cite *Jackson vs. Bank of America, N.A.*, 898 F.3d 1348 (11th Cir. 2018), which details the saga of a truly remarkable (and admittedly incomprehensible) pleading. The panel's frustration with the plaintiffs in that case is palpable, and one does not wonder why this is so. However, Mr. Williams's Complaint bears no resemblance to the pleading that so vexed the Court in *Jackson*.

When determining whether a pleading is a "shotgun pleading," the central question is "whether the pleadings 'give the defendants adequate notice of the claims against them and the grounds upon which each claim rests.'" *Burks vs. Wellstar Health System*, 2024 WL 5321638 (N.D.G.A., slip op., June 4, 2024), citing *Okposio v. Barry Univ., Inc.*, No. 22-13845, 2023 WL 7484223, at *2 (11th Cir. Nov. 13, 2023) (per curiam) (citing *Weiland*, 792 F.3d at 1323). The Complaint filed by Mr. Williams begins with an introduction that summarizes the facts and claims, then follows by identifying the parties with specificity. The Statement of Facts then provides a chronology of the relationship between the parties, including each instance of the conduct complained of by Mr. Williams. Finally, the Complaint states Mr. Williams's claims against Defendants. Each claim bears a heading identifying the law violated, followed when necessary by a statement of the relevant law, and concludes with a statement of how Defendants' conduct violated that law. The Complaint is not "calculated to confuse the parties and the Court" (*Aria Dental Group, LLC vs. Farmers Insurance Exchange*, 528 F.Supp.3d 1359, M.D.GA, 2021).

Defendants argue the Complaint is a "shotgun pleading" because none of the allegations are defendant-specific, and because the first sentence of each count incorporates by reference the preceding paragraphs. The first contention is specious, as Defendants are, respectively, owner and property manager, controlled

by the same person, Thomas Aderhold. The second claim is insufficient as *prima facie* evidence of a "shotgun pleading." The Northern District of Georgia, in *Burks vs. Wellstar Health System*, 2024 WL 5321638 (N.D.G.A. 2024, slip op., June 4, 2024), clarified that restating previously asserted paragraphs does not alone make a complaint a "shotgun pleading."

Mr. Williams' Complaint provides Defendants with notice of the claims against them, and the facts upon which those claims rest. It also provides details of Defendants' fraudulent acts sufficient to meet the requirements of Rule 9(b). Defendants' contention that the Complaint is a shotgun pleading should be denied.

False Claims Act

Mr. Williams's federal claims are based on the False Claims Act ("FCA"). 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).

Mr. Williams contends that Defendants presented false claims by receiving and retaining federal housing assistance funds in connection with Mr. Williams's tenancy despite also charging and collecting from Mr. Williams more rent than the total rent-to-owner allowed by the Housing Assistance Payments contract ("HAP contract") that Defendants signed with Atlanta Housing Authority. Note that a

"claim" under § 3729(a)(1) includes direct requests to the Government for payment as well as reimbursement requests made to the recipients of federal funds under federal benefits programs. See § 3729(b)(2)(A); *Universal Health Services, Inc. v. U.S.*, 579 U.S. 176, 182 (2016).

The False Claims Act is not limited to facially false or fraudulent claims for payment. See *U.S. ex rel. Hendow v. Univ. of Phx.,* 461 F.3d 1166, 1170 (9th Cir.2006). Rather, the False Claims Act is "intended to reach all types of fraud, without qualification, that might result in financial loss to the Government." *United States v. Neifert–White Co.,* 390 U.S. 228, 232, 88 S.Ct. 959, 19 L.Ed.2d 1061 (1968). More specifically, in amending the False Claims Act in 1986, Congress emphasized that the scope of false or fraudulent claims should be broadly construed *U.S. ex rel. Hendow v. Univ. of Phoenix,* 461 F.3d 1166, 1174 (9th Cir.2006).

"Rule 9(b) does not impose a 'one size fits all' list of facts that must be included in every FCA complaint." *U.S. ex rel. Kester v. Novartis Pharm. Corp.,* 23 F.Supp.3d 242, 258, 2014 WL 2324465, at *15 (S.D.N.Y. May 29, 2014) (quoting *In re Cardiac Devices Qui Tam Litig.,* 221 F.R.D. 318, 337–38 (D.Conn.2004)). Whether a complaint satisfies Rule 9(b) is a "fact-specific inquiry" and "depends upon the nature of the case". *United States v. Wells Fargo Bank, N.A.,* 972 F.Supp.2d 593, 616 (S.D.N.Y.2013). However, Defendants fail to

present any cases that assess an FCA claim under the Section 8 Voucher program. In order to properly evaluate the sufficiency of a FCA Complaint alleging false claims under the Section 8 program, we must look to other courts' analysis of such claims; and many courts in other circuits have examined pleadings with quite similar factual allegations.

a. Defendants' actions constitute presentment of a false claim

Defendants argue that Mr. Williams failed to plead that Defendants "presented a claim to the government," and assert that Mr. Williams's Complaint "fails to provide any of the who, what, when, where, and how of any presentment to the government."

The Defendants in this case are Muses Partners, LLC ("MPL") and Aderhold Properties, Inc. (collectively, "Defendants"), respectively the property owner and property manager of the Lofts at Muse during Mr. Williams's tenancy. Coro Muse TIC, LLC was dismissed as a party defendant, given that its ownership of the Property began after Mr. Williams was no longer a tenant. Mr. Williams named the Defendants in this suit on the basis that they were jointly responsible for the harm suffered by Mr. Williams. The Complaint alleges that Deb Betancourt executed the agreement on behalf of Defendant Aderhold; Defendant Aderhold, as property manager and agent for Defendant MPL, entered the agreement on behalf of MPL and, as such, Aderhold's knowledge is imputed to MPL.

Defendants also argue that the Complaint does not allege the presentation of a false claim. Yet the Complaint sufficiently alleges presentation by way of false certification. See *United States ex rel. Ebeid v. Lungwitz,* 616 F.3d 993, 995 (9th Cir.2010) (regarding a false statement or fraudulent course of conduct, "a party can sufficiently establish this first element under a theory of express or implied false certification."). Under this theory, a party "impliedly certifies compliance with underlying contractual or statutory duties when submitting claims to the government" such that "[a] violation of those duties thus renders the claims false for purposes of the FCA." *United States ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805, 808 n.1 (11th Cir. 2015). **880 F.3d 1302**.

The Defendants certified, through signing the HAP Contract, that they would not collect additional funds in excess of the defined rent to the owner. Complaint at Pars. 24-25, 27; HOUSING CHOICE RENTAL ASSISTANCE AGREEMENT, Part 5, subpart (k); Part 13, subpart (b). Mr. Williams alleges that Defendants did collect funds in excess of the rent, and, in doing so, Defendants were submitting false claims to the government in default of their explicit duties under the HCRA Agreement. The Eleventh Circuit has endorsed the implied false certification theory since 2005 and the U.S. Supreme Court endorsed the theory in 2016. See *McNutt ex rel. U.S. v. Haleyville Medical Supplies, Inc.*, 423 F.3d 1256 (2005); *Universal Health Services, Inc. v. U.S.*, 579 U.S. 176 (2016).

Defendants also cite to: *United States, ex rel. Atkins v. McInteer*, 470 F.3d 1350, 1357 (11th Cir. 2006); *Hopper v. Solvay Pharms., Inc.*, 588 F.3d 1318, 1324 (11th Cir. 2009); and *United States ex rel. Clausen v. Lab Corp. of Am.*, 290 F.3d 1301, 1309-10 (11th Cir. 2002) in their argument that a presentment to the government is a necessary element of a claim under the FCA. In none of these cases, however, did the Court find that the relator failed to allege the "presentation" of a claim. The issue in each of these cases was, rather, whether the claims presented were false. In *Hopper*, the relators alleged that the defendant illegally marketed a certain drug to physicians to prescribe for for off-label uses; and assuming at least some of their patients were Medicaid recipients, the physicians submitted claims to the state health programs, who then requested federal Medicaid funds to pay for an off-label prescription, thereby making a false claim. The Complaint did not identify specific persons or entities that participated in any step of this process. Nor does it allege dates, times, or amounts of individual false claims. *Hopper v. Solvay Pharms., Inc.*, 588 F.3d. at 1326. In *Clausen*, the complaint alleged a scheme to bill the government for unnecessary laboratory tests; however, the complaint failed to provide any information linking these schemes to the submission of actual false claims and instead relied on the conclusory allegation that defendant submitted bills to the Government "on the date of service or within a few days thereafter". *United States ex rel. Clausen v. Lab Corp. of Am.*,

290 F.3d at 1313. There is no question in this case that the claims Defendants are alleged to have presented–claims for federal housing assistance over three years while collecting unlawful side payments–were false claims.

b. Charging excess rent to voucher holders is fraudulent under FCA

Indeed, it is well settled that "side-payments" or "side-rent"—payments charged to a voucher holder in addition to rent, including additional payments for maintenance, can violate the HAP Contract and would constitute fraud under the FCA.[5] *U.S. ex rel. Mathis v. Mr. Prop., Inc.*, 2015 WL 1034332, at *4 (D. Nev. Mar. 10, 2015).[6] In *Coleman v. Hernandez,*[7] charging an additional $60 per month for water usage was considered a side-payment when not included in the HAP Contract and therefore was a FCA violation. The charging of additional maintenance fees not included in the HAP Contract have been considered side-payments and a fraudulent course of conduct under the FCA. Generally, any additional fees not included in the HAP Contract are, in fact, side-payments to the **owner** and constitute a fraudulent course of conduct under the FCA. In *Sutton v. Reynolds*, rent charged to plaintiffs was set at $595 and was defined to include all housing services and maintenance; as such defendant charging additional fees for landscaping, if true, would be an illegal side-payment in violation of the FCA. *U.S. ex rel Sutton v. Reynolds,* 564 F.Supp.2d 1183, 1187 (D.Or.2007). Likewise, in

[5] See HUD, OIG Fraud Bulletin, *Supra* note 1, 2
[6] Citing *U.S. ex rel Sutton v. Reynolds*
[7] 490 F.Supp.2d 278, 280 (D.Conn.2007)

Mathis, where rent was defined as "payment for all housing services, maintenance, equipment, and utilities to be provided by the owner without additional charge to the tenant, charging a tenant pool maintenance fee was fraudulent. *U.S. ex rel. Mathis v. Mr. Property, Inc.,* 2015 WL 1034332 at *5.

Defendants place significant reliance on *Klusmeier v. Bell Constructors, Inc.*; in *Klusmeier*, the relator alleged that the defendant, a government contractor, submitted invoices to the government for noncompliant work; however, the relator was a subcontractor of the defendant, with no knowledge of the content of the defendant's invoices to the government nor which work was included or excluded from the invoices. The relator only alleged specific instances of the defendant's noncompliant work and put forth no allegation that those instances were then included in invoices presented to the government; as far as the relator knew, the defendant only billed the government for compliant work and excluded any noncompliant work from its invoices.

Here, we have an entirely different situation. Defendants' obligations and duties were explicitly defined in the HAP contract, as were the monthly funds Defendants would receive from Mr. Williams and in the form of government subsidies. Mr. Williams knew the amount he was responsible for and which services or fees would be included or excluded from his monthly rent obligation. Further, unlike in *Klusmeier*, the connection between the noncompliant conduct

and requests to the government for payment is self-evident – each of defendants payments from the government were the result of fraudulent inducement, since each payment was issued in reliance on defendants' certifications of compliance in the HAP contract and the lease agreement.

c. Complaint satisfies the FCA's scienter requirement

The FCA defines "knowing" and "knowingly" as having actual knowledge of the information, or acting in either deliberate ignorance to or reckless disregard for the information's truth or falsity. 31 U.S.C. § 3729(b)(1)(A).The term "knowingly" in this context "requires no proof of specific intent to defraud." *Id.* § 3729(b)(1)(B). In *Cummings v. Hale*[8], *Sutton,* and *Baran*, the court found the pleading met the scienter requirement where the relator alleged that the defendant signed a HAP contract to receive section 8 funds at a specified rent and then continued collecting funds while collecting additional rents. This is exactly what Mr. Williams alleges in this suit. Mr. Williams alleges that Defendants, Aderhold through Deb Bettancourt and MPL through its agent Aderhold, entered into the HAP contract and, subsequently, collected funds from Mr. Williams in excess of the rent in the contract.

Defendant Aderhold signed a HAP contract explicitly conditioning its receipt of Section 8 funds on certain requirements, namely that it not collect more

[8] 2017 WL 3669622 (N.D.Ca. May 17, 2017)

than the agreed rent; and Defendants did charge excess fees to Mr. Williams, yet continued to receive those funds, despite repeatedly violating the express conditions of the HAP contract.

Defendants argue that their alleged conduct "does not become fraud without knowledge"[9], which is simply an inaccurate statement of the law. Defendants themselves acknowledge earlier in their brief that "knowledge" includes "deliberate ignorance and reckless disregard"[10], yet their ensuing argument focuses solely on whether Mr. Williams alleged affirmative intent[11], which is not the threshold for an FCA claim. § 3729(b)(1)(B).

It is not required that Mr. Williams allege that Defendants knew they should not charge additional fees. This condition was explicitly stated in the HAP contract and conduct that violates the explicit condition in the contract is, at the very least, acting with reckless disregard for the requirements of the contract. See *Cummings* at *7. And, although Defendants were plainly violating the HAP agreement, they continued collecting government funds pursuant to the contract they recklessly disregarded. The foregoing have been sufficient pleadings in numerous cases and they should easily meet the scienter requirement here.

Materiality

[9] See Motion to Dismiss, at p. 14.
[10] See Motion to Dismiss, at p. 12.
[11] See Motion to Dismiss, at p. 13-14.

The third element of an FCA requires that "false statement or course of conduct must be material to the government's decision to pay out moneys to the claimant." *Ebeid,* 616 F.3d at 997; Materiality means having "a natural tendency to influence, or be capable of influencing, the payment or receipt of money or property." § 3729(b)(4); *Id. ; Neder v. United States,* 527 U.S. 1, 16, 119 S.Ct. 1827 (1999) (false statement is material if it has a "natural tendency to influence, or [is] capable of influencing, the decision of the decisionmaking body to which it was addressed.").

The HAP Contract that Defendants and AHA entered into explicitly states that the owner of the rental property does not have a right to receive housing assistance payments under the HAP Contract unless the owner has complied with all provisions therein; it also states that, by signing this agreement, the owner is certifying their compliance with the terms of this Agreement. See HCRA Agreement, Part 5, subpart (k); Part 13, subpart (b). Defendant Aderhold, the property manager, entered into this agreement as the agent of the property owner, MPL. Therefore, both Defendants made a false certification that they were not receiving additional payments, and, as such, this false certification was material to the government's decision to pay out moneys. See *Baran* at *5.

Cost to Government

Lastly, a plaintiff should show that there was an actual *claim,* meaning that the government paid out moneys or forfeited moneys due. See *U.S. ex rel. Hendow v. Univ. of Phx.,* 461 F.3d 1166, 1174 (9th Cir.2006). Here, Mr. Williams has alleged that Defendants collected federal funds from 2018 to 2021, through the monthly HAP subsidy, totalling an estimated $65,000.[12] As such, Mr. Williams has pleaded that the government did, in fact, pay out moneys, which is sufficient to satisfy the fourth element of the FCA claim. See *Baran* at *5.

C. Plaintiff has stated a claim for breach of contract.

Mr. Williams has thoroughly pled in his Complaint the basis for his breach of contract claim, and he has properly identified the monetary damages he incurred as a result of Defendants' actions. Contract formation requires the following elements: parties able to contract, consideration, assent of the parties to the terms, and "a subject matter upon which the contract can operate." O.C.G.A. § 13-3-1. Mr. Williams has identified in his complaint a variety of ways Defendants' actions constitute breach of contract. In their Motion to Dismiss, Defendants fail to address the 2018-2019 trash charges or more importantly, the increased rent they charged him under the 2019 lease.

Defendants argue that only the terms of the lease agreement can support a breach of contract action in an attempt to mitigate some of the unauthorized fees.

[12] See Complaint, at p. 3.

However, because Mr. Williams and Defendants participated in Section 8, Federal regulations are incorporated into the lease agreement by law. Specifically, the Code of Federal Regulations states, "The tenant shall have the right to enforce the tenancy addendum against the owner, and the terms of the tenancy addendum shall prevail over any other provisions of the lease." 24 C.F.R. § 982.308(f)(2). Mr. Williams's Complaint has identified in detail the provisions of the Housing Assistance Payments contract that Defendants have breached, and he even attached a copy of it to his Complaint. All of the Parties signed this document. Accordingly, Defendants' argument that only the terms of the lease are important in this case fail as a matter of law.

D. Plaintiff has stated a claim for illegal water billing.

Defendants makes several arguments in their Motion to Dismiss regarding Mr. Williams's claim for illegal water billing. As an initial matter, Defendants' arguments are geared towards the merits of the case and are irrelevant to whether Mr. Williams has stated a plausible claim for relief. In spite of this, Mr. Williams addresses their arguments below.

First, Defendants argue that O.C.G.A. § 12-5-180.1(e)(5) shields them from liability because they utilized a third-party water metering company. However, that statute only applies in situations where the landlord "seeks reimbursement for water and waste-water usage as required by this chapter". *Id*. Mr. Williams has

pled in his Complaint that Defendants' actions violate that chapter because they did not properly disclose the terms of the charges and because Defendants charged Mr. Williams more than the actual cost. Accordingly, that provision of the statute is irrelevant to this case.

Defendants then argue that they satisfied the notice requirements of O.C.G.A. § 12-5-180.1(b), which requires that "the terms of the charges are disclosed to the tenants prior to any contractual agreement." In this case, Defendants simply included a provision in the lease stating "Resident will be billed by multi-family billing for water/sewage". On its face, that kind of language is simply insufficient to satisfy the requirements of the statute.

Defendants finally argue that Mr. Williams has not proven that the water service fees were unreasonable under the statute. However, Defendants' argument that Mr. Williams is required to prove a charge was unreasonable in his Complaint at this stage of the proceedings is incorrect. Mr. Williams' detailed Complaint is sufficient to state a claim for illegal water billing, and Defendants have failed to show that his claim should be dismissed.

E. Plaintiff states a claim for breach of Georgia's Security Deposit Act.

In the portion of Defendants' Motion to Dismiss that relates to Mr. Williams' claim under Georgia's Security Deposit Act, codified in O.C.G.A. § 44-7-30, *et seq*., Defendants argue that the claim lacks factual support and the amount in

dispute is $400. First, Mr Williams has provided detailed, specific factual allegations throughout the Complaint to support this claim. Second, while the amount of the security deposit is irrelevant to the Motion to Dismiss, Georgia law allows for treble damages and attorneys fees beyond just the amount of the security deposit in these cases. O.C.G.A § 44-7-35(c). Accordingly, Mr. William's claim under Georgia's Security Deposit Act should not be dismissed.

F. Plaintiff states a claim for unjust enrichment.

Defendants argue that Mr. Williams' unjust enrichment claim should be dismissed because there is a contract involved. It is well established under Georgia law that a party may plead an unjust enrichment claim as an alternative to a breach of contract claim so long as the unjust enrichment claim does not incorporate the breach of contract claim. *See Clark v. Aaron's, Inc.*, 914 F. Supp. 2d 1301, 1309-10 (N.D. Ga. 2012); *see also Graybill v. Attaway Constr. & Assocs., LLC*, 341 Ga. App. 805, 811 (2017) (upholding pleading in the alternative).

Furthermore, while courts have held that the existence of a legal contract precludes an unjust enrichment claim, the key word is "legal." In *Clark*, the court denied a motion to dismiss an unjust enrichment count because the plaintiff "pled her breach of contract claim in a separate count" and "disputed the validity of the contracts at issue by alleging that they are void as unconscionable and in violation of statutory law." *Id*. In this case, Mr. Williams has pled unjust enrichment in a

separate count and alleged that Defendants' conduct was "unfair, deceptive, and unconscionable" and in violation of the Fair Business Practices Act. Accordingly, it is premature to dismiss Mr. Williams' claim for unjust enrichment.

G. Plaintiff states a claim under the Fair Business Practices Act.

Defendants' argument that Mr Williams has not stated a claim under the Fair Business Practices Act (O.C.G.A. § 10-1-390, *et seq.)* relies on an argument that he has failed to prove a harm to the consumer marketplace. The sole case that Defendants cite in their Motion to Dismiss, *Leslie v. 1125 Hammond, LP*, 368 Ga. App. 793 (2023), involves a summary judgment motion, not a motion to dismiss based on failure to state a claim. Additionally, the *Leslie* case involved a reasonable accommodation of disability claim that was related to one specific tenant, which is different from the nature of Mr. Williams' allegations in this case. Defendants' actions affected tenants who rented apartments and also Section 8 voucher holders. In contrast to a case involving disability accommodations for a specific individual, this case affects the consumer marketplace.

It is well established that if the public consumer interest would be served, one instance of an unfair or deceptive act or practice is a sufficient basis for a claim under the FBPA. *See Zeeman v. Black,* 156 Ga.App. 82, 86 (1980); *See also Crown Ford, Inc. v. Crawford*, 221 Ga. App. 881, 883 (1996); *See also Marrale v. Gwinnett Place Ford*, 271 Ga. App. 303, 306 (2005). As alleged in Mr. Williams's

Complaint, Defendants are engaged in the selling, leasing, and managing of real estate. Additionally, Mr. Williams's Complaint alleges that the property at issue was an apartment complex. Accordingly, Mr. Williams has properly stated a plausible claim under the Fair Business Practices Act.

H. Plaintiff states a claim under the Unfair or Deceptive Practices Toward the Elderly Act.

In their Motion to Dismiss, Defendants fail to cite any case law to support their argument that Mr. Williams has failed to sufficiently plead that he is disabled under the Unfair or Deceptive Practices Toward the Elderly Act (UDPTEA) (O.C.G.A. § 10-1-851). Mr. Williams has alleged in his complaint that he is disabled and that he receives Supplemental Security Income. *In Horne v. Harbour Portfolio VI, LP*, this Court considered a nearly identical issue. 304 F. Supp. 3d 1332 (N.D. Ga. 2018). In that case, the Court held that because the pleading included a statement that the Plaintiffs were disabled and received Social Security Disability benefits, the Plaintiffs had sufficiently stated a claim under UDPTEA. The statute does not require that Plaintiff prove a nexus between his disability and the injury sustained. *See* O.C.G.A. § 10-1-851. Accordingly, Muses' arguments are without merit.

III. Conclusion

For the reasons set forth above, Mr. Williams respectfully requests that the

Court deny Muses' Motion to Dismiss in its entirety.

Respectfully submitted this 22nd day of May, 2025.

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CERTIFICATION PURSUANT TO LOCAL RULE 7.1(D)

I hereby certify that the foregoing brief was prepared using Times New Roman 14 point font, in accordance with Local Rule 5.1(C).

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CERTIFICATE OF SERVICE

I certify that, on this date, I electronically filed the foregoing *Plaintiff Matthew Williams' Response in Opposition to Defendants' Motion to Dismiss Plaintiff's Complaint* using this Court's ECF System, which will automatically send email notification to the following attorneys of record:

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Respectfully submitted this 22nd day of May, 2025.

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