UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LEGAL AID CHICAGO,	)	
	)	Case No. 1:23-cv-4809
Plaintiff,	)	
	)	Honorable Steven C. Seeger
v.	)	
	)	
HUNTER PROPERTIES, INC.,	)	
	)	
Defendant.	)	

DEFENDANT'S REPLY IN SUPPORT OF
MOTION TO DISMISS FIRST AMENDED COMPLAINT

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Introduction

Plaintiff Legal Aid Chicago's ("Plaintiff") Response to Defendant's Motion to Dismiss (Doc. 67) ("Response") is more remarkable for what it does not say than for what it does. Plaintiff completely ignores recent Supreme Court precedent addressing organizational standing. *See FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367 (2024) ("*Alliance*"). Plaintiff's First Amended Complaint (Doc. 53) ("FAC") fails to correct the deficiencies identified by this Court in *Legal Aid Chicago v. Hunter Properties, Inc.*, No. 23-CV-4809, 2024 WL 4346615 (N.D. Ill. Sept. 30, 2024) ("*Legal Aid Chicago I*"). Thus, the FAC should respectfully be dismissed with prejudice for lack of standing.

Moreover, despite the analysis in Defendant Hunter Properties, Inc.'s ("Hunter Properties") Memorandum in Support of Motion to Dismiss First Amended Complaint (Doc. 64) ("Mem.") detailing 2015 and 2017 Supreme Court precedent regarding pleading requirements for disparate-impact claims under the Fair Housing Act ("FHA"), 42 U.S.C. § 3604(a), Plaintiff does little more than simply cite these pivotal, controlling cases. At the same time, Plaintiff proceeds to rely on caselaw decided before the 1988 amendments to the FHA. This Court should decline Plaintiff's invitation to ignore controlling authorities and dismiss Counts I and II of the FAC for failure to sufficiently allege disparate-impact claims under the FHA.

Plaintiff's Count III under the Illinois Consumer Fraud and Deceptive Practices Act ("ICFA"), 815 ILCS 505/2, fairs no better. Plaintiff asserts a novel ICFA claim unsupported by any authority and asks this Court to find that allegedly true statements can support an ICFA claim for unfair practice, without any misrepresentations, omissions, deceptive acts, or unfair competition. This Court should reject this novel theory because Plaintiff does not have standing under the ICFA and Plaintiff's allegations do not state a cognizable claim for violation of the ICFA.

Argument

I. This Court Does Not Have Subject Matter Jurisdiction over Plaintiff's Claims.

A. Plaintiff's Alleged Injuries Are Not Sufficiently Concrete and Particularized.

Despite this Court's pronouncement that the Supreme Court "pumped the bakes on any extension of *Havens*," *Legal Aid Chicago I*, 2024 WL 4346615, at *10, Plaintiff ignores *Alliance* entirely and doubles down in its reliance on *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), in its Response brief. (Resp. at 2–7.) None of the alleged injuries identified in Plaintiff's Response constitute a cognizable injury in fact, and this Court lacks jurisdiction over the FAC for the same reasons as stated in *Legal Aid Chicago I*.

First, Plaintiff argues that it "was required to make substantive changes to its programs." (Resp. at 3–4.) But the list of activities it describes are almost exactly the same as those the Court held insufficient to constitute an injury in fact in *Legal Aid Chicago I*. *Compare Legal Aid Chicago I*, 2024 WL 4346615, at *6, *with* Resp. at 3–4. The FAC does not allege new facts to support Plaintiff's conclusory allegations. Conspicuously absent from the FAC are any allegations regarding when and over what period of time Plaintiff made the alleged changes to support a link to Hunter Properties. Plaintiff's alleged changes to its programs are nothing more than baseline work and ordinary program costs for Plaintiff, which do not constitute an injury in fact. *See Democratic Party of Wisconsin v. Vos*, 966 F.3d 581, 587 (7th Cir. 2020); *see also Legal Aid Chicago I*, 2024 WL 4346615, at *10 ("It is hard to see how working on eviction cases or sealing eviction records is an injury, let alone a harm caused by the alleged policy of Hunter Properties.").

Second, Plaintiff argues it "was required to divert its resources" and "has not been able to dedicate as many resources to" other advocacy work. (Resp. at 4–5.) These allegations are insufficient to state a cognizable injury in the wake of *Alliance*. *See Alliance*, 602 U.S. at 390–91 (holding allegations that the FDA's actions would cause the plaintiff doctors to divert "resources

and time from other patients to treat patients with mifepristone complications" did not confer standing). One of Plaintiff's core missions is "maximizing low-income Cook County residents' access to safe, decent and affordable housing, including by preventing and reducing the impacts of evictions and evictions records." (FAC ¶ 79.) None of the alleged activities differ from Plaintiff's routine activities in the slightest. *See Louisiana Fair Hous. Action Ctr., Inc. v. Azalea Garden Properties, L.L.C.*, 82 F.4th 345, 351–52 (5th Cir. 2023) (explaining that "not every diversion of resources rises to an injury sufficient to confer standing" and that the organization's alleged injuries do not confer standing because they "seemingly fall squarely within its routine activities undertaken to fulfill its mission 'to eradicate housing discrimination in Louisiana'"). Plaintiff alleges nothing more than the shifting of its resources between its ordinary programs that all advance "its bread-and-butter mission of legal representation in housing matters," which does not constitute a "'perceptibl[e]' impact on [the] organization's resources." *Legal Aid Chicago I*, 2024 WL 4346615, at *12.

Third, Plaintiff argues that Hunter Properties' policy impaired Plaintiff's "ability to carry out its core mission." (Resp. at 5–6.) But this is exactly the type of alleged injury that the Supreme Court rejected in *Alliance*. *Legal Aid Chicago I*, 2024 WL 4346615, at *10 (quoting *Alliance*, 602 U.S. at 394) ("An organization does not have standing simply because a defendant has 'impaired' its 'ability to provide services and achieve their organizational missions.'"). Such alleged "injuries really are 'simply a setback to the organization's abstract social interest[ ]' in achieving housing justice." *Legal Aid Chicago I*, 2024 WL 4346615, at *10 (quoting *Havens*, 455 U.S. at 379).

Finally, Plaintiff argues it "was required to take on work outside its core mission." (Resp. at 6–7.) But the list of activities purportedly outside of Plaintiff's core mission all fall under the umbrella of "engaging in advocacy related to housing issues," which is also part of Plaintiff's core

mission.[1] *See Legal Aid Chicago I*, 2024 WL 4346615, at *12. Moreover, the list once again "reads like a list of what Legal Aid Chicago does to oppose no-evictions policies generally, meaning policies adopted by landlords in society at large." *Id.* at *6.

Thus, the FAC once again fails to allege any injury that can confer organizational standing.

B. Plaintiff's Alleged Injuries Are Not Fairly Traceable to Hunter Properties.

Plaintiff's argument that it added "specific allegations in the FAC about the effect of Hunter's policy on Legal Aid Chicago" misses the point of Hunter Properties' argument that causation is lacking. (Resp. at 8–9.) The specific allegations Plaintiff added to the FAC fail to establish causation for two reasons.

First, the allegations are insufficient because they relate to Plaintiff's pre-lawsuit investigation. *See Alliance*, 602 U.S. at 394 ("But an organization that has not suffered a concrete injury caused by a defendant's action cannot spend its way into standing simply by expending money to gather information and advocate against the defendant's action. An organization cannot manufacture its own standing in that way.").

Second, Plaintiff's conclusion that Hunter Properties applied an "aggressive No-Evictions Policy of categorially denying rental housing to applicants based on any prior eviction filing" (Resp. at 8) was not reasonable based on Plaintiff's limited investigation involving three phone

[1] Plaintiff's activities allegedly outside of its core mission include the following:

> (1) researching and contacting other potential landlords to inquire about their eviction screening policies and practices; (2) assisting clients in completing applications for rental housing; (3) drafting and sending letters to landlords to explain the eviction sealing process and why a previously sealed eviction record has no bearing on an applicant's suitability as a tenant; (4) applying for emergency funds to assist clients to place their property in storage or pay for application fees when they struggle to find housing as a result of prior eviction records; and (5) applying for rental assistance funds on behalf of a client to increase the chance the landlord will agree to settle an eviction case and seal an eviction record.

(Resp. at 7.)

calls that did not mention sealed evictions or inquire whether Hunter Properties made exceptions to its policy. The FAC does not allege any facts from which it can plausibly be inferred that Hunter Properties' actions would "nullif[y] the value of Legal Aid Chicago's legal services." (*Id.* at 9.) Thus, the links in the chain of causation are too speculative and attenuated.

C. Any Favorable Decision Is Not Sufficiently Likely to Redress Plaintiff's Alleged Injuries.

Plaintiff argues redressability based on *Uzuegbunam v. Preczewski,* 592 U.S. 279 (2021), which holds that "a request for nominal damages satisfies the redressability element of standing where a plaintiff's claim is based on a completed violation of a legal right." *Id.* at 802. Plaintiff, though, does not allege a completed violation of a legal right or seek nominal damages for a past injury. *See Brumit v. City of Granite City*, 72 F.4th 735, 737 (7th Cir. 2023) (distinguishing *Uzuegbunam* because plaintiffs "failed to identify a concrete injury that could be redressed by nominal damages"). Instead, Plaintiff alleges ongoing conduct that it seeks a permanent injunction to stop. (FAC at 31–32.) The injunctive relief Plaintiff seeks against Hunter Properties is not sufficiently likely to cause Plaintiff to change any of its activities at all because it will still need to engage in the same activities to counteract similar policies enacted by other landlords. Thus, redressability is lacking.

II. The FAC does Not Plausibly Allege a Disparate-Impact Claim under *City of Miami* or *Inclusive Communities*.

A. The FAC Fails to Sufficiently Allege Proximate Cause.

Plaintiff's argument that the FAC alleges proximate cause because Hunter Properties' conduct harms Plaintiff's mission at the same time it allegedly harms Plaintiff's clients is flawed. (Resp. at 10–13.) As explained by this Court in *Legal Aid Chicago I*, making "it harder for Legal Aid Chicago to accomplish its mission" is not a cognizable injury, and Plaintiff is not injured simply because it works to remedy the effects of a policy maintained by Hunter Properties. *Legal*

Aid Chicago I, 2024 WL 4346615, at *12. It follows, therefore, that such alleged injury is not the proper focus of the proximate cause analysis under the FHA, which requires "some direct relation between the injury asserted and the injurious conduct alleged." *Bank of Am. Corp. v. City of Miami, Fla.*, 581 U.S. 189, 202–03 (2017) ("*City of Miami*"). To the extent Plaintiff suffered any cognizable harms from Hunter Properties' challenged conduct (it did not), those harms cannot be said to be directly related and do not satisfy the FHA's heightened proximate cause standard.

Moreover, Plaintiff fails to meaningfully distinguish its position from the plaintiffs in the lending cases Hunter Properties cites in its opening brief. The alleged harm to Plaintiff's mission is dependent on and interconnected with the housing market generally and the individual actions of Plaintiff's clients. The denial of a rental application submitted by any one of Plaintiff's clients does not automatically create the harms alleged by Plaintiff. As a next step, that client would need to go back to Plaintiff to request additional services, rather than simply move in with family members or pursue other housing opportunities without Plaintiff's assistance. Moreover, to cause the alleged harms to Plaintiff, many such denied applicants need to return to Plaintiff for services, and other landlords also need to enact policies of refusing to rent to applicants with eviction histories. Otherwise, Plaintiff's clients could easily find alternative housing and there would be no need to engage in additional advocacy efforts. In addition, the alleged disparate impact would not exist at all without the alleged racial disparities in eviction filings, which is the collective outcome of the actions of many different landlords in Cook County. Thus, there is no persuasive reason for this Court to depart from the well-reasoned lending cases holding that proximate cause under the FHA was lacking. (*See* Mem. at 7–8 (citing cases).)

B. The FAC Fails to Allege a Prima Facie Case of Disparate Impact.

Despite the Supreme Court's recognition of disparate-impact claims in *Texas Department of Housing and Community Affairs v. Inclusive Communities Project, Inc.*, 576 U.S. 519 (2015)

("*Inclusive Communities*"), Plaintiff does not discuss the application of *Inclusive Communities* beyond simply citing it. (Resp. at 10, 14.) This Court should decline Plaintiff's invitation to apply caselaw predating *Inclusive Communities* and, instead, follow recent caselaw discussing and applying *Inclusive Communities* at the pleading stage. Under the appropriate standard, the FAC fails to plausibly allege the elements of a disparate-impact claim under the FHA.

1. Plaintiff's Alleged Statistical Disparity Does Not Show a Disparate Impact Caused by Hunter Properties.

Plaintiff argues that statistics regarding renters in Cook County are sufficient to "show that Hunter's No-Evictions Policy has a significant disparate impact." (Resp. at 13–17.) But Plaintiff confuses cause and effect and relies on cases decided before the 1988 amendments to the FHA, which recognized disparate-impact claims, and caselaw called into doubt following *Inclusive Communities*. *See, e.g.*, *Inclusive Communities*, 576 U.S. at 521; *Ellis v. City of Minneapolis*, 860 F.3d 1106, 1111 n.2 (8th Cir. 2017) ("The Supreme Court's decision casts significant doubt on *Gallagher* [*v. Magner*, 619 F.3d 823 (8th Cir. 2010)]. Thus, at least to the extent it is inconsistent with *Inclusive Communities* and the present opinion, *Gallagher* is no longer binding precedent.").

Plaintiff's own cited cases rely on statistics regarding the effect of the challenged policies, rather than attempting to draw an inference based on the available applicant pool, as Plaintiff asks this Court to do. *See Betsey v. Turtle Creek Assocs.*, 736 F.2d 983, 988 (4th Cir. 1984) (discussing statistical impact of defendant's challenged policy); *Metro. Hous. Dev. Corp. v. Vill. of Arlington Heights*, 558 F.2d 1283, 1286 (7th Cir. 1977) (discussing statistics showing the effect of the Village's challenged decision); *Huskey v. State Farm Fire & Cas. Co.*, No. 22 C 7014, 2023 WL 5848164, at *2 (N.D. Ill. Sept. 11, 2023) (discussing statistical disparities in "(1) State Farm's claims-processing times, (2) the paperwork it required, and (3) the number of interactions between policyholders and State Farm employees").

Plaintiff has also not sufficiently alleged any methodology for Hunter Properties to challenge, and therefore, Plaintiff's cited cases regarding "methodological challenges" are inapposite. (*See* Resp. at 16.) The FAC merely alleges disparities in the population of Cook County renters served with evictions (FAC ¶¶ 46–52), and Plaintiff wholly fails to explain how these numbers show any impact of an alleged "No-Evictions Policy." What Plaintiff really asks the Court to do is to infer an impact, but doing so is far too speculative based on the FAC's allegations. Thus, Plaintiff's alleged statistical disparity does not support a claim against Hunter Properties.

2. The FAC Fails to Allege Robust Causation as Required by *Inclusive Communities*.

Plaintiff argues that it sufficiently alleged a causal connection as required by *Inclusive Communities* (Resp. at 17–18) without citing any authority interpreting and applying the Supreme Court's "robust causality requirement" at the pleading stage. *See Inclusive Communities*, 576 U.S. at 542–43; *Trimuel v. Chicago Hous. Auth.*, No. 22 CV 03422, 2023 WL 6290485, at *7 (N.D. Ill. Sept. 27, 2023) ("The FHA requires a more robust causal connection at the motion to dismiss stage."). Instead, Plaintiff relies on *County of Cook v. HSBC North America Holdings Inc.*, 136 F. Supp. 3d 952 (N.D. Ill. 2015), which decided a motion to dismiss filed before *Inclusive Communities* was decided and merely acknowledges *Inclusive Communities.* The opinion does not discuss causation and applies an old pleading standard from a 1977 Seventh Circuit case. *See HSBC N. Am. Holdings Inc.*, 136 F. Supp. 3d at 966. The cases Hunter Properties cites in its opening brief, on the other hand, discuss and apply the pleading standard from *Inclusive Communities*. *See Inclusive Communities Project, Inc. v. Lincoln Prop. Co.*, 920 F.3d 890, 904 (5th Cir. 2019); *Trimuel*, 2023 WL 6290485, at *7; *TBS Grp., LLC v. City of Zion, Illinois*, No. 16-CV-5855, 2017 WL 5129008, at *9 (N.D. Ill. Nov. 6, 2017). Under the applicable standard, the FAC fails to state a claim because it does not allege sufficient facts to establish robust causation.

Plaintiff's cited case highlights the FAC's deficiencies. Cook County's amended complaint in *County of Cook v. HSBC North America Holdings Inc.* is over 100 pages long and contains detailed factual allegations regarding the defendants' marketing targeted to minorities and discretionary pricing policies. 136 F. Supp. 3d at 957. The amended complaint alleges specific facts regarding how defendants used a computer system to set rates, fees, and terms on high cost, subprime, and ALT-A loans at the corporate level, distributed those rate sheets to employees, branch managers, and a network of broker's and correspondent lenders, and expressly encouraged additional discretionary charges. After reviewing information provided by loan applicants, as wells as traditional objective risk-related credit variables, defendants allegedly derived a risk-based financing rate, while simultaneously encouraging and authorizing, through the rate sheets and other communications, "loan officers and branch managers to charge yield spread premiums and other discretionary fees and costs that were not based on any particular or appropriate credit risk factor" on mortgage loans offered to FHA protected minority borrowers. Amend. Compl. at ¶¶ 100–05, *Cnty. of Cook v. HSBC N. Am. Holdings Inc.*, No. 1:14-cv-2031 (N.D. Ill. 2015), 2014 WL 1677060. Plaintiff's 32-page FAC does not come anywhere close to level of detail found to be sufficient to state a disparate-impact claim and falls well short of what is required.

III. This Court Should Reject Plaintiff's Novel ICFA Theory.

Plaintiff's argument that it has sufficiently pled the elements of an ICFA claim is contradictory and does not make sense. Plaintiff attempts to plead a violation of the ICFA for an unfair practice, without any misrepresentations, omissions, deceptive acts, or unfair competition. The ICFA is not intended to apply to unfair business practices that are not also deceptive. *See Robinson v. Toyota Motor Credit Corp.*, 775 N.E.2d 951, 960 (Ill. 2002) ("The Consumer Fraud Act is a regulatory and remedial statute intended to protect consumers, borrowers, and business persons against fraud, unfair methods of competition, and other unfair and deceptive business

practices."). Plaintiff does not cite any authority indicating its claim is actionable under the ICFA, and it simply does not make sense that it could be because the FAC alleges Hunter Properties' conduct *deterred* prospective tenants from applying at all. (FAC ¶ 101.) This is the opposite of unfair competition. Plaintiff's novel ICFA claim fails for the additional reasons stated below.

A. Plaintiff Does Not Have Standing Under the ICFA.

Plaintiff's argument that it has standing under the consumer nexus test is novel and unsupported. (Resp. at 18–20.) "The consumer nexus test is difficult to satisfy, as 'Illinois courts are skeptical of business-v.-business ICFA claims when neither party is actually a consumer in the transaction.'" *Onvi, Inc. v. Radius Project Dev., Inc.*, No. 19 C 3201, 2020 WL 4607242, at *4 (N.D. Ill. Aug. 11, 2020) (quoting *Cmty. Bank of Trenton v. Schnuck Markets, Inc.*, 887 F.3d 803, 823 (7th Cir. 2018)). Plaintiff does not satisfy this high bar.

First, Plaintiff has not alleged that its "actions were akin to a consumer's actions to establish a link between them and consumers." *See Patel v. Zillow, Inc.*, No. 17 C 4008, 2018 WL 2096453, at *8 (N.D. Ill. May 7, 2018). Instead, it misconstrues the consumer nexus test by cherry picking language from this element of the test to argue it need only show an "adequate link to the consumers of the rental market." (Resp. at 18.)[2] But the way to show this link under the consumer nexus test is to allege actions "akin to a consumer's actions," which Plaintiff does not claim to have done. "[W]hen Illinois courts have found that business-entity-plaintiffs meet the consumer nexus test, it is often because, unlike here, they 'were harmed by the defendants' deceptive practices while acting as consumers, in the sense that they were more like end-users of the

[2] Contrary to Plaintiff's assertion, the reason for the consumer nexus test is to evaluate whether a business can maintain a cause of action under the "any person" language in the ICFA. *See Cmty. Bank of Trenton*, 887 F.3d at 822 ("Because the statute's right of action is available to 'Any person who suffers actual damage as a result of a violation,' *id.*, quoting 815 Ill. Comp. Stat. 505/10a(a), Illinois courts have interpreted the ICFA to apply not only in consumer-against-business cases but also in some cases when 'both parties to the transaction are business entities.'").

defendants' products or services.'" *Garvey v. Citizens for Rauner, Inc.*, No. CV 18 C 7919, 2020 WL 13512715, at *4 (N.D. Ill. Sept. 3, 2020); *see also Cmty. Bank of Trenton*, 887 F.3d at 823 ("ICFA claims may not be available when the business relationship is more like that of 'partners' or 'joint venturers' and not 'consumers of each other's services.'"). Plaintiff's cited authority is inapposite because Plaintiff is not acting in a representative capacity or on behalf of its alleged clients—it filed this lawsuit on its own behalf. *See Breeze v. Bayco Prod. Inc.*, 475 F. Supp. 3d 899, 907 (S.D. Ill. 2020) (holding that "legal representatives such as estates" have standing on behalf of consumers).

Plaintiff fails to establish the remaining factors of the consumer nexus test because the FAC alleges the subject statements on Hunter Properties' website were true, not that they confused or deceived consumers. (FAC ¶ 32.) Thus, they do not sufficiently affect the market or involve consumer protection concerns. *See MacNeil Auto. Prod., Ltd. v. Cannon Auto. Ltd.*, 715 F. Supp. 2d 786, 793 (N.D. Ill. 2010) (noting "courts have found that conduct that would confuse or deceive consumers implicates consumer protection concerns"). Plaintiff does not cite any authority permitting an ICFA claim to proceed based on statements that were neither misleading nor deceptive.

B. The FAC Does Not Allege the Elements of any Recognized ICFA Claim.

Plaintiff argues it pled the first element of an ICFA claim by alleging that "Hunter's No-Evictions Policy offends public policy because it undermines state and federal statutes designed to protect consumers of residential housing." (Resp. at 20.) While a plaintiff need not establish all three criteria of an unfair practice, the Court must consider the degree to which the practice meets one or more criteria. *See Robinson*, 775 N.E.2d at 961. Plaintiff only argues the public policy criteria and thereby concedes that the other two criteria do not apply. Thus, the alleged practice must be particularly offensive to public policy. *See Batson v. Live Nation Ent., Inc.*, No. 11 C 1226,

2013 WL 992641, at *6 (N.D. Ill. Mar. 13, 2013) (dismissing ICFA unfairness claim because "[e]ven if the claim somehow satisfied one of the [three *Robinson*] factors, it would not do so to the degree necessary to state a viable ICFA claim"). Plaintiff's allegations that Hunter Properties undermines the purpose behind certain statutes does not allege an offense of public policy to a sufficient enough degree. Plaintiff points to a law allowing eviction records to be sealed, the Homelessness Prevention Act, the FHA, and the Illinois Human Rights Act. (FAC ¶¶ 96–99.) With the exception of the FHA, which Plaintiff has not sufficiently alleged a violation of for the reasons explained above, Hunter Properties is not alleged have violated any of these statutes, nor could it be. The FAC, therefore, does not plausibly allege the first element of an ICFA claim. *See Loop Spine & Sports Ctr., Ltd. v. Am. Coll. of Med. Quality, Inc.*, No. 22 CV 04198, 2023 WL 3585835, at *3 (N.D. Ill. May 22, 2023) (collecting cases and dismissing ICFA claim because, although plaintiff alleged conduct that violated public policy, "the other two factors, without more, weigh against a finding of unfairness").

Second, Plaintiff argues that Hunter Properties intended reliance on this practice because it "stated its No-Evictions Policy directly on its website and featured it prominently in its housing application, thereby deterring applicants." (Resp. at 21.) But the FAC alleges these statements are true. (FAC ¶ 32.) Plaintiff does not cite any authority holding that an allegedly accurate statement deterring consumers from engaging in a transaction is actionable under the ICFA. *See Abramov v. Home Depot, Inc.*, No. 17-CV-1860, 2018 WL 1252105, at *3 (N.D. Ill. Mar. 12, 2018) ("The few cases which have found a true statement to be actionable under ICFA have all involved a facially obvious omission or deception as to a material fact."). Permitting such a claim to proceed would stretch the ICFA beyond the text of the statute. *See* 815 ILCS 505/2 (stating second element as "with intent that others rely upon the concealment, suppression or omission of such material fact").

Without any state authority supporting Plaintiff's position, this Court is directed to "take the approach that is restrictive of liability." *Home Valu, Inc. v. Pep Boys*, 213 F.3d 960, 965 (7th Cir. 2000); *accord Pisciotta v. Old Nat. Bancorp*, 499 F.3d 629, 635–36 (7th Cir. 2007). Thus, Hunter Properties' alleged statements are not actionable under the ICFA.

Third, Plaintiff fails to allege proximate cause for the reasons stated in Section II.A, *supra*, but even if an ICFA claim has a more relaxed standard than the standard stated in *City of Miami*, Plaintiff still does not establish proximate cause. Under the ICFA, "[a] defendant's conduct is a 'cause in fact' of the plaintiff's injury only if that conduct is a material element and a substantial factor in bringing about the injury. A defendant's conduct is a material element and substantial factor in bringing about the injury if, absent that conduct, the injury would not have occurred." *Abrams v. City of Chicago*, 811 N.E.2d 670, 675 (Ill. 2004) (citation omitted). The FAC does not plausibly allege any injury that would not have occurred absent Hunter Properties' challenged conduct because other landlords apply similar policies. Plaintiff's allegations are more akin to a "market theory of causation," which Illinois courts have rejected. *See Cmty. Bank of Trenton*, 887 F.3d at 823–24 (discussing market theory of causation).

Finally, even if Plaintiff does not need to quantify its alleged loss in the FAC, the FAC still must "allege facts sufficient to show that plaintiffs suffered actual, measurable, non-speculative damages." *Petrizzo v. DeVry Educ. Grp. Inc.*, No. 16 CV 9754, 2018 WL 827995, at *6 (N.D. Ill. Feb. 12, 2018). The Response fails to rebut Hunter Properties' argument that the costs of any alleged diversion of resources or frustration of mission are too speculative to be calculated or measured with any reasonable certainty. Thus, Plaintiff's ICFA claim fails to state a claim upon which relief can be granted.

Conclusion

For the foregoing reasons, Defendant Hunter Properties, Inc. respectfully requests that the Court dismiss Plaintiff Legal Aid Chicago's First Amended Complaint, with prejudice.

Dated: March 19, 2025

Respectfully submitted,

/s/ Maria A. Boelen

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CERTIFICATE OF SERVICE

I hereby certify that on this date, March 19, 2025, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court using the CM/ECF system, which will automatically send email notification of such filing to all attorneys of record.

/s/ Maria A. Boelen