

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA**

**VERNITA COLEMAN and JAYDA
JAMES**, on behalf of themselves and all
others similarly situated,

Plaintiffs,

v.

**RICHMOND REDEVELOPMENT AND
HOUSING AUTHORITY**,

Defendant.

CIVIL ACTION NO.: 3:25-CV-00133-RCY

**PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANT RICHMOND
REDEVELOPMENT AND HOUSING AUTHORITY'S MOTION TO DISMISS**

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Public housing authorities are not ordinary landlords. Private landlords negotiate rent with tenants through arms-length transactions and can remain largely indifferent to an individual tenant's financial circumstances. Public housing authorities, which serve society's most financially vulnerable households, do not have that luxury. Federal law requires them to set rent at no more than 30% of a resident's household income. When a resident has no income, the housing authority must charge "minimum rent" of no more than \$50. And critically, when a resident experiences a financial hardship, the housing authority "shall immediately" exempt the resident from paying that minimum rent (the "Hardship Exemption").

Defendant Richmond Redevelopment and Housing Authority (RRHA) understands well its obligation to evaluate its residents' financial circumstances. When a resident reports she has no income, RRHA requires the resident to fill out a Zero Income Worksheet that exhaustively probes whatever money that resident can obtain. And with respect to its duty to apply the Hardship Exemption, RRHA promises to "consider all relevant circumstances" brought to its attention relating to financial hardship, that it will "notify families subject to a minimum rent of their right to request a minimum rent Hardship Exemption under the law," and that all notices of lease termination premised on nonpayment of rent will advise families of the availability of the Hardship Exemption.

RRHA has failed to meet these obligations under the statute, its rental agreement with residents, and its own operating policy. When residents advise RRHA of the "relevant circumstances" that demonstrate hardship, RRHA does nothing. It does not "consider" if those circumstances justify the Hardship Exemption. It does not even notify families about the Hardship Exemption or how to formally request it. The Zero Income Worksheet, which tenants must complete to explain their financial hardship and show they have no income, makes no mention of

the Hardship Exemption. When families report income losses or other qualifying circumstances, RRHA stays silent. And, until recently, when RRHA notified families that they will be evicted for not paying rent, RRHA did not notify families of the availability of the Hardship Exemption.

The experience of Plaintiffs Vernita Coleman and Jayda James is typical of RRHA residents. While on minimum rent, both Ms. Coleman and Ms. James experienced significant financial hardship and told RRHA they lacked income sufficient to pay their rent. Yet RRHA did nothing. Because Plaintiffs did not use some unspecified magic words, RRHA now says it could ignore its duties under the statute and its operating plan. This argument upsets the basic promises federal law makes to Richmond's most vulnerable families. The statute obliges RRHA to understand tenants' financial condition and impose rent commensurately. Federal law does not condition that obligation on the tenant first incanting special language or using special forms. And whatever process a housing authority may lawfully impose, it must first tell its residents in a meaningful way. RRHA never did that, so it is no wonder that Plaintiffs did not do so here. Nor is it any surprise that from 2019 to 2024, RRHA recognized only *one* tenant who requested and was granted a Hardship Exemption. RRHA's motion to dismiss makes no effort to justify or explain how this abysmal record could possibly result from compliance with federal housing law.

RRHA has breached its obligations under the plain language of § 1437a, its own Residential Rental Agreement ("Lease"), and its Admissions and Continued Occupancy Policy (ACOP), and the Court should deny its motion to dismiss.

LEGAL AND FACTUAL BACKGROUND

The United States Housing Act of 1937, 42 U.S.C. § 1437 *et seq.* ("Housing Act"), as modified by the Brooke Amendment and the Quality Housing and Work Responsibility Act of 1998, obligates public housing authorities to calculate residents' rent based on their income. Public housing authorities must set a resident's rent at 30% of the household's monthly adjusted income,

10% of its unadjusted monthly income, or the portion of the household's welfare assistance payment specifically designated for housing costs, whichever is highest. *See* 42 U.S.C. § 1437a(a)(1). Public housing authorities may set a minimum rent of no more than \$50, again based on an evaluation of the resident's income. *Id.* § 1437a(a)(3)(A). But, "a public housing agency . . . **shall immediately grant an exemption** from application of the minimum monthly rental under such subparagraph to any family unable to pay such amount because of financial hardship[.]" *Id.* § 1437a(a)(3)(B)(i) (emphasis added). Just as a public housing authority's calculation of rent is based on its thorough evaluation of a resident's income, a public housing authority must "immediately grant" a Hardship Exemption to minimum rent when it learns a resident cannot pay because of financial hardship.¹

Reflecting this obligation, RRHA's Lease promises that tenants will be considered for a Hardship Exemption if they notify RRHA that they "are experiencing hardship in paying [their] minimum rent." *See* Am. Compl. Ex. B at 8. RRHA's ACOP, incorporated by reference into the Lease, requires RRHA to "review all relevant circumstances brought to the RRHA's attention regarding financial hardship as it applies to minimum rent." *See* Am. Compl. Ex. A at 92. RRHA promises in the ACOP that it "will notify **all** participant families subject to a minimum rent of their right to request a minimum rent Hardship Exemption under the law." *Id.* (emphasis added). And

¹ The Housing Act defines "financial hardship" as "situations in which (I) the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is an alien lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; (II) the family would be evicted as a result of the imposition of the minimum rent requirement under subparagraph (A); (III) the income of the family has decreased because of changed circumstance, including loss of employment; (IV) a death in the family has occurred; and (V) other situations as may be determined by the agency (or the Secretary, in the case of a family described in subparagraph (A)(ii))." *See* 42 U.S.C. § 1437a(a)(3)(B)(i)(I)-(V).

when a family on minimum rent may be evicted for nonpayment of rent, RRHA commits to notify the family in the lease termination notice about the Hardship Exemption. *Id.*

RRHA satisfies none of these obligations. When residents tell RRHA of their financial hardship, RRHA does not “consider” that information at all. Nor does it notify residents about the Hardship Exemption, as the ACOP promises it will do. And when RRHA has terminated leases for nonpayment of minimum rent, RRHA has not (until recently) provided notice of the Hardship Exemption. Unsurprisingly, from 2019 to 2024, RRHA recognized only *one* tenant who requested and was granted a Hardship Exemption. Am. Compl. ¶ 70.

Plaintiff Vernita Coleman has lived in RRHA housing since 2004. She is disabled, and relied on Supplemental Security Income as her only source of income since 2020. *Id.* ¶¶ 79-81. In January 2024, those benefits were suspended, meaning she had no regular source of income and could not pay her rent. *Id.* ¶¶ 84-85. She told RRHA that her benefits had been suspended and she had no income, and as part of RRHA’s recertification of her rent, filled out a Zero Income Worksheet. *Id.* ¶¶ 86-87. That form asked detailed questions, including how much money she spends monthly on toilet paper and sanitary napkins, and whether anyone in the household “has their nails done.” But that worksheet said nothing about the Hardship Exemption. *Id.* ¶¶ 87-88. Even though Ms. Coleman detailed her financial hardship on the Zero Income Worksheet, RRHA did not apply the Hardship Exemption as the law requires. Nor did RRHA tell Ms. Coleman that it needed more information to assess her eligibility for the Hardship Exemption or that she needed to make some formal request in order to claim her right to be considered for a Hardship Exemption. Instead, RRHA set Ms. Coleman’s rent at minimum rent, \$50, effective February 1, 2024. *Id.* ¶¶ 89-90. RRHA never even considered that Ms. Coleman qualified for the Hardship Exemption. *Id.* ¶¶ 95-97.

Plaintiff Jayda James's experience is similar. She lived in RRHA housing from December 2022 to May 2024. *Id.* ¶ 104. During that time, because she was a full-time caregiver for her young child who had significant medical needs, she could not work and had no income. RRHA determined that she should pay the minimum rent. *Id.* ¶¶ 106-107. Ms. James told RRHA that she had no regular income and could not afford the \$50 rent. *Id.* ¶¶ 109, 113. Ms. James also told RRHA that she had to pay to fix mold issues and broken air conditioning in her apartment. RRHA nevertheless never considered Ms. James for a Hardship Exemption. *Id.* ¶¶ 112-115.

ARGUMENT

I. RRHA violated the Housing Act by failing to inform residents of their right to a Hardship Exemption and by failing to grant Hardship Exemptions when requested.

A. RRHA violated its statutory duty by failing to “immediately grant” a Hardship Exemption to residents experiencing a financial hardship.

Federal housing law imposes on public housing authorities an express duty to determine a tenant's rent based on their income. The law focuses on what the public housing authority must do, not the tenant. RRHA must assign a tenant an appropriate rent based on their income. And when a tenant's income is such that she cannot afford minimum rent, RRHA must grant an exemption to the minimum rent, or at the very least consider the tenant's eligibility for an exemption.

The statute imposes no obligation on residents to calculate their rent. The residents must provide the relevant information to the housing authority, but at that point their job is done. Tenants need not explicitly request a specific rent or ask for minimum rent. Thus, not surprisingly, the statute does not require the resident to expressly request the Hardship Exemption in any particular form or using any prescribed incantation. Instead, just as with the calculation of rent and the setting of minimum rent, the statute obligates the housing authority to determine whether the Hardship

Exemption applies. And the statute is unambiguous—where the resident has reported a qualifying hardship, the housing authority “shall immediately grant” the exemption.

RRHA understands its obligation to evaluate a resident’s financial condition. When residents inform RRHA that they have no income, RRHA requires residents to fill out a Zero Income Worksheet, where tenants fill in comprehensive information about household spending and expenses. RRHA then uses this detailed monthly expense information to determine whether residents are eligible for minimum rent. Frequently, the residents’ Zero Income Worksheet, standing alone, demonstrates the resident is entitled to the Hardship Exemption. Residents like Ms. Coleman and Ms. James also disclose their financial hardship to RRHA as part of the routine recertification process. Through these disclosures, tenants bring to RRHA’s attention “relevant circumstances” relating to financial hardship.

RRHA promises to consider such circumstances, but it does not. Nor does RRHA “notify families” of their right to request the Hardship Exemption or how to do so. RRHA cannot dispute these facts. It instead contends that Plaintiffs simply have not “requested” the Hardship Exemption. This argument defies the plain language of the statute, RRHA’s own commitments in the ACOP, RRHA’s actual knowledge of residents’ financial hardship, and basic common sense.

The statute specifies that RRHA “shall immediately grant” the Hardship Exemption when a tenant experiences financial hardship. 42 U.S.C. § 1437a(a)(3)(B)(i). Congress used “mandatory language,” which deprives RRHA of any discretion to ignore it. *Page v. Richmond Redevelopment & Hous. Auth.*, 2021 WL 5237241, at *3 (E.D. Va. Nov. 10, 2021) (citing *Mallette v. Arlington Cty. Emps.’s Supplemental Ret. Sys. II*, 91 F.3d 630, 635 (4th Cir. 1996)). RRHA fails to include this language anywhere in its brief.

Instead, RRHA refers exclusively to a different portion of the statute that concerns a waiting period for temporary financial hardship. *See* Dkt. 27, RRHA’s Brief in Support of its Motion to Dismiss (“MTD”) at 8 (citing 42 U.S.C. § 1437a(a)(3)(B)(ii)). From this provision, RRHA asks the Court to infer that the statute obliges residents to make a formal “request” beyond notifying RRHA that they are experiencing hardship. This provision does not specify what would constitute such a request and RRHA never tells residents exactly how they should formally ask.

RRHA’s argument defies the basic structure of federal housing law and reads new words into the statute. “Statutory language . . . ‘cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.’” *Roberts v. Sea-Land Servs., Inc.*, 566 U.S. 93, 101 (2012) (citing *Davis v. Michigan Dept. of Treasury*, 489 U.S. 803, 809 (1989)). Interpreting the waiting period provision’s language to require formal use of the words “Hardship Exemption” would supersede the clear mandatory language of the statute that actually governs when Hardship Exemptions should be granted. Further, requiring a formal request would run counter to the clear statutory objective of the Hardship Exemption, which is to ensure that tenants who cannot afford even minimum rent are not evicted for nonpayment. Allowing such a tenant to be evicted for lack of a formal request, especially where the housing authority knows of the tenant’s qualifying financial hardship, would be an absurd result in light of the statute’s purpose. *See Lara-Aguilar v. Sessions*, 889 F.3d 134, 144 (4th Cir. 2018) (“We are to avoid ‘interpretations of a statute which would produce absurd results . . . if alternative interpretations consistent with the legislative purpose are available.’”).

The Western District of Pennsylvania’s decision in *Alston v. Hous. Auth. of City of Pittsburgh*, 2025 WL 1798139 (W.D. Pa. June 30, 2025) is not to the contrary. The *Alston* court

determined that “subsection (B)(i) and (B)(ii) must be read together” and that “requiring a tenant to request the hardship exemption does not violate Section 1437a(a)(3).” *Id.* at *1. This case asks a different question. Without arguing whether § 1437a(a)(3)(B) requires residents to request a Hardship Exemption, the question here is: what *form* must that request take when the housing authority knows of the financial hardship? Must the request actually say “hardship exemption?” Plaintiffs do not disagree with the *Alston* court that “subsection (B)(i) and (B)(ii) must be read together,” but nothing in the *Alston* decision suggests that tenants must make a formal request in a particular manner or using some set of magic words. On the contrary, the only permissible reading of (B)(ii) that renders it compatible with the mandate in (B)(i) is to construe the term “request” to include a tenant’s efforts to inform RRHA she is “unable to pay such amount because of financial hardship.” 42 U.S.C. § 1437a(a)(3)(B)(i). While the claimant in *Alston* argued he should not be required to make such a request, here, Plaintiffs clearly allege that they *did* in fact request a hardship exemption when they notified RRHA that they were experiencing a financial hardship that impacted their ability to pay rent. Am. Compl. ¶¶ 97, 113.

Moreover, the rationale of *Alston* does not apply to the facts alleged here. The Court in *Alston* was persuaded that “it would be an entirely unworkable standard for any housing authority with thousands of low-income tenants to have to independently determine which tenants *might* be eligible for a financial hardship exemption *without the tenant ever making such a request.*” *Alston*, 2025 WL 1798139 at *1. But RRHA’s own practices show it routinely determines independently what rent residents should pay based on the information they provide about their income without the need for a stylized “request” that uses specific language. Am. Compl. ¶¶ 64, 85-87. Indeed, those types of determinations are routine for housing authorities, even when the law actually uses the term “request.” For example, Housing Act regulations provide that families “may *request* an

interim reexamination” of their income for the purposes of rent calculation. 24 C.F.R. § 960.257(b) (emphasis added). But when a tenant reports a loss of income, RRHA treats that information as a “request” for interim reexamination and recalculates her rent, regardless of whether the tenant says the words “I request an interim reexamination.” *See, e.g.,* Am. Compl. ¶¶ 85-86. And where a tenant reports that she has no income, RRHA demands that she fill out the Zero Income Worksheet so it can evaluate her financial circumstances. The court’s decision in *Alston* discusses no such practice. While such an “independent determination” might have been unworkable for the housing authority in *Alston*, it is *already being done* by RRHA.

Other federal programs that confer specified accommodations on qualifying recipients disclaim the necessity of a specific form of “request,” even when the statute expressly requires a request.² In *Sydnor v. Fairfax Cnty., Va.*, 2011 WL 836948, at *7 (E.D. Va. Mar. 3, 2011), despite the fact that the claimant did not use any “magic words,” the court found that “although Defendant may not have received crystal-clear information regarding Plaintiff’s exact prognosis, the information it received was sufficient to meet the [Americans with Disabilities Act]’s notice requirement. Defendant knew that Plaintiff had foot surgery that resulted in limited functioning upon her return to work, such that *some* accommodation would be needed for her to continue working. That was enough to satisfy the ADA’s notice requirement.” Just so here. Plaintiffs

² *See, e.g., United States v. Hialeah Hous. Auth.*, 418 F. App’x 872, 876 (11th Cir. 2011) (tenant with disabilities not required to use “magic words” of “reasonable accommodation” in order to obtain a disability accommodation where he made it clear that he was disabled and could not climb stairs in his apartment.); *Charlotte-Mecklenburg Cnty. Bd. of Educ. v. Brady*, 66 F.4th 205, 212 (4th Cir. 2023) (holding statute of limitations for Individuals with Disabilities Education Act claim tolled where claimant’s email did not use the “magic words” of “I request an [Individualized Education Program] evaluation” but did alert board of education that he wanted to discuss issues covered by the statute); *Roberts v. Gestamp W. Virginia, LLC*, 45 F.4th 726, 733 (4th Cir. 2022) (holding to qualify for Family and Medical Leave Act leave, an employee must notify an employer of the need for leave, but “need not use any magic words.”).

explained their financial hardship and inability to pay minimum rent, as directed by the Lease. RRHA had sufficient information to at the very least consider whether they were eligible for a Hardship Exemption, but failed to do so.

Plaintiffs' well-pleaded allegations are more than sufficient to state a plausible claim that RRHA ignored their requests for the Hardship Exemption. *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citing Fed. R. Civ. P. 12(b)(6)).

B. RRHA instructs that residents need not formally request a Hardship Exemption.

Not only does the statute not require a formal request, but RRHA's instructions to residents mention no formal request. RRHA's Lease states that "[a] hardship exists when circumstances beyond Tenant's control make Tenant unable to meet his financial obligations under the Lease. If you are a Tenant who is paying minimum rent and are experiencing hardship in paying your minimum rent, you must *notify* your property manager before the 8th of the month, or as soon as possible thereafter in the case of an emergency." *See* Am. Compl. Ex. B at 8 (emphasis added). The *only* obligation the Lease imposes on tenants is to *notify* the property manager of the hardship. And Plaintiffs did just that. *See* Am. Compl. ¶¶ 95, 97, 112.

In contrast, the lease at issue in *Alston* expressly required the tenant to do much more. It explained in full not only what would qualify residents for a Hardship Exemption but the procedure for requesting one. *Alston*, 2025 WL 1798139, at *1. So unlike the defendant in *Alston*, RRHA cannot credibly contend that Plaintiffs did less than what the Lease required.

RRHA cannot dispute this critical point, so it instead argues that its ACOP imposes a duty to "apply for" the Hardship Exemption. MTD at 12. But the ACOP itself disclaims any such formality. In that document, RRHA commits to "review all relevant circumstances brought to the RRHA's attention regarding financial hardship as it applies to minimum rent" and further promises that it will separately notify residents of the availability of the exemption. *See* Am. Compl. Ex. A

at 92. So, far from imposing some rigorous formal application process to trigger any obligation to consider the resident's hardship, the ACOP assures residents that RRHA will "review all relevant circumstances" and will notify residents how to make themselves eligible if more is required. And even if the ACOP could be fairly be read as RRHA contends, RRHA cannot create additional, procedural roadblocks for requesting and obtaining a Hardship Exemption that are not required or permitted by the statute, especially given that the ACOP states it "is expressly subordinate to all applicable law." *Id.* at 1.

C. RRHA fails to sufficiently notify residents they must formally request the Hardship Exemption.

Even if the statute and RRHA's Lease required tenants to affirmatively request an exemption in a specific way—and they do not—RRHA does not effectively tell its residents what a sufficient "request" would entail. Information about the Hardship Exemption can be found only in two paragraphs of a dense, 35-page lease and buried on page 92 of RRHA's 342-page ACOP. And RRHA knows that disclosure is not enough. The ACOP itself promises that RRHA will separately "notify families subject to a minimum rent of their right to request a minimum rent Hardship Exemption under the law." If the discussion regarding the Hardship Exemption in the ACOP alone was sufficient, this promise would be superfluous. The Court should not indulge such an interpretation of the ACOP, especially since RRHA alone drafted it. *Pharm. Coal. for Patient Access v. United States*, 126 F.4th 947, 957 (4th Cir. 2025) (applying canon against superfluity); *Martin & Martin, Inc. v. Bradley Enters., Inc.*, 256 Va. 288, 504 S.E.2d 849, 851 (1998) (applying principle that any ambiguity in a written contract must be construed against the drafter of the agreement).

In truth, RRHA has ignored any obligation to provide clear notice to residents regarding the Hardship Exemption. Until July 2025, RRHA failed to notify tenants about their right to request

a Hardship Exemption in lease termination notices, even though it committed to do so in the ACOP. And despite stating in its ACOP that it “will review all relevant circumstances brought to the RRHA’s attention regarding financial hardship as it applies to minimum rent[,]” RRHA clearly failed to do so. RRHA provides no information about the Hardship Exemption in any other forms, notices, or mailings—not even in the Zero Income Worksheet.

The absence of such notice is more remarkable in light of the guidance the Department of Housing and Urban Development (HUD) has provided to RRHA. In instructional materials and toolkits, it states that public housing authorities should communicate tenants’ right to a Hardship Exemption at various times during a resident’s tenancy, including at admission and reexamination, during direct conversations with families who have had a change in circumstance that may qualify them for the Hardship Exemption, and via door hangers, community bulletin boards, simple request forms, Fact Sheets/FAQs, and checklists. *See* Am. Compl. ¶ 45. RRHA has done none of that.

The numbers show RRHA’s abject failure to provide sufficient notice of the Hardship Exemption. Only *one* RRHA resident requested and was granted a Hardship Exemption from 2019 to 2024. The absence of requests for the Hardship Exemption conclusively demonstrates the inadequacy of RRHA’s notice. So RRHA proves the point when it argues that Plaintiffs make “no allegations that RRHA routinely or systematically denied Hardship Exemptions when requested because *no such Hardship Exemptions were ever requested.*” MTD at 13. That remarkable concession proves Plaintiffs’ point twice over. RRHA either ignored actual requests for a Hardship Exemption not couched in a specific way, or systematically failed to notify residents how to make a request RRHA would recognize. Either way, RRHA breached its statutory duty and deprived RRHA residents of any meaningful access to the Hardship Exemption.

II. RRHA does not adequately train its employees, who fail to consider or grant Hardship Exemptions.

RRHA's historical failure to grant Hardship Exemptions demonstrates it has neglected to adequately train its staff, who neither inform tenants of their right to request a Hardship Exemption, nor grant exemptions when they are aware of a qualifying hardship. To state a claim under § 1983 for failure to train, "a plaintiff must plead and prove that: (1) the subordinates actually violated the plaintiff's constitutional or statutory rights; (2) the supervisor failed to train properly the subordinates thus illustrating a 'deliberate indifference' to the rights of the persons with whom the subordinates come into contact; and (3) this failure to train actually caused the subordinates to violate the plaintiff's rights." *Brown v. Mitchell*, 308 F. Supp. 2d 682, 701 (E.D. Va. 2004). RRHA's motion to dismiss *confirms* it in fact has a policy not to grant a Hardship Exemption unless a tenant explicitly requests one using the "magic words." Indeed, RRHA claims that any other policy would be "untenable," despite its clear duty under federal housing law. RRHA's policy, as implemented by RRHA's employees, violates both § 1437a(a)(3)(B)(i) and RRHA's Lease, and deprives tenants of their rights under federal housing law.

III. RRHA deprived Plaintiffs of due process by failing to inform them of their right to a Hardship Exemption and by failing to grant Hardship Exemptions when requested.

A. RRHA deprived Plaintiffs of their property interests in the Hardship Exemption, their right to be considered for one, and the money they overpaid in rent.

In addition to violating its statutory duty under federal housing law, RRHA has deprived Plaintiffs of property rights without due process. To state a § 1983 claim for deprivation of property without due process in violation of the Fourteenth Amendment, plaintiff must show "(i) that she has a constitutionally protected property interest, and (ii) that she has been deprived of that interest by state action." *Echtenkamp v. Loudon Cnty. Pub. Sch.*, 263 F. Supp. 2d 1043 (E.D. Va. 2003). RRHA deprived Plaintiffs and Proposed Class members of their right to a fair determination of

their eligibility for a Hardship Exemption and by failing to grant Hardship Exemptions to eligible tenants. In addition, by failing to grant Hardship Exemptions, RRHA miscalculated Plaintiffs' rents and overcharged them in violation of federal housing law, thus depriving them of their money.

RRHA does not dispute that Plaintiffs have a property interest in their money, which they overpaid to RRHA due to its failure to grant mandatory Hardship Exemptions. But RRHA erroneously claims that Plaintiffs do not have a property interest in the Hardship Exemption. As this Court made clear in *Page v. Richmond Redevelopment & Hous. Auth.*, 2021 WL 5237241, at *2 (E.D. Va. Nov. 10, 2021)—a case cited by and involving RRHA—"even applicants have a property interest in potential benefits if the government has little discretion in awarding those benefits once an individual applies." The court in *Page* found that RRHA's "Plan and HUD regulations contain mostly 'mandatory language' which signals the existence of a property interest." *Id.* (citing *Mallette*, 91 F.3d at 635 (finding where local ordinance at issue instructed that a person "shall receive" the benefits if they meet the eligibility requirements, government had little to no discretion to deny benefits, applicants had a property interest in potential benefits, and due process was required)). RRHA is bound by the mandatory language of 42 U.S.C. § 1437a(a)(3)(B)(i), which states RRHA "shall immediately grant" a Hardship Exemption when residents are eligible. As such, Plaintiffs have a property interest in both their potential for a Hardship Exemption and an exemption itself, provided they meet the eligibility requirements.

RRHA ignores its own case law, citing *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005) to argue that "a benefit is not a protected entitlement if government officials may grant or deny it in their discretion." But the Hardship Exemption is mandatory, not discretionary. RRHA cites language from § 1437a(a)(3)(B)(i) out of context to claim that the Hardship Exemption is subject to RRHA's discretion. In defining a financial hardship, the statute identifies the various

financial circumstances that definitively qualify a resident for a Hardship Exemption and one catch-all exemption (“other situations as may be determined by the agency”) that may allow a resident to qualify for the exemption. *See* 42 U.S.C. § 1437a(a)(3)(B)(i)(I)-(V) (the full text of which can be found in footnote 1 *supra*). The use of the “as may be determined” language is clearly limited to this catch-all category. The statute accordingly affords RRHA no discretion to ignore a resident’s qualifying financial hardship.

B. RRHA deprived Plaintiffs of due process by failing to provide sufficient notice of the Hardship Exemption.

RRHA deprived Plaintiffs of their property interest without proper notice or any opportunity to be heard. *See Todman v. Mayor & City Council of Baltimore*, 104 F.4th 479, 488 (4th Cir. 2024) (“The essence of due process is the requirement that ‘a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it.’” (citing *Mathews v. Eldridge*, 424 U.S. 319, 348 (1976))). To comply with the requirements of due process, “[n]otice ‘must be reasonably calculated to convey information concerning [the] deprivation’ of a property interest.” *Page*, 2021 WL 5237241, at *4 (citing *Snider Int’l Corp. v. Town of Forest Heights, Md.*, 739 F.3d 140, 149 (4th Cir. 2014)); *Todman*, 104 F.4th at 488 (“[n]otice must be ‘reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.’”); *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950) (“[W]hen notice is a person’s due, process which is a mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it.”).

RRHA failed to provide sufficient notice of the Hardship Exemption in its Lease or ACOP. The Lease does not actually provide residents with any information about what criteria might qualify them for the Hardship Exemption, nor set out any process for requesting it, other than

simply saying residents should notify RRHA if they are experiencing a hardship in paying their rent. And when residents did inform RRHA, that information was ignored. While the ACOP contains additional explanation of the Hardship Exemption, that information is buried in a dense legal document. What is more, unlike the Lease, tenants do not actually receive a copy of the 342-page ACOP, nor does the Lease direct tenants to the ACOP to find additional information about the Hardship Exemption. Publishing the ACOP on RRHA's website is insufficient, especially when residents are not aware they should search it to find more information about the exemption.

And even if RRHA had provided copies of the ACOP directly to tenants, the Fourth Circuit has found that burying the relevant information in a complex document does not provide sufficient notice. *Todman*, 104 F.4th at 488 (finding "content of the notice mailed to the Todmans was not reasonably calculated to convey the relevant information" where relevant information "was found in small print two-thirds of the way down the back of the form"). As the court in *Todman* explained, "notice should be readily accessible and easily understood and should be of a form that drafters of the ordinance would appreciate if their own property were at risk." *Id.* Burying information in a dense legal documents, where "even an attorney might find it time-consuming to wade through the many provisions" will not suffice. *Id.*

The fact that only one resident requested and was granted a Hardship Exemption by RRHA from 2019 through 2024 demonstrates the deficiency of RRHA's notice. Further, RRHA's practices stand in sharp contrast to the notice provided by the housing authority in *Alston*. There, the court found notice was sufficient where the Hardship Exemption and grievance procedures were outlined not only in the ACOP, but in the lease and lease eviction notices provided *directly* to the tenant. *Alston*, 2025 WL 1798139, at *2. As explained above, RRHA's Lease includes only a passing reference to the Hardship Exemption. And despite promising in its ACOP to include information

about the Hardship Exemption in lease termination notices, RRHA did not start doing so until July 2025, after this case was filed.

C. Plaintiffs were not required to exhaust administrative remedies before bringing suit.

RRHA erroneously argues that Plaintiffs were required to exhaust administrative remedies before bringing suit. MTD at n.2. But “courts universally agree that the exhaustion of state administrative remedies is generally not required prior to bringing an action under § 1983,” and there “is a ‘strong presumption against requiring the exhaustion of state administrative remedies in § 1983 suits.’” *Talbot v. Lucy Corr Nursing Home*, 118 F.3d 215, 219-20 (4th Cir. 1997) (citing *Patsy v. Board of Regents*, 457 U.S. 496, 512 (1982)). Courts recognize only two exceptions to this rule: where Congress “explicitly provide[s] that state administrative remedies must be exhausted before bringing suit” or where “the obligation to require exhaustion of administrative remedies may be fairly understood from congressional action.” *Id.* at 219 “[T]he mere provision of state administrative remedies, however, is not enough to demonstrate an implicit Congressional intent to impose an exhaustion requirement on a plaintiff seeking to bring a § 1983 action.” *Id.* Further, “[i]f there is doubt as to whether an exception applies, courts should refrain from requiring exhaustion in § 1983 suits because ‘*Patsy* leaves no doubt that the presumption is *strongly* in favor of no exception.’” *Id.* Nothing in the housing statute explicitly requires that administrative remedies must be exhausted. In fact, the Housing Act makes clear that waiver of a grievance hearing “will not constitute a waiver of any right the complainant may have to contest the PHA’s disposition of the grievance in an appropriate judicial proceeding.” 24 C.F.R. § 966.56(c).

RRHA’s argument rests entirely on *Woodford v. Ngo*, 548 U.S. 81, 88-89 (2006), a case involving a § 1983 suit under the Prison Litigation Reform Act, which explicitly required exhaustion of administrative remedies, and left no discretion to the district court. That case has no bearing on this action, and RRHA can point to no statutory or congressional directive that requires

exhaustion of administrative remedies for a § 1983 suit under § 1437a.

IV. This Court has subject matter jurisdiction over Plaintiffs’ breach of contract and unjust enrichment claims.

This Court has jurisdiction over Plaintiffs’ common law claims. *See* 28 U.S.C. § 1367(a) (“the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”). Plaintiffs’ federal and common law claims are based on the same set of facts and the same conduct. RRHA insists this Court should dismiss Plaintiffs’ federal claims, and thus dismiss their common law claims for lack of jurisdiction. But even if the Court dismisses Counts I and II—and it should not—it can still hear Plaintiffs’ common law claims. *Carlsbad Tech., Inc. v. HIF Bio, Inc.*, 556 U.S. 635, 639–40 (2009) (“A district court’s decision whether to exercise that jurisdiction after dismissing every claim over which it had original jurisdiction is purely discretionary.” (citing 28 U.S.C. § 1367)).

V. RRHA breached its Lease and ACOP.

RRHA breached its obligations under the Lease and ACOP. RRHA does not dispute that it entered into valid agreements with Plaintiffs through the Lease and incorporated ACOP. Despite RRHA’s commitment in its ACOP to “review all relevant circumstances brought to the RRHA’s attention regarding financial hardship as it applies to minimum rent,” when Ms. Coleman and Ms. James informed RRHA that they had no regular income and could not pay their minimum rent, RRHA did not consider them for or grant any Hardship Exemptions. Am. Compl. ¶¶ 85-101, 109-116. Likewise, despite stating in the ACOP that it would ““notify all participant families . . . of their right to request a minimum rent Hardship Exemption” and inform tenants in lease termination notices of their right to request a Hardship Exemption, RRHA only began including that information in termination notices after this suit was filed. *Id.* ¶¶ 57, 62. Finally, RRHA commits

in its ACOP to “meet the requirements of the Department of Housing and Urban Development (HUD), and all other law.” As explained above, RRHA failed to fulfill its statutory obligations under federal housing law, and thus also breached this portion of its agreement with tenants.

Rather than meaningfully respond to any of these contractual obligations, RRHA merely says it could not possibly “independently determine which tenants *might* be eligible for a financial hardship exemption[.]” MTD at 16. But under the terms of its agreements and federal housing law, RRHA must evaluate tenants’ financial circumstances and determine whether they are eligible for a Hardship Exemption when provided with information showing the tenant’s financial hardship and inability to pay. RRHA’s consistent failure to fulfill that duty constitutes a breach of contract.

VI. RRHA was unjustly enriched by failing to grant Hardship Exemptions and overcharging residents.

Plaintiffs stated a claim for unjust enrichment in the alternative to their breach of contract claim. Under Virginia law, “a plaintiff is permitted to plead equitable theories of relief such as unjust enrichment and *quantum meruit* as alternatives to contract recovery.” *Mendoza v. Cerderquist*, 2009 WL 1254669, at *3 (E.D. Va. May 6, 2009). In addition, courts routinely find that the question of whether plaintiffs raise an equitable claim or whether an express contract applies is a matter to be resolved after discovery, not on a motion to dismiss. *Id.* at 3; *Shah & Assocs., Inc. v. Hazen & Sawyer, P.C.*, 2012 WL 13029491, at *3 (E.D. Va. Oct. 17, 2012) (“Whether the parties had an express contract or implied contract, and, if so, the scope of such a contract, are matters to be resolved by the trier-of-fact, not on a motion to dismiss.”). While Plaintiffs assert that RRHA’s failure to consider or grant Hardship Exemptions to qualifying residents gives rise to a breach of contract claim under the Lease, RRHA denies the parties’ agreement imposes such a duty. As such, while there is an agreement between the parties, Plaintiffs have a viable equitable claim if the Court determines that there is not an enforceable contract

governing Plaintiffs’ right to be informed of a Hardship Exemption and eligible residents’ right to receive such exemptions, or that Plaintiffs conferred a benefit on RRHA that was outside of or over and above the benefits contemplated by the Lease. The mere existence of the written agreement does not mean the Court should dismiss Plaintiffs’ equitable claim at this stage.

Further, RRHA is not entitled to sovereign immunity from Plaintiffs’ unjust enrichment claim. While sovereign immunity protects municipalities from liability arising from the exercise of government functions, the Virginia Supreme Court has ruled that a municipal redevelopment and housing authorities like RRHA can be held liable while engaging in “proprietary functions.” *VEPCO v. Hampton Redev. & Hous. Auth.*, 217 Va. 30, 34 (1976). RRHA’s reliance on *Jean Moreau & Assocs. v. Health Ctr. Comm’n*, 283 Va. 128, 140 (2012) is misplaced, given that in that case, a health care commission was performing a government function related to public health. More recently, the Virginia Supreme Court held that “[u]nder any interpretation of the rules for determining whether a particular function is governmental or proprietary . . . the operation and maintenance of a municipal housing project would be classified as proprietary,” (i.e., not governmental). *Page v. Portsmouth Redevelopment & Hous. Auth.*, 902 S.E.2d 751, 755 (Va. 2024). As such, RRHA is not entitled to sovereign immunity.

CONCLUSION

RRHA has systemically failed to fulfill its statutory duties under federal housing law and breached its contractual obligations to its tenants. RRHA’s refusal to grant Hardship Exemptions to eligible tenants, or even consider tenants for an exemption when they provide fulsome information about their financial hardship and inability to pay minimum rent, violated federal housing law and Plaintiffs’ due process rights, breached the Lease, and unjustly enriched RRHA. Plaintiffs have adequately pleaded each of their claims, and the Court should deny RRHA’s motion to dismiss.

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Respectfully submitted,

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