

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
(Richmond Division)**

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

**DEFENDANT RICHMOND REDEVELOPMENT AND HOUSING AUTHORITY’S
MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS**

Defendant, Richmond Redevelopment and Housing Authority (hereinafter, “RRHA” or “Defendant”), by undersigned counsel, and in support of its Motion to Dismiss Plaintiffs’ Amended Complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) and for failure to state a claim pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure states as follows:

INTRODUCTION

Ignoring the clear language, policy, and statutory framework of 42 U.S.C. §1437a, and the clear and unambiguous language in the RRHA lease agreement (“Residential Rental Agreement”) and its accompanying Admissions and Continued Occupancy Policy (“ACOP”), Plaintiffs’ Amended Complaint seeks to impose obligations on RRHA, which are contrary to federal law and unenforceable, in order to obtain retroactive and prospective declaratory and injunctive relief, and monetary damages, based on purported violations of Plaintiffs’ constitutional and procedural due process rights.

Specifically, Plaintiffs accuse RRHA, *without evidence*, of purposefully and systemically violating their civil rights as well as the rights of other former and current RRHA tenants relating to hardship exemptions from the mandatory minimum rental amount of \$50.00 per month as required by 42 U.S.C. 1437a (“Hardship Exemption” or “Exemption”). However, despite such allegations, the factual allegations of the Amended Complaint, accepted as true for the purpose of this Rule 12(b)(6) Motion to Dismiss, undermine Plaintiffs’ claims against RRHA. Plaintiffs contend, without any legal support or merit, that the notification and instructions for how and when to request a hardship exemption expressly provided in RRHA’s Residential Rental Agreement and ACOP were insufficient and therefore, Plaintiffs’ constitutional and due process rights have been violated. Under Plaintiffs’ theory, requiring tenants to formally request a hardship exemption violates their constitutional rights and due process rights and RRHA should simply infer that tenants are seeking Hardship Exemption. This theory has not been adopted by *any* court, and indeed, the U.S. District Court for the Western District of Pennsylvania recently found that “requiring a tenant to request the hardship exemption does not violate Section 1437a(a)(3), and is not otherwise unconstitutional.” *Alston v. Hous. Auth.*, Civil Action No. 2:24-cv-01326-CB, 2025 U.S. Dist. LEXIS 123463, at *3 (W.D. Pa. June 30, 2025).” In other words, Plaintiffs’ proposition has been expressly rejected by at least one federal court.

Based on Plaintiffs’ own allegations, RRHA’s Residential Rental Agreement and ACOP follow applicable federal law and related regulations to inform tenants of their right to request a Hardship Exemption, and it outlines the proper procedures to follow for requesting such Exemption. The Amended Complaint, therefore, fails to state a claim that RRHA violated Plaintiff’s constitutional rights under either the United States Housing Act or that RRHA violated Plaintiffs’ due process rights under 42 U.S. C. § 1983. Accordingly, this Honorable Court lacks

subject matter jurisdiction over the Virginia state law claims for breach of contract and unjust enrichment, but which also fail as the Amended Complaint provides no evidence that RRHA breached the terms of the Residential Rental Agreement. Simply stated, Plaintiffs' Amended Complaint fails to state a cause of action upon which relief can be granted, and RRHA respectfully requests this Honorable Court to dismiss the above-captioned matter in its entirety with prejudice.

FACTUAL BACKGROUND

For purposes of this Motion to Dismiss, Defendant adopts the well-pleaded facts as alleged in Plaintiff's Amended Complaint. However, Defendant does not otherwise admit the truth of the allegations set forth in the Amended Complaint.

The Amended Complaint alleges that Plaintiff Vernita Coleman ("Ms. Coleman") has been an RRHA public housing resident since 2004, and since 2020, has relied on Supplemental Security Income ("SSI") as her sole source of regular income due to her disability until it was suspended in January 2024. Amend. Compl. at ¶¶ 79, 81, 84. The Amended Complaint admits that after advising RRHA that she had no regular income, her minimum rent was set at the mandatory minimum rental amount of \$50.00 per month as prescribed by 42 U.S.C. § 1437a(a)(3)(A). *Id.* at ¶¶ 85, 90-91. Nonetheless, Plaintiffs allege that "Ms. Coleman put RRHA on notice of her *potential* eligibility for the Hardship Exemption. Though she may not have used the 'magic words,' she *effectively* requested the Hardship Exemption." *Id.* at ¶ 97 (emphasis added). Moreover, the Amended Complaint avers that Ms. Coleman "intends to maintain her tenancy in RRHA public housing and must be able to rely on the minimum rent Hardship Exemption *if and when she needs it.*" *Id.* at ¶ 102 (emphasis added).

The Amended Complaint also states that Plaintiff Jayda James ("Ms. James") was an RRHA public housing resident in a unit on Carmine Street in Richmond, Virginia from

December 2022 to May 2024, where she was a full-time caregiver who could not work. *Id.* at ¶¶ 104-06. The Amended Complaint alleges that Ms. James “was charged the \$50 minimum rent for each full month she lived at the Carmine Street Apartment.” *Id.* at ¶ 108. The Amended Complaint avers that “Ms. James experienced significant issues with mold and broken air conditioning,” and that “paying out of pocket for solutions to these unfixed issues (on top of her monthly rental payment) was causing her financial hardship.” *Id.* at ¶ 112. Similar to Ms. Coleman, the Amended Complaint alleges that, “Ms. James thus informed RRHA of her *potential* eligibility for the Hardship Exemption. Though she may not have used the ‘magic words,’ she *effectively* requested the Hardship Exemption.” *Id.* at ¶ 113 (emphasis added).

Plaintiffs’ Amended Complaint seeks declaratory and injunctive relief as well as reasonable costs and attorneys’ fees, and alleges four (4) counts against RRHA. Specifically, the Amended Complaint alleges violations of the United States Housing Act of 1937, 42 U.S.C. § 1437, *et seq.* (Count I), violations of the Due Process Clause of the Fourteenth Amendment (Count II), breach of contract (Count III), and unjust enrichment (Count IV). Plaintiffs aver, *inter alia*, that “RRHA’s actions reflect a practice of failing to provide residents meaningful, adequate, and timely notice of their right to request a Hardship Exemption to the minimum rent requirement,” and conclude that such allegations violate 42 U.S.C. § 1437a(a)(3)(B). *See id.* at ¶¶ 142-43. Plaintiffs further allege, without evidence, that “RRHA deprived Plaintiffs and Proposed Class members of their financial resources and their right to a fair determination of their eligibility for a Hardship Exemption by failing to notify them in a meaningful and timely manner of their right to request such an exemption.” *Id.* at ¶ 151. Similarly, Plaintiffs allege that RRHA breached the Residential Rental Agreements “by failing to comply with the ACOP’s requirement that it ‘review all relevant circumstances brought to the RRHA’s attention regarding financial hardship as it

applies to minimum rent.” *Id.* at ¶ 159. Finally, Plaintiffs assert in the alternative that RRHA “accepted rental payments from Plaintiffs despite failing to comply with federal law and its own policies regarding the Hardship Exemption,” and that “[i]t would be inequitable for RRHA to retain these rental payments when it should have informed residents of their right to request Hardship Exemptions and failed to grant exemptions to eligible residents.” *Id.* at ¶¶ 168-69.

LEGAL STANDARD

A. Rule 12(b)(1) Standard

Rule 12(b)(1) permits the dismissal of a matter where the Court lacks jurisdiction over the subject matter of the case. *See generally*, Fed. R. Civ. P. 12(b)(6). Indeed, “[a] district court *must* dismiss an action over which it lacks subject-matter jurisdiction.” *Kuiper v. Mena*, No. 1:24-cv-1785, 2025 U.S. Dist. LEXIS 178276, at *30 (E.D. Va. Sep. 10, 2025) (emphasis added). In determining whether the Court lacks subject matter jurisdiction, this Court has found that “the burden is on the plaintiff to prove that subject-matter jurisdiction is proper.” *Kuiper*, 2025 U.S. Dist. LEXIS 178276, at *30 (citing *United States v. Hays*, 515 U.S. 737, 743 (1995)).

B. Rule 12(b)(6) Standard

A motion to dismiss a complaint under Rule 12(b)(6) should be granted unless the complaint “states a plausible claim for relief” under Rule 8(a). *Walters v. McMahan*, 684 F.3d 435, 439 (4th Cir. 2012) (citing *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). The complaint must contain sufficient factual allegations “to raise a right to relief above the speculative level” and “nudge [the] claims across the line from conceivable to plausible.” *Vitol, S.A. v. Primerose Shipping Co.*, 708 F.3d 527, 543 (4th Cir. 2013) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). In considering a Rule 12(b)(6) motion, the Court “must accept as true all of the factual allegations contained in the complaint,” drawing “all reasonable inferences” in the

plaintiff's favor. *E.I. du Pont de Nemours and Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 440 (4th Cir. 2011) (citations omitted). No such assumption of truth is afforded to those "naked assertions" and "unadorned conclusory allegations" devoid of "factual enhancement." *Vitol*, 708 F.3d at 543 (citations omitted). Thus, the court's review involves the separation of factual allegations from legal conclusions, the latter of which may be disregarded when resolving the motion. *Burnette v. Fahey*, 687 F.3d 171, 180 (4th Cir. 2012). Moreover, "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should ... be exposed at the point of minimum expenditure of time and money by the parties and the court." *Bell Atl. Corp. v. Twombly*, 550 U.S. 554, 558 (2007).

ARGUMENT

A. The Amended Complaint Fails to State a Cause of Action Against RRHA for Either a Violation of the U.S. Housing Act or a Violation of the Due Process Clause of the Fourteenth Amendment.

Plaintiffs' Amended Complaint alleges, without evidence, that RRHA, acting under the color of law, violated Ms. Coleman and Ms. James' rights under the United States Housing Act as well as the Due Process Clause of the Fourteenth Amendment. *See generally*, Amend. Compl. at Counts I and II. Accordingly, the Amended Complaint asserts Section 1983 claims. 42 U.S.C. § 1983.

In order to prevail on a Section 1983 claim, the United States Supreme Court has long held that "the action that is alleged to be unconstitutional implements or executes a policy statement, ordinance, regulation, or decision officially adopted and promulgated by that body's officers." *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 690 (1978). Stated differently, "a plaintiff must establish three elements to state a cause of action: (1) the deprivation of a right secured by the

Constitution or a federal statute; (2) by a person; (3) acting under color of state law.” *Jenkins v. Medford*, 119 F.3d 1156, 1159-60 (4th Cir. 1997).

Even accepting the well pleaded allegations of the Amended Complaint as true, as the Court must at this stage, the Amended Complaint still fails as a matter of law. Indeed, despite admitting that neither Ms. Coleman, nor Ms. James explicitly sought a Hardship Exemption, Plaintiffs allege that RRHA’s actions of charging the minimum rent of \$50.00, as set forth in 42 U.S.C. § 1437a(a)(3)(A), reflects “a practice of failing to provide residents with notice of their right to request a Hardship Exemption,” and that “failing to immediately grant and failing to train its staff to immediately grant Hardship Exemptions when the facts warranting such exemptions are known to RRHA and where the tenant *effectively* requests a Hardship Exemption by notifying RRHA of qualifying facts,” amounts to a deprivation of a federal or Constitutional right. Amend. Compl. at ¶142 (emphasis added). The speculative nature of the Amended is further evidence by allegations that RRHA “[u]pon information and belief,” has an “unwritten policy is that if the resident provides all of the necessary information to show she qualifies for a Hardship Exemption but does not use the ‘magic words,’ she is not given a Hardship Exemption.” Amend. Compl. at ¶¶ 13, 53; *see also*, Amend. Compl. at ¶¶ 72-73, 75.

However, such conclusory allegations are insufficient to state a cause of action, and “the court ‘need not accept the [plaintiff’s] legal conclusions drawn from the facts,’ nor need it ‘accept as true unwarranted inferences, unreasonable conclusions, or arguments.’” *Wahi v. Charleston Area Med. Ctr., Inc.*, 562 F.3d 599, 615 n.26 (4th Cir. 2009) (quoting *Kloth v. Microsoft Corp.*, 444 F.3d 312, 319 (4th Cir. 2006). As detailed *infra*, Plaintiffs’ Amended Complaint amounts to unadorned legal conclusions, which fails to state a claim, and therefore, should be dismissed with prejudice.

i. RRHA Provided Proper Notice of the Hardship Exemption.

Pursuant to 42 U.S.C. § 1437a, RRHA is required to charge “a minimum monthly rental amount (which amount shall include any amount allowed for utilities) of not more than \$50 per month.” 42 U.S.C.S. § 1437a(A)(3)(A). Indeed, Congress intended the requirement for housing authorities to charge minimum rent to encourage U.S. Department of Housing & Urban Development (“HUD”) housing tenants to attain economic self-sufficiency. *See* U.S.C. § 1437a(a)(2)(D) – Encouragement of self-sufficiency (“The rental policy developed by each public housing agency *shall encourage and reward employment and self-sufficiency.*”) (emphasis added). Moreover, Section 1437a(a)(3)(B)(ii) states that “[i]f a resident *requests* a hardship exemption under this subparagraph and the public housing agency ... reasonably determines the hardship to be of a temporary nature, an exemption shall not be granted during the 90-day period beginning upon the making of a request for the exemption.” (emphasis added). In other words, the U.S. Housing Act requires a resident to request a hardship exemption, thereby requiring the housing authority to immediately grant the exemption, unless the housing authority reasonably determines that the exemption is unwarranted because the claimed hardship is temporary. Indeed, “a request must be made to be eligible for the financial hardship exemption.” *Alston v. Hous. Auth. of the City of Pittsburgh*, No. 2:24-cv-01326, 2025 U.S. Dist. LEXIS 123463, at *2 (W.D. Pa. June 30, 2025).

The Amended Complaint confirms that RRHA conformed with its obligations under 42 U.S.C. § 1437a, going so far as to cite the provisions of RRHA’s ACOP, in effect at the time of the alleged violations, which specifically set forth a tenant’s right to seek a hardship exemption. Amend. Compl. at ¶¶ 47-51. As such, the Amended Complaint fails, as a matter of law, since there is no allegation that the ACOP failed to comply with Section 1437a(a).

ii. Plaintiff's Amended Complaint Seeks to Impose a Higher Standard on RRHA in Contravention of Federal Law and the Rules of Statutory Interpretation.

Instead, Plaintiffs seek to impose higher duties on RRHA than required of it by Section 1437a. Specifically, the Amended Complaint alleges, in a conclusory fashion, that RRHA violated Plaintiffs' constitutional rights by RRHA not reminding Plaintiffs of the Hardship Exemption. *See id.* at ¶¶ 65-66. However, such notice requirement was not required of RRHA at the time complained of in the Amended Complaint¹.

Even if one accepted such legal conclusion as fact, the plain language of the 42 U.S.C. § 1437a, coupled with the Congressional intent of self-sufficiency, does not require RRHA to independently determine whether each and every tenant is entitled to a Hardship Exemption where *no such request is made*. Accordingly, Plaintiffs' allegations that RRHA violated Section 1437a(a)(3)(B)(i) by missing or ignoring verbal suggestions by tenants that they are purportedly requesting a Hardship Exemption without using those words or putting the request in writing is misplaced. *Id.* at ¶¶ 68, 97, 113, 126, 142. Aside from the conclusory nature of such allegations, the Amended Complaint fails to state a claim upon which relief can be granted, as it is completely devoid of any factual allegations that RRHA violated any Constitutional right of Plaintiffs or other RRHA tenants.

Specific to Ms. Coleman and Ms. James, Plaintiffs admit that no such hardship exemption was ever requested. *Id.* at ¶¶ 102, 113 ("Ms. Coleman intends to maintain her tenancy in RRHA public housing and must be able to rely on the minimum rent Hardship Exemption *if and when she*

¹ While RRHA acknowledge that Congress revised § 1437a effective January 1, 2025, to require *additional* notice of the hardship exemption in a notice of termination, Plaintiffs have not alleged that any notices of termination served after January 1, 2025 failed to contain notice of the Hardship Exemption.

needs it.”; “Ms. James thus informed RRHA of *her potential eligibility* for the Hardship Exemption. Though she may not have used the “magic words”, she *effectively* requested the Hardship Exemption.”). Instead, Plaintiffs seek to impose liability on RRHA for an alleged failure to interpret Plaintiffs’ statements regarding their financial situation as requesting a Hardship Exemption. Such allegations neither constitute a violation of Section 1473a, nor a viable claim. Accordingly, RRHA cannot be held liable for an alleged violation of either the U.S Housing Act or the Fourteenth Amendment for failing to grant a Hardship Exemption where none was requested. Instead, the Amended Complaint simply regurgitates the elements for Section 1983 claims without any “factual adornment,” sufficient to state a cause of action.

Indeed, Plaintiffs’ suggestion that RRHA is required to “train its staff to immediately grant Hardship Exemptions when the facts warranting mandatory Hardship Exemptions are known to RRHA and where the tenant *effectively* requests a Hardship Exemption by notifying RRHA of qualifying facts,” is not only *not required* by Section 1437a, but is also an untenable policy for RRHA to implement as it serves, “over 10,000 residents and manag[es] over 3,000 public housing units.” *Id.* at ¶ 142. Plaintiffs’ reference to the HUD’s “Assisting Housing Choice Voucher and Public Housing Tenants in Reducing Accrual of Rent Owed,” (Amend. Compl. at ¶ 47, FN 1) in support of their proposition is misplaced and inapplicable, as the HUD Notice was issued specifically to address “the Federal eviction moratoriums,” due to the COVID-19 pandemic. *See* U.S. Department of Housing and Urban Development, “Assisting Housing Choice Voucher and Public Housing Tenants in Reducing Accrual of Rent Owed,” available at https://www.hud.gov/sites/dfiles/PIH/documents/PH_HCV_reducing_back_rent_accrual_factsheet.pdf (last accessed, Sept. 26, 2025). Such protocols were temporary. Requiring RRHA to grant Hardship Exemptions, where no such exemption is requested, renders the applicable language of

Section 1473a meaningless and in contravention of statutory interpretation set forth by the United States Supreme Court. *See Mackey v. Lanier Collection Agency & Serv.*, 486 U.S. 825, 837, 108 S. Ct. 2182, 2189 (1988) (“As our cases have noted in the past, we are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”)

Moreover, requiring RRHA employees to interpret verbal statements by tenants suggesting that they are making a request for a hardship exemption without using those words or submitting a written request, thereby exposing RRHA to violations of tenants’ constitutional rights, is untenable, and not supported by the law or related regulations. As recently confirmed by the Western District of Pennsylvania, “[i]t 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 U.S. Dist. LEXIS 123463, at *3 (emphasis in the original).

Plaintiffs’ Amended Complaint admits that neither Ms. Coleman nor Ms. James *ever* requested a Hardship Exemption. Accordingly, RRHA cannot be held liable for alleged violations of the U. S. Housing Act (Count I) or for alleged violations of the Due Process Clause of the Fourteenth Amendment (Count II) since Plaintiffs fail to allege, because they cannot, the deprivation of any right secured by the Constitution or a federal statute. Therefore, the Amended Complaint should be dismissed with prejudice.

iii. Plaintiffs Never Sought Hardship Exemption and thus, Were Not Deprived of “Life, Liberty, or Property.”

“In order to state a claim for a violation of due process, ‘a plaintiff must allege sufficient facts to support a finding that the [plaintiff was] ‘deprived of life, liberty, or property, by governmental action.’” *Kerr v. Marshall Univ. Bd. of Governors*, 824 F.3d 62, 79 (4th Cir. 2016)

(quoting *Equity in Athletics, Inc. v. Dep’t of Educ.*, 639 F.3d 91, 109 (4th Cir. 2011)) (citations omitted). Moreover, “[d]ue process does not create a property interest, ‘rather the property interest ‘must be created or defined by an independent source.’” *Page v. Richmond Redevelopment & Hous. Auth.*, No. 3:21-cv-462, 2021 U.S. Dist. LEXIS 218260, at *6 (E.D. Va. Nov. 10, 2021) (quoting *Kerr v. Marshall Univ. Bd. of Governors*, 824 F.3d 62, 79 (4th Cir. 2016)). Importantly, “[w]hen government benefits are the property at issue, an independent source must delineate ‘more than an abstract need or desire . . . or *unilateral expectation of [the benefit]*.’” *Id.* (quoting *Bd. of Regents of State Coll. v. Roth*, 408 U.S. 564, 577 (1972)) (emphasis added).

Again, Plaintiffs seek to hold RRHA liable for alleged due process violations where the facts *as alleged* in the Amended Complaint evidence that *no such violations occurred*. Specifically, the Amended Complaint alleges that “Plaintiffs and Proposed Class members have legitimate claims of entitlement to *consideration* for a Hardship Exemption, and to a Hardship Exemption *when eligible*.” Amend. Compl. at ¶ 150 (emphasis added). Without evidence, the Amended Complaint avers that:

RRHA deprived Plaintiffs and Proposed Class members of their financial resources and their right to a fair determination of their eligibility for a Hardship Exemption by failing to notify them in a meaningful and timely manner of their right to request such an exemption, and by failing to maintain a system of rent calculation that fairly and lawfully determines rent in times of financial hardship.

Id. at ¶ 151. However, such allegations are undermined by the Amended Complaint’s factual allegations, which cite RRHA’s ACOP verbatim, providing the necessary instructions on how tenants may seek a Hardship Exemptions. *Id.* at ¶¶ 47-51. In other words, the Residential Rental Agreement and ACOP expressly and clearly inform Plaintiffs and all tenants of the right to apply for, and obtain, a Hardship Exemption and dispute rent changes. Moreover, there are no *factual* allegations that RRHA did not comply with the Residential Rental Agreement or ACOP but rather,

unsupported speculation that RRHA as an “unwritten policy” to deny Hardship Exemptions where *not requested*. Amend. Compl. at ¶¶ 13, 53. Therefore, as a matter of law, the Amended Complaint fails to state a cause of action upon which relief may be granted.

Moreover, Plaintiffs couch their alleged property interest, namely “in their subsidized housing, in their money that they are forced to spend on minimum rent when they qualify for a Hardship Exemption, in the right to seek a Hardship Exemption, and in their right to receive a Hardship Exemption when eligible,” as a right, when it is, in fact, a benefit. *Id.* at ¶ 148. The United States Supreme Court has long held that “a benefit is not a protected entitlement if government officials may grant or deny it in their discretion.” *Town of Castle Rock v. Gonzales*, 545 U.S. 748, 756 (2005). Rather, residence in a public housing facility, the associated rent, eligibility for the minimum rental amount set forth in Section 1437a, and the eligibility for a Hardship Exemption are all subject to “determination by the agency.” See 42 U.S.C. 1437a(1) (eligible tenants), (2)(A)(i) (rental payments), (3)(A)(i) (minimum rent), (3)(B)(i). Accordingly, the Amended Complaint fails to allege an independent source for an alleged property interest, and relies instead on “unilateral expectation of [the benefit].” As such, Plaintiffs’ Amended Complaint fail to sufficiently allege a crucial element of a due process claim, and should be dismissed with prejudice.

Further evidencing Plaintiff’s failure to state a claim, there are no allegations that RRHA routinely or systematically denied Hardship Exemptions when requested because *no such Hardship Exemptions were ever requested*. Rather, the Amended Complaint’s basis for an alleged due process violation is that it “knew or should have known that burying the existence of the Hardship Exemption in a lengthy lease and in its technical Admission & Continued Occupancy Plan document was not reasonably calculated to reach tenants who qualified for the Hardship

Exemption, and in fact was not informing such tenants.” Amend. Compl. at ¶ 152. In addition to admitting that RRHA provided notice of the Hardship Exemption and procedure for the same in its ACOP, such speculative allegations regarding what RRHA knew or should have known are insufficient to support a claimed due process violation. The Amended Complaint is devoid of any facts that RRHA did not afford applicants seeking a Hardship Exemption due process. Rather, it attempts to equate Plaintiffs failure to request an Exemption as tantamount to a denial of due process under the Fourteenth Amendment. Such legal conclusions are insufficient² to support a cause of action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. Accordingly, Plaintiffs’ Amended Complaint fails to state a cause of action, and should be dismissed with prejudice.

² Even assuming, *arguendo*, that Plaintiffs sufficiently alleged a due process violation, which they have not, Plaintiffs’ claims are barred by their failure to exhaust administrative remedies. The Residential Rental Agreement, the ACOP and the Code of Federal Regulations establish procedures for tenants to grieve an alleged violation of their constitutional, statutory, or contractual rights in connection with their lease of RRHA housing. ECF 19-1 at 288; ECF 19-2 at 13; 24 C.F.R. § 966.50, *et seq.* Plaintiffs have failed to allege, because they cannot, that they sought to grieve any failure of RRHA to properly notify them of their right to request a hardship exemption. Plaintiffs’ failure to exhaust their administrative remedies requires dismissal of the Amended Complaint. *See Woodford v. Ngo*, 548 U.S. 81, 88-89, 126 S. Ct. 2378, 2385 (2006) (holding that “no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.”) (citing *McKart v. United States*, 395 U.S. 185, 193, 89 S. Ct. 1657, 23 L. Ed. 2d 194 (1969)).

B. The Amended Complaint Fails to State a Cause of Action for Breach of Contract or Unjust Enrichment.

i. The Amended Complaint Should be Dismissed for Lack of Subject Matter Jurisdiction.

Counts III and Count IV of the Amended Complaint regarding breach of contract and unjust enrichment, respectively, assert Virginia state common law contractual and equitable claims. Accordingly, this Honorable Court does not have original jurisdiction over such claims pursuant to 28 U.S.C. § 1331 (“The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States”). Although Plaintiffs urge the Court to exercise supplemental jurisdiction, a district court ‘may decline to exercise supplemental jurisdiction’ when it ‘has dismissed all claims over which it has original jurisdiction.’” *See Henderson v. Harmon*, 102 F.4th 242, 251 (4th Cir. 2024) (citing 28 U.S.C. § 1367(c)).

As detailed *supra*, the Amended Complaint fails to state a claim under either the U.S. Housing Act or the Due Process Clause of the Fourteenth Amendment, and thus Counts I and II should be dismissed with prejudice. Therefore, to the extent the Court considers either Counts III or IV, it lacks jurisdiction, and thus dismissal of the Amended Complaint pursuant to Rule 12(b)(1) is warranted. *See Kuiper*, 2025 U.S. Dist. LEXIS 178276, at *30.

ii. The Amended Complaint Fails to State a Cause of Action for Breach of Contract as There are No Factual Obligations that RRHA Failed to Comply with the Terms of the Residential Rental Agreement.

In Virginia, “[t]he elements of a breach of contract action are (1) a legally enforceable obligation of a defendant to a plaintiff; (2) the defendant’s violation or breach of that obligation; and (3) injury or damage to the plaintiff caused by the breach of obligation.” *Young-Allen v. Bank of Am., N.A.*, 298 Va. 462, 469 (2020) (quoting *Ramos v. Wells Fargo Bank, NA*, 289 Va. 321, 323 (2015)). Here, Plaintiffs allege that RRHA breached its lease agreement with Plaintiffs by “failing

to comply with the ACOP's requirement that it 'review all relevant circumstances brought to the RRHA's attention regarding financial hardship as it applies to minimum rent,'" "by failing to notify tenants of their right to request a Hardship Exemption in its lease termination notices premised on nonpayment of rent," " by denying otherwise qualifying tenants their right to the minimum rental payment and, when applicable, a subsequent Hardship Exemption, and causing them financial and other harms," and by allegedly failing to comply with federal law. Amend. Compl. at ¶¶ 159-162.

Setting aside that the breach of contract claim is simply regurgitation of the elements of a breach of contract claim, the allegations as alleged in the Amended Complaint fail to state any facts that RRHA did not comply with the Residential Rental Agreement, ACOP, or applicable federal law. Rather, as detailed *supra*, the Amended Complaint seeks to impose obligations on RRHA which are neither supported by federal law, nor feasible as a practical matter. Indeed, Plaintiffs' breach of contract claim is entirely premised on the idea that RRHA must "independently determine which tenants *might* be eligible for a financial hardship exemption *without the tenant ever making such a request.*" *Alston*, 2025 U.S. Dist. LEXIS 123463, at *3. As such obligation is not required by either the Residential Rental Agreement, ACOP, or applicable federal law, RRHA could not, and did not, breach any contract with Plaintiffs.

Plaintiffs attempt to impose a higher burden on RRHA but the Amended Complaint admits that RRHA's ACOP provides notice regarding the procedure to request a Hardship Exemption (Amend. Complaint at ¶ 48), incorporates the applicable federal law (*Id.* at ¶ 49), and that RRHA's Residential Rental Agreement "explicitly incorporates its ACOP" (*Id.* at ¶ 50). In other words, the Amended Complaint confirms that RRHA has complied with its contractual obligations.

Therefore, as a matter of law, Plaintiffs' Amended Complaint fails to state a cause of action, and should be dismissed with prejudice.

iii. Unjust Enrichment is Plead Improperly, and Should be Dismissed with Prejudice.

In Virginia, the law is clear that an equitable claim for unjust enrichment, quasi-contract, or implied contract cannot be asserted when the parties have a written contract. *CGI Fed. Inc. v. FCI Fed., Inc.*, 295 Va. 506, 519 (2018) ("The existence of an express contract covering the same subject matter of the parties' dispute precludes a claim for unjust enrichment."); *see also S. Biscuit Co. v. Lloyd*, 174 Va. 299, 311 (1940) (holding that "an express contract defining the rights of the parties necessarily precludes the existence of an implied contract of a different nature containing the same subject matter"). Virginia federal courts concur with this principle. *See Eagle Paper Int'l, Inc. v. Cont'l Paper Grading Co.*, 726 F. Supp. 3d 541, 552 (E.D. Va. 2024) ("Thus, a plaintiff may plead alternative claims for breach of contract and unjust enrichment 'when the applicability or enforceability of the contract is in dispute.'... By contrast, if the parties do not dispute the contract's enforceability or scope, then a breach of contract claim precludes a claim for unjust enrichment and the latter must be dismissed.") (internal citations omitted).

Here, as the claims asserted in the Amended Complaint attack RRHA's conduct in performing a governmental function, the equitable claim of unjust enrichment asserted in Count IV should be dismissed. *See Jean Moreau & Assocs. v. Health Ctr. Comm'n*, 283 Va. 128, 140 (2012) ("When municipal corporations exercise governmental functions, they act as arms or agencies of the State. For this reason, we have long held that municipal corporations share in the Commonwealth's immunity from tort claims when they are performing such functions. We see no reason why we should hold differently for quasi-contractual claims. If municipal corporations act as arms or agencies of the State when they exercise governmental functions, then they should be

protected — like the Commonwealth — from both tort and quasi-contractual claims. We therefore conclude that municipal corporations performing governmental functions are immune from quantum meruit claims and that recovery against municipal corporations on a quantum meruit basis is limited to proprietary functions.”) (internal citations omitted). Not only is there an express contract with Plaintiffs, which precludes a claim for unjust enrichment, but also RRHA’s governmental function makes it immune from such a claim. Therefore, to the extent this Honorable Court considers Plaintiffs’ claim for unjust enrichment, such claim, as a matter of law, fails to state and cause of action and should be dismissed.

CONCLUSION

For the reasons set forth herein, in Defendant’s Motion to Dismiss, and those which may be discussed with the Court at oral argument, Plaintiffs’ Complaint wholly fails to state a claim upon which relief can be granted.

WHEREFORE, Defendant Richmond Redevelopment and Housing Authority respectfully requests that this Honorable Court grant its Motion to Dismiss, dismiss Plaintiff’s Complaint with prejudice, and provide such further relief as this Court deems appropriate.

Dated: September 26, 2025

Respectfully submitted,
RICHMOND REDEVELOPMENT AND
HOUSING AUTHORITY

/s/ John W. Palenski

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26th day of September, 2025 I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all counsel of record.

/s/ John W. Palenski

John W. Palenski