
IN THE

COURT OF APPEALS OF MARYLAND

September Term 2021

Misc. No. 11

ALISON ASSANAH-CARROLL,

Appellant

V.

LAW OFFICES OF EDWARD J. MAHER, P.C., ET AL.,

Appellees.

On Certification of Legal Question from the United States District Court of Maryland
The Honorable Catherine C. Blake

APPENDIX

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TABLE OF CONTENTS FOR APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

ALISON ASSANAH-CARROLL 2601 Madison Ave, PH7 Baltimore, MD 21217, On Her Own Behalf and on Behalf of All Others Similarly Situated Plaintiff, v. LAW OFFICES OF EDWARD J. MAHER, P.C. 1426 E. Joppa Road Towson, MD 21286 s/o Edward J. Maher, Resident Agent 723 S. Charles Street, Suite 101 Baltimore, MD 21230 and EDWARD J. MAHER 1426 E. Joppa Road Towson, MD 21286 and E.T.G. ASSOCIATES '94, LP Suite 5 832 Germantown Pike Plymouth Meeting, PA 19462 s/o The Corporation Trust, Inc. 2405 York Road Suite 201 Timonium, MD 21093-2264 and ROIZMAN DEVELOPMENT, INC. Suite 5 832 Germantown Pike Plymouth Meeting, PA 19462	:	Civil Action No.

s/o :
Robert C. Douglas :
6225 Smith Ave. :
Baltimore, MD 21209 :
:
Defendants. :

FIRST AMENDED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff Alison Assanah-Carroll, on her own behalf and on behalf of a class of similarly situated persons, by and through her attorneys Joseph S. Mack of the Law Offices of Joseph S. Mack and Ingmar Goldson of the Goldson Law Office, LLC, sues Defendants Law Offices of Edward J. Maher, P.C. ("Law Office"), Edward J. Maher ("Maher"), E.T.G. Associates '94, LP ("E.T.G.") and Roizman Development, Inc. ("Roizman"), and states as follows:

INTRODUCTION

1. On August 1, 2018, Baltimore City Council Bill 18-0185 went into effect, which requires that all Baltimore City rental dwellings be licensed. In order to obtain a license, the rental property must be registered and must be inspected for compliance with the housing code. Art. 13, §§ 5-6, 5-7 of the Baltimore City Code. In order to protect renters from unsafe conditions and ensure that landlords comply with the licensing requirement, the Baltimore City Council included a clear consequence for unlicensed residential rental property: Under Article 13, § 5-4 of the Baltimore City Code, "no person may… Charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy."

2. This case involves a landlord who, through its horrible maintenance practices, allowed its property to fall into disrepair, which caused its license to rent that property to lapse

for nearly a year, and its debt collection lawyer who aggressively pursued payments for rent that Defendants were prohibited from collecting during the period where the property was unlicensed.

3. As a result, the residents of the 146 units in the property were illegally deceived into paying rent that Defendants were prohibited from collecting while the property had numerous unsafe conditions and housing code violations.

4. As set forth in this Complaint, Defendants Law Office and Maher's actions violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. §§ 1692-1692p, and Defendants E.T.G. and Roizman are liable to the class under Maryland's Consumer Debt Collection Act ("MCDCA"), Md. Code Ann., Comm. § 14-201 *et seq.*, Maryland's Consumer Protection Act ("CPA"), Md. Code Ann., Comm. § 13-101 *et seq.*, and the common law.

PARTIES

5. Defendant Law Office is a Maryland professional corporation with its principal place of business in Baltimore County, Maryland. Defendant Law Office is engaged in the daily business of providing legal services and debt collection services for Maryland landlords, filing hundreds of landlord/tenant collection actions each year.

6. Defendant Maher is a Maryland attorney who founded Defendant Law Office. He has significant experience practicing in the area of landlord/tenant law on behalf of landlords, and is engaged in the daily business of providing debt collection services for Maryland landlords. Throughout the timeframe of this Complaint, Defendant Maher was personally involved in the planning, drafting, and execution of the collection efforts by Defendant Law Office at issue in this case.

7. Defendant E.T.G. is a Pennsylvania limited partnership. Defendant E.T.G. is the owner of the Renaissance Plaza Apartments, located at 2601 Madison Ave, Baltimore, MD 21217 (the "Property").

8. Defendant Roizman is a Pennsylvania corporation and the general partner of Defendant E.T.G. As general partner of Defendant E.T.G., Defendant Roizman is legally responsible for all actions of Defendant E.T.G., and all actions taken by Defendants E.T.G. and Roizman referred to herein were taken jointly by Defendant E.T.G. and Defendant Roizman in its role as general partner of Defendant E.T.G. Together with Defendant E.T.G., Defendant Roizman manages the Property, occasionally using the trade name "Shnir Apartment Management," but usually operating under Defendant E.T.G.'s name. Shnir Apartment Management is not a business entity incorporated or registered with the State of Maryland.

9. Named Plaintiff Alison Assanah-Carroll is a resident of Maryland, residing in the Property in Baltimore City since April of 2019, and is a "consumer" as defined by the FDCPA.

JURISDICTION AND VENUE

10. This court has subject matter jurisdiction over this action under 28 U.S.C. § 1331 (Federal Question) and 28 U.S.C. § 1367 (Supplemental Jurisdiction).

11. Venue is proper in this District because, under 28 U.S.C. § 1391(b), a substantial part of the events giving rise to claims herein occurred within this District and the Defendants systematically and continually transact business in this District.

FACTS

Common Facts

12. Defendants E.T.G and Roizman acquired the Property approximately 25 years ago. Over the years, Defendants E.T.G. and Roizman allowed the Property to develop numerous

problems, including recurring issues with non-working elevators, issues with water pressure and plumbing, and rodent infestations, as well as various additional issues in numerous individual apartments.

13. Whether out of that same general neglect, problems passing inspection, or intentional avoidance because they knew that the Property would fail the inspection required for a license, Defendants E.T.G and Roizman allowed their license to rent the Property to expire on August 15, 2019.

14. Upon information and belief, all Defendants were immediately aware that the license to collect rent from tenants in the Property had expired and that, under Article 13, § 5-4 of the Baltimore City Code, they were prohibited from "accept[ing], retain[ing], or [seek]ing to collect any rental payment or other compensation" for the rental of the units in the Property.

15. At a minimum, all Defendants were aware of the licensing issue and its consequences by February 4, 2020, when a judge for the Maryland District Court sitting in Baltimore City explicitly ruled against Defendants on the licensing issue, meaning that they were not entitled to collect or retain any rent from their tenants.

16. Nevertheless, Defendants did not inform the tenants in the Property that the Property was no longer licensed and that rent could not be collected. Indeed, Defendants aggressively continued to pursue rent from the tenants of the Property during the entire period that the Property was unlicensed.

17. Specifically, Defendant Law Office, in a letter authored and signed by Defendant Maher dated March 25, 2020 that was provided to every tenant of the Property, falsely claimed that "ALL RENT AND ANY OTHER MONIES DUE UNDER YOUR LEASE ARE PAYABLE AS USUAL ON THE DUE DATE" (emphasis in original).

18. Defendants also aggressively pursued collections actions against tenants who fell behind on their rental payments during the period of time where the Property was unlicensed.

19. Defendants E.T.G. and Roizman continued to collect rent from the tenants of the Property during the entire period that the Property was unlicensed, never disclosing to their tenants that the Property was unlicensed or that the Baltimore City code prohibited Defendants from collecting or retaining that rent.

20. In addition to the efforts of Defendants Law Office and Maher, Defendants E.T.G. and Roizman made their own aggressive collections efforts with regard to any tenants who did not fully pay the illegal rent. Defendants E.T.G. and Roizman consistently left notes for tenants who fell behind on their payments asking for immediate payment or a lawsuit would be filed.

21. Many of these aggressive attempts to collect illegal rent occurred during state of emergency in Maryland caused by the Covid-19 pandemic, causing further and unnecessary stress during an uncertain and stressful time for the tenants in Defendants' pursuit of illegal rent.

22. Further, throughout the time that Defendants were intentionally collecting illegal rent, the Property itself remained in such a state of disrepair that it could not meet the health and safety requirements necessary to obtain a new license. The elevators constantly broke down, the water pressure and plumbing problems persisted, and numerous problems with individual units went unaddressed. Despite having an inspection performed in February of 2020, the Property had so many unresolved code violations that it was not granted the license to collect rent until July 14, 2020, leaving it unlicensed for a full 11 months.

23. Defendants have not returned any of the rent collected from tenants during the period that the Property was unlicensed, and continue to pursue any unpaid rent from tenants during that period.

24. Moreover, Defendants E.T.G. and Roizman continued to advertise available units in the Property while the Property was unlicensed, and entered into new leases or renewed leases with their existing tenants during the period that the Property was unlicensed. Defendants are also aggressively pursuing rent allegedly due under leases that were entered into or renewed during that period, despite the fact that Article 13, § 5-4 of the Baltimore City Code prohibits the collection of rent unless a license existed at both the time of offering to provide occupancy and the time that the occupancy is actually provided.

Facts Specific to Named Plaintiff's Experience

25. Named Plaintiff moved into the PH7 unit of the Property on April 1, 2019.

26. Like many of the other tenants in the Property, she was frustrated by the state of disrepair but continued to do her best to pay rent.

27. Named Plaintiff was initially unaware that the Property became unlicensed on August 15, 2019, and continued to make her rent payments for August and September of 2019.

28. However, on October, 3, 2019, while attempting to leave her apartment to attend a job interview for a promising position, the elevator in the Property malfunctioned while Plaintiff was riding it down, trapping her until the fire department arrived to get her out of the elevator. As a result, she missed her job interview. This was the second time in her short time living in the Property that she had been trapped in the elevator.

29. Although Named Plaintiff asked for a rent concession as a result of this ordeal, Defendants E.T.G. and Roizman refused, and Named Plaintiff ended up falling behind on rent payments.

30. In November, 2019, Defendants E.T.G. and Roizman, through Defendant Law Office and at Defendant Maher's direction, sued Named Plaintiff in a failure to pay rent action

filed in the District Court of Maryland sitting in Baltimore City, case no. 2019014500522802 (the "First Failure to Pay Rent Case"). The First Failure to Pay Rent Case sought to have Named Plaintiff evicted if she did not pay $772.54 in alleged rent due for October and November of 2019. Named Plaintiff was unable to make the December 9, 2019 trial date in the First Failure to Pay Rent Case, and a default judgment was entered against her, with a right of redemption that would allow her to remain in her apartment if she paid any time before any eviction.

31. In the meantime, Named Plaintiff discovered that the Property was no longer licensed and ceased all rent payments. On January 8, 2020, Defendants E.T.G. and Roizman, through Defendant Law Office and at Defendant Maher's direction, filed a new failure to pay rent case against Named Plaintiff in the District Court of Maryland sitting in Baltimore City, case no. 2020014300301171 (the "Second Failure to Pay Rent Case") seeking an eviction if Named Plaintiff did not pay $1,680, representing rent for December 2019 and January 2020.

32. Named Plaintiff was able to attend the February 4, 2020 trial in the Second Failure to Pay Rent Case. Upon learning that the Property was unlicensed, the judge in the Second Failure to Pay Rent Case ruled against Defendants, meaning that because the Property was unlicensed, they were prohibited from attempting to collect rent.

33. Despite that outcome, and with knowledge that a judge had ruled against them regarding the licensing issue, Defendants moved forward to try to evict Named Plaintiff under the default judgment that they obtained in the First Failure to Pay Rent Case. Defendants obtained a warrant of restitution directing the Baltimore City Sheriff's Office to evict Named Plaintiff on February 18, 2020. To avoid eviction, Named Plaintiff paid $800 to cover the $772.54 that represented rent for October and portions of November, 2019, while the Property

was unlicensed, right before the sheriff would have otherwise evicted her at Defendants' direction.

34. Although Defendants stopped filing failure to pay rent actions against Named Plaintiff after the judge ruled against them in the Second Failure to Pay Rent Case, Named Plaintiff did receive the March 25, 2020 Letter from Defendant Law Office, authored and signed by Defendant Maher, that falsely claimed that "ALL RENT AND ANY OTHER MONIES DUE UNDER YOUR LEASE ARE PAYABLE AS USUAL ON THE DUE DATE."

35. Moreover, Defendants E.T.G. and Roizman made numerous additional attempts to collect rent from Named Plaintiff for the period of time where the Property was unlicensed, including for the months that a judge had explicitly ruled that they could not collect.

36. For example, in a note dated June 13, 2020, Defendants E.T.G. and Roizman wrote to Named Plaintiff:

> Your rent is currently past due!!!!! You must contact the rental office immediately!!! Your payments need to be in the office before 9am on Wednesday, July 15, 2020.
>
> You currently owe a balance of $5,605.75 as a result of your missed or partial rent payments.
>
> The Baltimore City Courts are reopening next week. Failure to make your complete rental payment has resulted in your household being sued for the delinquent amount. As a result you will be responsible for the legal fee and writ fee (if applicable) as well.

The entirety of the alleged debt is for rent incurred during a period of time where Defendants E.T.G. and Roizman were prohibited from collecting rent.

37. Named Plaintiff resumed paying rent once she learned that the Property became licensed on July 15, 2020, but Defendants E.T.G. and Roizman have made it clear that they intend to continue to pursue her for rent during the time that the Property was unlicensed.

Defendants E.T.G. and Roizman sent a letter as recently as August 12, 2020, claiming that she owed several thousand dollars for rent during the time that the Property was unlicensed and stating "This balance needs to be presented to the Management Office by the close of business TOMORROW."

38. On July 27, 2020, Defendants E.T.G. and Roizman, through Defendant Law Office and at the direction of Defendant Maher, filed a failure to pay rent action seeking to evict Named Plaintiff from her home for unpaid rent obligations incurred during the period that the Property was unlicensed. Indeed, Defendant Law Office, under the direction of Defendant Maher, purposefully concealed that the unpaid rent sought was allegedly incurred during the period that the Property was unlicensed, stating that the arrearages was for "Jul. '20" when the true time period was earlier. Defendant Law Office, under the direction of Defendant Maher, filed that failure to pay rent action with knowledge that it sought to evict Named Plaintiff for unpaid rent that was not legally due because the Property was unlicensed at the time it was allegedly incurred, and purposefully acted to conceal this defect in the filing. That action was subsequently dismissed by Defendants without prejudice.

CLASS ACTION ALLEGATIONS

39. Named Plaintiff brings this action on behalf of a Class which consists of:

> All tenants of 2601 Madison Ave, Baltimore, MD 21217 who rented an apartment or unit between August 15, 2019 and July 14, 2020 and/or who entered into or renewed a lease for an apartment or unit between August 15, 2019 and July 14, 2020.

40. The Class, as defined above, is identifiable. The Named Plaintiff is a member of the Class.

41. The Class is so numerous that joinder of all members is impracticable, with approximately 146 units in the Property.

42. There are questions of law and fact which are not only common to the Class, but which predominate over any questions affecting only individual class members. The common and predominating questions include, but are not limited to:

a. Whether the Property was licensed during the period between August 15, 2019 and July 14, 2020.

b. Whether Defendant Law Office and Defendant Maher employed unfair and unconscionable means to collect an alleged debt by falsely claiming to residents that their rent was still due.

c. Whether Defendant Law Office and Defendant Maher made false and misleading representations about the legality and enforceability of the rent.

d. Whether Defendants collected rent payments during a time where the Property was unlicensed.

e. Whether Defendants collected rent payments made pursuant to leases that were entered into or renewed during the period that the Property was unlicensed.

f. Whether the actions of Defendant Law Office and Defendant Maher constitute violations of the Fair Debt Collection Practices Act.

g. Whether the Defendants claimed, attempted, or threatened to enforce a right with knowledge that the right does not exist in their dealings with Named Plaintiff and Class Members.

h. Whether Defendants E.T.G. and Roizman engaged in an unfair or deceptive practice under the CPA in their dealings with Named Plaintiff and Class Members.

i. Whether a declaratory judgment is proper to prevent the Defendants from claiming that rent is still owed to them by the Class Members for the period of time where the Property was unlicensed or arising from leases that were entered into or renewed during the time that the Property was unlicensed.

j. Whether Defendants E.T.G. and Roizman were unjustly enriched by any amounts they collected from Named Plaintiff and the Class Members for rent or late fees for the period of time that the Property was unlicensed or pursuant to leases entered into or renewed during the time that the Property was unlicensed.

k. Whether Named Plaintiff and the Class may recover damages.

43. The claims of Named Plaintiff are typical of the claims of the respective members of the Class within the meaning of Fed. R. Civ. P. 23(a)(3), and are based on and arise out of similar facts constituting Defendants' wrongful conduct. In particular, as a person who paid rent during the period that the Property was unlicensed, and who received the correspondence from Defendants Law Office and Maher, Named Plaintiff asserts claims that are typical of each Class member. Named Plaintiff will fairly and adequately represent and protect the interests of the Class, and has no interests which are antagonistic to any member of the Class.

44. Named Plaintiff is an adequate representative of the Class within the meaning of Fed. R. Civ. P. 23(a)(4), and is prepared to represent the Class. Furthermore, Named Plaintiff has secured counsel experienced in class actions, who foresee little difficulty in the management of this case as a class action.

45. Neither Named Plaintiff nor Plaintiffs' counsel has any interests that might cause them not to vigorously pursue this claim.

46. The prosecution of separate actions by individual members of the Class would create a risk of establishing incompatible standards of conduct for Defendants within the meaning of Fed. R. Civ. P. 23(b)(1)(A).

47. The Defendants' actions are generally applicable to the respective Class as a whole, and Plaintiffs seek equitable remedies with respect to the Class as a whole within the meaning of Fed. R. Civ. P. 23(b)(2).

48. Common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class and a class action is the superior method for fair and efficient adjudication of the controversy within the meaning of Fed. R. Civ. P. 23(b)(3).

49. The likelihood that individual members of the Class will prosecute separate actions is remote due to the time and expense necessary to conduct such litigation.

CAUSES OF ACTION

Count I – Defendant Law Office and Defendant Maher
Violation of the Fair Debt Collection Practices Act
15 U.S.C. 1692f

50. Plaintiffs incorporate into this paragraph the foregoing paragraphs of the Complaint.

51. Federal law strictly regulates the practice of collecting consumer debts and imposes harsh penalties for the violation of those requirements. *See* 15 U.S.C. §§ 1692-1692p.

52. In 1977, Congress enacted the FDCPA to address illegal and improper practices by debt collectors such as the Defendant Law Office. "It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged,

and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692(e).

53. Congress enacted the FDCPA because it determined that: "There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." 15 U.S.C. §1692(a).

54. To this end, the FDCPA forbids debt collectors from using "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

55. The Act also makes it illegal for debt collectors to use "false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e.

56. Any debt collector that violates the FDCPA is liable for actual damages, plus statutory damages, plus litigation costs and attorney's fees. 15 U.S.C. § 1692k.

57. Each of Defendant Law Office and Defendant Maher is a "debt collector" within the meaning of 15 U.S.C. § 1692a(6).

58. The attempt to collect rent for an unlicensed property in Baltimore City is unfair or unconscionable within the meaning of 15 U.S.C. 1692f.

59. When attempting to collect rent for an unlicensed property in Baltimore City, Defendants Law Office and Maher also made false representations of the character, amount, or legal status of any debt, in violation of 15 U.S.C. 1692e(2)(A).

60. The March 25, 2020 Letter from Defendant Law Office, authored and signed by Defendant Maher, that falsely claimed that "ALL RENT AND ANY OTHER MONIES DUE

UNDER YOUR LEASE ARE PAYABLE AS USUAL ON THE DUE DATE" was a false, deceptive, or misleading representation made in connection with the collection of an alleged debt.

WHEREFORE, Plaintiff demands, on behalf of herself and the proposed Class, that the Court:

A. Award Named Plaintiff and the Class actual damages as provided for in the FDCPA, 15 U.S.C. §1692k(a)(1), in an amount equal to all amounts paid by Named Plaintiff and Class members to Defendant Law Office and Defendant Maher for rent during the period that the Property was unlicensed or pursuant to a lease entered into or renewed during the period the Property was unlicensed;

B. Award Plaintiffs statutory damages as provided for in the FDCPA, 15 U.S.C. §192k(a)(2);

C. Certify this case as a Plaintiff Class action pursuant to Rule 23(b)(1), (2) and/or (3) of the *Federal Rules of Civil Procedure*;

D. Award pre-judgment interest;

E. Award Plaintiffs reasonable costs and attorney's fees; and

F. Award Plaintiffs such other and further relief as the Court deems just and proper.

Count II
Maryland Declaratory Judgment Act - Defendants E.T.G. and Roizman
Md. Code Ann., Cts. & Jud. Proc., § 3-409

61. Plaintiffs incorporate into this paragraph the foregoing paragraphs of the Complaint.

62. An actual controversy exists between the Class (including Named Plaintiff), and Defendants E.T.G. and Roizman.

63. Antagonistic claims are present between the Class (including Named Plaintiff) and Defendants E.T.G. and Roizman which indicate imminent and inevitable litigation.

64. Named Plaintiff and the Class assert that Defendants E.T.G. and Roizman are not permitted to collect or retain rent for the period of time that the Property was unlicensed or pursuant to a lease entered into or renewed during the period the Property was unlicensed.

65. A declaratory judgment that establishes that Named Plaintiff and the Class do not owe any rent for the period of time that the Property was unlicensed or pursuant to a lease entered into or renewed during the period the Property was unlicensed will alleviate all uncertainty in this proceeding.

WHEREFORE, Named Plaintiff demands, on behalf of herself and the proposed Class, that the Court:

A. Issue a declaratory judgment declaring the Property was unlicensed to rent from August 15, 2019 until July 15, 2020, and accordingly Defendants E.T.G. and Roizman are not entitled to collect or retain any rent for that period or pursuant to a lease entered into or renewed during that period.

B. Award Plaintiffs such other and further relief as the Court deems just and proper.

Count III
Violation of the Maryland Consumer Debt Collection Act - Defendants E.T.G. and Roizman
Md. Code Ann., Comm. § 14-201 *et seq.*

66. Plaintiffs incorporate into this paragraph the foregoing paragraphs of the Complaint.

67. Under the MCDCA, "In collecting or attempting to collect an alleged debt a collector may not: Claim, attempt, or threaten to enforce a right with knowledge that the right does not exist." Md. Code Ann., Comm. § 14-202(8). Additionally, under Md. Code Ann.,

Comm. § 14-202(11), a collector may not "[e]ngage in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act."

68. A collector who violates the MCDCA is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury. Md. Code Ann., Comm. § 14-203.

69. Defendants E.T.G. and Roizman are debt "collectors" as defined in Md. Code Ann., Comm. § 14-201(b).

70. The alleged rent arises from "consumer transactions" as defined in Md. Code Ann., Comm. § 14-201(c).

71. As sophisticated owners of large apartment buildings, Defendants E.T.G. and Roizman are aware that under Article 13, § 5-4 of the Baltimore City Code, they may not collect or retain rent for the Property during the period it was unlicensed or pursuant to a lease entered into or renewed during the period the Property was unlicensed.

72. Accordingly, by seeking to collect, collecting, and retaining rent for the period of time where the Property was unlicensed, or pursuant to a lease that was entered into or renewed during that period, in violation of Article 13, § 5-4 of the Baltimore City Code, Defendants E.T.G. and Roizman are claiming and attempting to enforce a right with knowledge that it does not exist. Further, Section 808 of the FDCPA, 15 U.S.C. § 1692f, prohibits, among other things, the collection of any debt that is not permitted by law or contract, 15 U.S.C. § 1692f(1).

73. Defendants E.T.G. and Roizman are prohibited from retaining or collecting any monies paid by Named Plaintiff and Class Members for rent during the period that the Property was unlicensed or pursuant to a lease entered into or renewed during the period the Property was

unlicensed, and any such payments constitute actual damages and must be repaid to Plaintiffs by Defendants E.T.G. and Roizman pursuant to the MCDCA.

WHEREFORE, Named Plaintiff demands, on behalf of herself and the proposed Class, that the Court:

A. Award Named Plaintiff and the Class actual damages as provided for in Md. Code Ann., Commercial Law, § 14-203, in an amount equal to all amounts paid by Named Plaintiff and the Class for rent during the period where the Property was unlicensed, or paid pursuant to a lease that was entered into or renewed during the time that the Property was unlicensed;

B. Certify this case as a Plaintiff Class action pursuant to Rule 23(b)(1), (2) and/or (3) of the *Federal Rules of Civil Procedure*;

C. Award pre-judgment interest;

D. Award Plaintiffs costs; and

E. Award Plaintiffs such other and further relief as the Court deems just and proper.

Count IV
Violation of the Maryland Consumer Protection Act - Defendants E.T.G. and Roizman
Md. Code Ann., Comm. §13-101 *et seq.*

74. Plaintiffs incorporate into this paragraph the foregoing paragraphs of the Complaint.

75. The CPA, Md. Code, Comm., §13-101 *et seq.*, was originally enacted in 1973 because the legislature found that existing laws were "inadequate, poorly coordinated and not

widely known or adequately enforced," § 13–102(a)(2). The General Assembly enacted the CPA as a comprehensive consumer protection act to provide protection against unfair or deceptive practices in consumer transactions. § 13–102(b). The intention of the Legislature was to set "minimum statewide standards for the protection of consumers." § 13–102(b)(1); see § 13–103(a). To realize this end, the General Assembly sought to implement strong protective and preventive measures to assist the public in obtaining relief from unlawful consumer practices and to maintain the health and welfare of the citizens of the State. § 13–102(b)(3).

76. To this end, the CPA forbids "any unfair or deceptive trade practice" in "[t]he offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services" § 13-303 (2).

77. "Unfair or deceptive trade practices include … False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers; [and] Failure to state a material fact if the failure deceives or tends to deceive." Md. Code, Comm. § 13-301 (1), (3). "Unfair or deceptive trade practices" also includes any violation of the MCDCA. Md. Code, Comm. § 13-301 (14)(iii).

78. The collection of rent in violation of Article 13, § 5-4 of the Baltimore City Code by Defendants E.T.G. and Roizman for periods of time where the Property was unlicensed or pursuant to leases that were entered into or renewed during the time that the Property was unlicensed constitutes an unfair or deceptive trade practice, particularly where the Property continued to have numerous housing code violations while it was unlicensed.

79. Accordingly, Defendants E.T.G. and Roizman are prohibited from retaining or collecting any monies paid by Named Plaintiff and Class Members for rent during the period that

the Property was unlicensed, or pursuant to leases entered into or renewed during the period that the Property was unlicensed, and any such payments constitute actual damages and must be repaid to Plaintiffs by Defendants E.T.G. and Roizman pursuant to the CPA.

WHEREFORE, Named Plaintiff demands, on behalf of herself and the proposed Class, that the Court:

A. Award Named Plaintiff and the Class actual damages as provided for in Md. Code Ann., Commercial Law, § 13-408, in an amount equal to all amounts paid by Named Plaintiff and the Class for rent during the period where the Property was unlicensed or pursuant to leases entered into or renewed during the period that the Property was unlicensed;

B. Certify this case as a Plaintiff Class action pursuant to Rule 23(b)(1), (2) and/or (3) of the *Federal Rules of Civil Procedure*;

C. Award pre-judgment interest;

D. Award Plaintiffs reasonable costs and attorney's fees; and

E. Award Plaintiffs such other and further relief as the Court deems just and proper.

Count V
Money Had and Received - Defendants E.T.G. and Roizman

80. Plaintiffs incorporate into this paragraph the foregoing paragraphs of the Complaint.

81. As set forth above, Defendants E.T.G. and Roizman assessed and collected payments for rent during a time where they were legally prohibited from collecting or retaining rent because the Property was unlicensed or pursuant to leases that were entered into or renewed while the Property was unlicensed.

82. Defendants E.T.G. and Roizman had, and have, knowledge that the Property was unlicensed during the period from August 15, 2019 to July 15, 2020.

83. By collecting and retaining rent for those periods and pursuant to leases that were entered into or renewed during those periods, Defendants E.T.G. and Roizman have come into the possession of money in the form of payments that they had, and have no right to.

84. It would be inequitable for Defendants E.T.G. and Roizman to retain any such monies that they had no legal right to.

85. As a result, Named Plaintiff and Class members suffered damages.

WHEREFORE, Plaintiffs demand, on behalf of themselves and the proposed class, that the Court:

A. Award Named Plaintiff and the Class actual damages in an amount equal to all amounts paid by Named Plaintiff and Class members for rent for the period that the Property was unlicensed or pursuant to leases that were entered into or renewed during the time that the Property was unlicensed;

B. Certify this case as a Plaintiff Class action pursuant to Rule 23(b)(1), (2) and/or (3) of the *Federal Rules of Civil Procedure*;

C. Award pre-judgment interest;

D. Award Plaintiffs such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ Joseph Mack
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JURY DEMAND

Plaintiffs hereby demand a trial by jury on all legal claims and disputed facts asserted herein.

/s/Joseph Mack
Joseph Mack

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

ALISON ASSANAH-CARROLL, Plaintiff, v. LAW OFFICES OF EDWARD J. MAHER, P.C., et al. Defendants.	Case No. 20-02376-CCB

DEFENDANTS E.T.G. ASSOCIATES '94, LP'S AND ROIZMAN DEVELOPMENT, INC.'S MOTION TO DISMISS COUNTS II THROUGH IV OF THE FIRST AMENDED COMPLAINT AND TO STRIKE CLASS-ACTION ALLEGATIONS

Defendants E.T.G. Associates '94, LP ("ETG") and Roizman Development, Inc. ("Roizman"), by their undersigned counsel, and pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, move to dismiss Counts II through V of the First Amended Complaint[1] and to strike the class allegations therein (ECF 25). The reasons in support of this motion are set forth in the accompanying memorandum of law, which is incorporated herein by reference.[2]

WHEREFORE, Defendants ETG and Roizman request that the Court dismiss Plaintiff's First Amended Complaint, and grant any other relief that the Court deems proper.

[1] Count I of the First Amended Complaint does not seek relief against Defendants ETG or Roizman. Counsel for Defendants Law Offices of Edward J. Maher, P.C. and Edward J. Maher authorize undersigned counsel to state that the Maher defendants join in this motion to the extent that Plaintiff's allegations of actual damages are insufficient to sustain any claims.

[2] Contemporaneously with moving to dismiss the claims in the First Amended Complaint, Defendants note the potential of additional arguments based on the doctrines of abstention and comity based on state court rent actions.

Dated: February 2, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on this 2nd day of February, 2021, copies of the foregoing motion and accompanying memorandum of law were served via CM/ECF on all counsel of record.

/s/
David J. Shuster

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

ALISON ASSANAH-CARROLL, Plaintiff, v. LAW OFFICES OF EDWARD J. MAHER, P.C., et al. Defendants.	Case No. 20-02376-CCB

MEMORANDUM OF LAW IN SUPPORT OF DEFENDANTS E.T.G. ASSOCIATES '94, LP'S AND ROIZMAN DEVELOPMENT, INC.'S MOTION TO DISMISS COUNTS II THROUGH V OF THE FIRST AMENDED COMPLAINT AND TO STRIKE CLASS-ACTION ALLEGATIONS

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TABLE OF CONTENTS

LIST OF EXHIBITS

ETG and Roizman's
Motion to Dismiss the First Amended Complaint and Strike Class Action Allegations

ECF Suffix	Exhibit	Description
1		Memorandum of Law
2	**A.**	Transcript of Case No. 2020014300301171, District Court of Maryland for Baltimore City (Feb. 4, 2020)
3	**B.**	Transcript of Case No. 2020014300301171, District Court of Maryland for Baltimore City (Jan. 27, 2020)
4	**C.**	Audio Recording Certificate, District Court of Maryland for Baltimore City, Case No. 2020014300301171
5	**D.**	Motion and Order (Feb. 7, 2020) District Court of Maryland for Baltimore City, Case No. 2020014300301171
6	**E.**	Transcript of Case No. 2019014500522802, District Court of Maryland for Baltimore City (Dec. 9, 2019)
7	**F.**	Audio Recording Certificate, District Court of Maryland for Baltimore City, Case No. 2019014500522802

Defendants E.T.G. Associates '94, LP ("ETG") and Roizman Development, Inc. ("Roizman") submit this memorandum of law in support of their motion to dismiss Counts II through V of the First Amended Complaint (ECF 25) and to strike the class-action allegations. This Court should dismiss the four counts asserted against ETG and Roizman — Count II (declaratory judgment); Count III (Maryland Consumer Debt Collection Act); Count IV (Maryland Consumer Protection Act); and Count V (money had and received) — because they do not state viable claims. If this Court determines any claims against ETG and Roizman can remain, the Court should strike allegations that purport to justify class certification because those allegations are insufficient on their face.

I. OVERVIEW OF ARGUMENTS

Plaintiff is a tenant in an apartment building who fell behind on her rent payments and is now attempting to procure a windfall based on a technical issue — allegedly, the building's rental license under the Baltimore City Code had lapsed. Plaintiff asserts (for herself and for a purported class of tenants who paid rent during the period in question) that, because the subject Baltimore City Code section provides that a landlord cannot collect or retain rent without an effective rental license in place, Defendants must reimburse all rents collected during that period and, to the extent she or any other tenants did not pay rent during the period, the landlord is out of luck, even though it is undisputed that the property is currently licensed.

Plaintiff seeks that relief even though: (1) she does not allege the apartment is uninhabitable or she sustained actual damages; (2) the license was restored and has been in full force and effect ever since; and (3) the violation of the subject Baltimore City Code licensing provision does not create a private cause of action. Succinctly put, based on an alleged lapse of the license without any discernable harm, Plaintiff says the rents paid during the unlicensed period are her damages and that she and her fellow tenants should be permitted to live rent-free for nearly a year.

In an attempt to secure that relief, Plaintiff asserts (in Count III) that Defendants violated Maryland's Consumer Debt Collection Act ("MCDCA") when they attempted to collect and/or did collect rents during the period in question, including by filing rent court actions in the District Court of Maryland for Baltimore City ("Baltimore City District Court") and sending collection letters. According to Plaintiff, the alleged MCDCA violation is an unfair trade practice that serves as the predicate for Plaintiff's claim (in Count IV) under the Maryland Consumer Protection Act ("MCPA"). And, because the building has more than 140 units, Plaintiff believes that a class can be formed to enable the other tenants to obtain the same relief.

Those theories and the others asserted against ETG and Roizman do not state viable claims. It is important to note what Plaintiff has not alleged in her lawsuit. Plaintiff does not allege that the MCDCA was violated because her contractual debt obligation created by her lease has been satisfied, discharged, or extinguished. As explained below, any such allegation would be fatal to a MCDCA claim because the controlling decisions of the Court of Appeals of Maryland and this Court make clear that the MCDCA is not a vehicle to challenge the validity of a debt. Rather, the MCDCA redresses improper collection tactics (*e.g.*, harassing phone calls or threatening a debtor with criminal charges). Whether the debt itself is valid or is owed is not a question to be resolved under the MCDCA.

Thus, if Plaintiff's position is that Defendants violated the MCDCA because they sent past-due letters or filed rent court actions for debts that are now *invalid* as a consequence of the lapse of the rental license, the controlling cases discussed below demonstrate that the MCDCA is, as a matter of law, not available to Plaintiff. Likewise, if her position is that sending past-due letters or filing rent court actions at a time when the rental license had lapsed is an improper collection *tactic* under the MCDCA, this Court should reject that position. As explained below, that conduct

cannot form the basis of a violation of the MCDCA. But, even if Plaintiff could state a MCDCA claim, the only conceivable injury (which Plaintiff does not even allege) from premature collection letters and rent actions would be the actual expense that Plaintiff incurred for having to deal with such actions. As explained below, however, the rent payment itself does not constitute damages.

Because the MCDCA claim is not viable, Plaintiff's claim under the MCPA — which is predicated on a MCDCA violation — is not sustainable either. Moreover, the MCPA claim is not viable for a separate reason: Plaintiff has not sustained "actual damages," which are required before a consumer may recover under the MCPA. Simply stated, having to pay rent is not "actual damages" under the controlling cases. Indeed, in an unbroken 30-year line of decisions, the Court of Appeals of Maryland has rejected Plaintiff's central premise — that the absence of a license, without any causal connection to actual damages, excuses the payment of rent or entitles the tenant to restitution. *See Golt v. Phillips*, 308 Md. 1, 517 A.2d 328 (1986); *CitaraManis v. Hallowell*, 328 Md. 142, 613 A.2d 964 (1992); *McDaniel v. Baranowski*, 419 Md. 560, 19 A.3d 927 (2011).

In short, with no factual disputes at issue, the MCDCA and MCPA claims present an overarching legal question:

> Where a rental property is habitable and without any defective conditions, does the mere payment of rent under a lease, during a period when the landlord's rental license under the Baltimore City Code had allegedly lapsed, constitute actual damages that entitles a tenant to monetary recovery under the MCPA or MCDCA?

The answer is "No" and, therefore, this Court should dismiss the MCDCA and MCPA claims.

The same outcome is required as to Plaintiff's counts for a declaratory judgment (Count II) and for "money had and received" (Count V). Count II should be dismissed because there is nothing for this Court to declare given that the debt is not alleged to be invalid. Count V is infirm because the claim is not available where an agreement exists between the parties and because

Plaintiff received the full contractual benefit of her rental payments — use, possession, and enjoyment of a habitable apartment as obligated under the lease.[3]

Finally, if this Court is inclined to permit any aspect of Plaintiff's claims to proceed against ETG and Roizman, the allegations cannot support certification of a class action. Consequently, for the reasons explained below, this Court should strike the class allegations.

II. APPLICABLE PLEADING STANDARDS

This motion tests the sufficiency of the complaint under the pleading requirements of Rule 8 and the plausibility standard announced in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). As to fraud-based claims, the heightened pleading standards under Rule 9 apply. In the interest of brevity, those strictures are discussed below within the context of the arguments for dismissal.

III. FACTUAL ALLEGATIONS

According to Plaintiff, beginning April 1, 2019, she rented a unit in the Renaissance Plaza Apartments ("Building"). First Am. Compl. ¶¶ 9, 25 (all subsequent "¶" citations refer to the First Amended Complaint, ECF 25). Plaintiff alleges ETG owns, and Roizman and ETG manage, the Building. ¶¶ 7, 8.

Plaintiff alleges, without specificity, that the Building has "numerous problems, including recurring issues with non-working elevators, issues with water pressure and plumbing, and rodent infestations" (¶ 12), and "various additional issues in numerous individual apartments" (¶ 12), but she does not allege what those "additional issues" are. Plaintiff does not allege she reported any

[3] The motion to dismiss (ECF 15) Plaintiff's original Complaint (ECF 1) identified the foregoing flaws in Plaintiff's claims. Defendants consented to Plaintiff amending her Complaint. Although Plaintiff had the benefit of the motion to dismiss, the amended allegations are not substantively different from the original allegations. Plaintiff still makes no allegations of uninhabitable conditions or any other defects that could constitute an actual injury.

such issues to the landlord. She does not provide any details about the location, timing, duration, or severity of the alleged problems. Nor does she allege that her unit was uninhabitable or that any Code violations pertained to her unit (because none have occurred).

Likewise, Plaintiff does not allege that any of the alleged problems rose to the level that could entitle her to pay her rent into the Baltimore City District Court's registry as part of a rent escrow action. Certainly, the First Amended Complaint does not allege that she filed a rent-escrow action. *See McDaniel v. Baranowski*, 419 Md. 560, 567 & nn. 8 & 12, 19 A.3d 927, 931 (Md. 2011) (tenant's remedy for defects in a dwelling is the rent escrow process).

Plaintiff further alleges the rental license for the Building expired on August 15, 2019, but does not say why that occurred. ¶ 13. On the contrary, she expressly posits guesses as to why there was a change in licensing status.[4] ¶ 13. Likewise, Plaintiff alleges "[on] information and belief" that Defendants were "immediately aware" that the license's expiration prohibited collection of rent payments under Baltimore City Code, Art. 13, § 5-4(a). ¶ 14.

Plaintiff paid rent in August and September 2019, but says she fell behind in October and November 2019. ¶¶ 27-30. She alleges she twice was stuck in the elevator and, on one occasion, missed a job interview. ¶ 28. She does not say she did not get the job because of the incident. She alleges that ETG and Roizman declined her request for a rent concession. ¶ 29.

Plaintiff alleges that, because she failed to pay October and November 2019 rents, Defendants filed a rent court action in the Baltimore City District Court. ¶ 30. Plaintiff

[4] Solely for purposes of background and context, the Court can take judicial notice that the 2018 Code amendment changed the City's inspection regime, from annual inspections by City inspectors to inspections by private home inspectors on a City-approved list to be scheduled and coordinated by the landlord and inspector. Balt. City Code, Art. 13, § 5-7. This change in the inspection regime, which was not well-publicized, appears to have led to the license expiring and not immediately being renewed.

acknowledges she failed to appear for a December 9, 2019 trial date and a default judgment was entered against her. ¶ 30. Notably, the Baltimore City District Court Judge noted on the record no rent escrow action was pending. *Ex. E*, Trans. (Dec. 9, 2019) Case No. 2019014500522802; *Ex. F*, Audio Recording Certificate, Baltimore City District Court, Case No. 2019014500522802.

According to Plaintiff, on January 8, 2020, Defendants filed a second rent court action for December 2019 and January 2020 rents (¶ 31), and on February 4, 2020, a Baltimore City District Court Judge "ruled against Defendants on the licensing issue." ¶ 15. Plaintiff asserts, incorrectly, that this meant the Judge ruled that Defendants "were not entitled to collect or retain any rent from their tenants." *Id.*

This Court can take judicial notice that Plaintiff has not correctly described what happened in rent court. Although the Judge did rule that an open violation notice on the property precluded a judgment for the landlord at that time, the Judge did not rule explicitly or implicitly that ETG and Roizman "were not entitled to collect or retain rent from their tenants." ¶ 15. The Baltimore City District Court merely ruled that ETG and Roizman were not entitled to judgment in that case pursuant to the summary procedures set forth in Md. Code Ann., Real Prop. § 8-401, *et seq*. *Ex. A.*

Plaintiff's allegation that this ruling "mean[s] that because the Property was unlicensed, [Defendants] were prohibited from collecting rent" (¶ 32) is an incorrect legal conclusion and not a well-pleaded factual allegation. In reality, the lack of a license means only that the landlord is not allowed to summarily eject the tenant. *McDaniel*, 419 Md. at 587, 19 A.3d at 943 (landlord must affirmatively demonstrate licensure to initiate summary ejectment process, but tenant must demonstrate actual damages to make out MCPA claim). And, the Baltimore City District Court rejected Plaintiff's attempt to use its ruling as a basis for disgorgement of rent payments she already

made. *Ex. A*, Transcript of Case No. 2020014300301171 (Feb. 4, 2020), at 5-6.[5] Additionally, although Plaintiff was represented by counsel, there was no suggestion that Plaintiff had asserted a rent escrow action or even that the conditions at the property would entitle her to escrow her rent. *Exs. B*, Case No. 2020014300301171 (Jan. 27, 2020), and *A* (Feb. 4, 2020). In response to Plaintiff's request for restitution, the Judge declined to order such relief, and instead directed Plaintiff to file a motion (*id.*), which she did, and was denied. *Ex. D*, Motion and Order (Feb. 7, 2020). Accordingly, this Court should disregard the Complaint's allegations in ¶¶ 15 and 32 that purport to describe the oral rulings of the Baltimore City District Court.

Plaintiff further alleges Defendants did not inform Building tenants that the Building was not currently licensed and continued to "pursue" rent and collections of past due rent. ¶¶ 16, 18. According to the First Amended Complaint, on March 25, 2020, a letter prepared and signed by Defendants Law Offices of Edward J. Maher, P.C. and Edward J. Maher was provided to every tenant, stating the rent was still due as usual. ¶ 17.

The First Amended Complaint alleges Plaintiff did not pay the judgment for the overdue October and November 2019 rents, and Defendants obtained a warrant of restitution for February 18, 2020. ¶ 33. Plaintiff alleges she paid $800 toward her overdue rent and was not evicted. ¶ 33.

According to Plaintiff, ETG and Roizman advertised available units and entered and renewed leases during that time period. ¶ 24. Plaintiff alleges that ETG and Roizman left notes for tenants who were behind on rent and informed them that lawsuits may be filed. ¶ 20. She says ETG and Roizman left her a note dated June 13, 2020 seeking past due rent totaling $5,605.75 and informing her a lawsuit would be filed when the court reopens. ¶ 36.

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[5] *See also Ex. B*, Transcript of Case No. 2020014300301171, District Court of Maryland for Baltimore City (Jan. 27, 2020) (continuing the case until Feb. 4, 2020), and *Ex. C*, Audio Recording Certificate, Baltimore City District Court, Case No. 2020014300301171.

The First Amended Complaint alleges there was a licensing inspection of the property in February 2020 and the license was granted on July 14, 2020. ¶ 22. Plaintiff resumed paying rent after learning that the Building's license was reinstated. ¶ 37. Plaintiff does not allege there was or has been any change in the condition of the Building, or her unit, at any time during the period the license had expired.

Finally, Plaintiff alleges another rent court action was filed against her on July 27, 2020 (which was dismissed without prejudice), and ETG and Roizman sent a letter dated August 12, 2020 seeking "several thousand dollars" of unpaid rent from Plaintiff. ¶¶ 37-38. Plaintiff states that Defendants have not returned rent collected from tenants during the time the licensed lapsed, and Defendants continue to pursue rent for that time period. ¶ 23.

IV. ARGUMENTS FOR DISMISSAL OF PLAINTIFF'S CLAIMS

ETG and Roizman's arguments for dismissal proceed in the following sequence: III, IV, V, and II, rather than the numerical order of the counts in the First Amended Complaint. Analyzing the claims in that order tracks the analytical steps of the applicable legal principles and is appropriate given that each of Plaintiff's claims is premised on the lapse of the rental license.

A. This Court Should Dismiss Count III (MCDCA).

The crux of Plaintiff's First Amended Complaint, including the claim under the MCDCA (Count III), is Defendants collected rent and attempted to collect rent for a period during the tenancy when the property was not licensed under Baltimore City Code, Art. 13, § 5-4(a).

Section 5-4(a) provides that no person may:

> (1) rent or offer to rent to another all or any part of any rental dwelling without a currently effective license to do so from the Housing Commissioner; or
>
> (2) charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy.

Notably, the City Code does not contain a provision authorizing a private cause of action against a landlord for violating § 5-4(a).

Based on the alleged violation of that licensing provision, Plaintiff alleges Defendants violated the MCDCA by: "seeking to collect, collecting, and retaining rent for the period of time where the Property was unlicensed, or pursuant to a lease that was entered into or renewed during that period"; and "claiming and attempting to enforce a right with knowledge that it does not exist." ¶ 72. *See* MCDCA §§ 14-201(b), 14-202(8) ("a person collecting or attempting to collect an alleged debt arising out of a consumer transaction" may not "[c]laim, attempt, or threaten to enforce a right with knowledge that the right does not exist." (emphasis added)).[6]

1. The MCDCA is not a vehicle for challenging the validity of the underlying debt; rather, the MCDCA redresses improper collection methods.

Importantly, Plaintiff does not claim that the alleged lapse of the license forever extinguished the contractual debt obligation created by the Lease. Nor does she allege that the debt was permanently discharged or forever satisfied such that the landlord lost all recourse to ever enforce the obligation, even after the license was restored (an undisputed fact[7]).

The absence of such allegations is important because the MCDCA does not afford a cause

[6] Additionally, in the First Amended Complaint (¶¶ 67, 72), Plaintiff added an allegation that ETG and Roizman are liable under MCDCA § 14-202(11) for collecting a debt that is not permitted by law or contract under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692f. Notably, however, no FDCPA claim is asserted against ETG and Roizman and they are not "debt collectors" under the FDCPA. 15 U.S.C. § 1692a(6) ("debt collector" does not include the creditor itself or its officers and employees). Hence, the FDCPA does not apply to them and cannot form the basis of any claim against them.

[7] There is no dispute the license is currently in full force and effect. Even if the license lapsed for any period of time, there is no legal basis to state that ETG and Roizman are not entitled to collect all past due rent through the date of this motion.

of action to a debtor against a collector based upon the validity of the alleged debt itself. *See McKlveen v. Monika Courts Condo.*, 208 Md. App. 369, 382–83, 56 A.3d 611, 619–20 (2012) (MCDCA prohibits various methods, such as use or threat of violence, when collecting alleged debts, and provides a civil action in response to such methods, but not to challenge the existence of debts); *Fontell v. Hassett*, 870 F. Supp. 2d 395, 405 (D. Md. 2012) (MCDCA is "meant to proscribe certain *methods* of debt collection and is not a mechanism for attacking the validity of the debt itself") (emphasis in original); *Allen v. Silverman Theologou, LLP*, No. JFM-14-3257, 2015 WL 2129698, at *7 (D. Md. May 6, 2015) ("MCDCA can be used to challenge 'the methods used to collect the alleged debt,' but not the validity of that debt"); *Ben-Davies v. Blibaum & Assocs., P.A.*, 421 F. Supp. 3d 94, 99 (2019) ("The parties agree that § 14-202(8) cannot be used to challenge the validity of the underlying debt.").

Hence, if Plaintiff really does contend that Baltimore City Code Art. 13, § 5-4(a) extinguished her debt obligation for the rental months in question, then the MCDCA is not available under the cases cited above. In this regard, one's attempt, without engaging in abusive methods, to collect such funds from another is not a violation of the MCDCA and the MCDCA is not the mechanism for determining the validity of the debt.

Consequently, the only reading of Plaintiff's theory of recovery that is permissible given the constraints of the MCDCA is that Defendants allegedly violated that statute because they sent past-due letters or resorted to the courts when the debt was allegedly not then collectible because the rental license had lapsed for a period of time.

But the notion that prematurely filing a rent court action or sending a past-due letter to collect a valid debt constitutes a MCDCA violation is not tenable in light of this Court's holding in *Fontell v. Hassett*. As this Court explained when analyzing a plaintiff's MCDCA claim under

the same provision that Plaintiff relies on in her First Amended Complaint (at ¶ 67), "Section § 14–202(8) only makes grammatical sense if the underlying debt, expressly defined to include an alleged debt, is assumed to exist, and the specific prohibitions are interpreted as proscribing certain methods of debt collection rather than the debt itself[,]" and "makes sense within the context of the other proscribed practices only if it is also read to proscribe certain methods of debt collection, 'such as enforcing a right collateral to the debt in order to pressure the debtor to pay the debt,' rather than collection of the debt itself." 870 F. Supp. 2d at 405–06 (citation omitted).

In light of the analysis in *Fontell*, the premature rent court action or past-due letter with respect to a debt that is valid under a lease for a rental property that was at all times undisputedly habitable and being used and enjoyed by Plaintiff can hardly be said to constitute an abusive debt-collection method of the type that the MCDCA was designed to address. Even if those methods — filing a rent court action or sending a past-due notice — could constitute a technical violation of the MCDCA, the statute does not erase the underlying debt obligation or require the landlord to return the rental payments. In other words, the consequence of a MCDCA violation is never that the debt is erased and that the consumer, as examples, gets to live rent free or drive his car without making car payments. Therefore, since the debt itself remains valid (not even Plaintiff goes so far as to allege to the contrary), the only conceivable damages are Plaintiff's expenses proximately caused by the premature filing of a rent court action or by the premature sending of a past-due notice. But, no such damages are alleged in her First Amended Complaint.

Hence, there is no viable MCDCA claim in the particular circumstances of this case.

2. Plaintiff fails to allege actual damages, an element of any MCDCA claim.

Moreover, this Court should dismiss Plaintiff's MCDCA claim because the allegations regarding Plaintiff's "actual damages" are legally insufficient.

As this Court has held, a private right of action under the MCDCA § 14-203 is predicated on recovery of "damages proximately caused by" a violation of the statute and, accordingly, actual damages are "a necessary element" of any claim under the MCDCA.[8] *Joy Family Limited Partnership v. United Financial Banking Cos.*, No. ELH-12-3741, 2013 WL 4647321, *12 (D. Md. Aug. 28, 2013) (dismissing MCDCA claim, among others, for failure to plead any pecuniary loss and resultant failure to plead jurisdictional amount in controversy).

Plaintiff does not allege actual damages proximately caused by Defendants' alleged attempt to collect rent.[9] Instead, she claims that the rent payments (the debts themselves) are damages. ¶ 72; Count III *Ad Damnum* Clause A (Plaintiff seeks an award "equal to all amounts paid by [by her] for rent during the period where the Property was unlicensed . . . ."). But the debt itself cannot be her damages because, as explained above, the MCDCA is not a vehicle for invalidating debts. Likewise, as explained above, the City Code does not contain a disgorgement provision or a provision creating a private cause of action. Further, as explained in Part IV.B., below, because the First Amended Complaint contains no specific allegations that the absence of a license was based on conditions of the property causing Plaintiff to sustain any actual damage, the payment of rent is simply not "damages" Plaintiff can recover in a claim based on a property's failure to have

[8] In reaching that conclusion, this Court analogized the elements of a claim under the MCPA (where a plaintiff must demonstrate actual damages proximately caused by the violation). *Id.* The MCPA and the Maryland cases analyzing the pleading requirements for stating a claim under the MCPA are discussed in more detail below in the next section.

[9] Plaintiff does identify alleged issues with the Building, but those allegations do not pertain to debt-collection tactics and are thus irrelevant to the MCDCA analysis. In any event, the allegations do not describe or permit the inference of an uninhabitable dwelling. In this regard, the alleged issues are the kinds of issues that can crop up in any rental property, but they do not even approach the type of defects going to habitability that are described below in the seminal case on this issue, *Golt v. Phillips*, 308 Md. 1, 517 A.2d 328 (1986) (damages proved where violations included lack of the most basic health and safety measures and tenant had to move to a more expensive apartment).

a rental license. Because the First Amended Complaint does not plead actual damages under the MCDCA, Count III of the First Amended Complaint should be dismissed.

In addition, Count III fails to adequately allege the "knowledge" requirement of the MCDCA. The knowledge requirement of this Act "has been held to mean that a party may not attempt to enforce a right with actual knowledge or with reckless disregard as to the falsity of the existence of the right." *Kouabo v. Chevy Chase Bank, F.S.B.*, 336 F. Supp. 2d 471, 475 (D. Md. 2004) (citing *Spencer v. Hendersen-Webb, Inc.*, 81 F. Supp. 2d 582, 595 (D. Md. 1999)). "To establish reckless disregard, a plaintiff must show the defendant either (1) made the statement with a high degree of awareness of . . . probable falsity; or (2) actually entertained serious doubts as to the truth of the statement." *Allen v. Bank of Am. Corp.*, No. CCB-11-33. 2011 WL 3654451, at *9 (D. Md. Aug. 18, 2011) (internal citations and quotation marks omitted). Importantly, a MCDCA claim requires a plaintiff to satisfy the heightened pleading standard of Rule 9(b). *Roos v. Seterus, Inc.*, No. RDB-18-3970, 2019 WL 4750418, at *6 (D. Md. Sept. 30, 2019) (dismissing MCDCA claim, collecting cases applying the particularity standard).

Plaintiff's allegations of scienter plainly fail this test. Although in some instances, knowledge may be alleged generally, in this case Plaintiff's characterization of Defendant's knowledge is based on an inaccurate recounting of the proceedings in the Baltimore City District Court. *See* ¶¶ 32-33. This Court can take judicial notice that, contrary to Plaintiff's allegations (still erroneously stated in the First Amended Complaint), there was never any ruling that rent did not become due, and Defendants were never ordered to return any prior rent payments. *Exs. A & D.* Furthermore, the Baltimore City District Court's ruling in the second rent action did not

invalidate the default judgment obtained in the first rent case.[10] There was nothing improper about executing on that duly entered, and un-appealed judgment. Yet, Plaintiff is attempting here exactly what this Court held in *Blibaum & Associates* is prohibited under the MCDCA — rather than attacking an incorrect interest rate, Plaintiff is disputing the underlying debt itself. As set forth in *Blibaum & Associates*, Plaintiff cannot, as a matter of law, challenge this judgment, or any underlying debt, via a MCDCA claim.

And, by attempting to recover damages for Defendants' efforts to collect a validly entered judgment, Plaintiff is collaterally attacking that judgment, a prohibited attempt to invalidate a judgment entered in another matter. *Klein v. Whitehead*, 40 Md. App. 1, 21, 389 A.2d 374, 386 (1978) ("The prohibition against collateral attack . . . prevents a person from challenging the validity of the existing judgment [or] from attacking the judgment itself rather than merely its scope or effect."); *Edwards v. Tobin*, 139 F.3d 889 (Table), No. 96-2237, 1998 WL 123060, *3–4 (4th Cir. Mar. 19, 1998) (per curiam) (same; citing *Klein v. Whitehead*).

For these reasons, Count III of the First Amended Complaint should be dismissed.

B. This Court Should Dismiss Count IV (MCPA).

Because the alleged violation of the MCDCA is the sole basis of Plaintiff's claim that Defendants violated the MCPA, Count IV is also subject to dismissal. *See* ¶ 77 ("'Unfair or deceptive trade practices' [under the MCPA] also includes any violation of the MCDCA. Md. Code Comm., § 13-301(14)(iii).").[11] In Count IV, Plaintiff seeks an award of her "actual damages

[10] As noted above, the change in the City's inspection requirements, and not issues rendering the dwelling uninhabitable, led to the alleged gap in the currently effective license.

[11] In addition to authorizing public enforcement actions by the Office of the Attorney General, the MCPA authorizes an aggrieved consumer to bring a private civil action to recover damages caused by unfair or deceptive trade practices prohibited under the MCPA. *See* Md. Code Ann., Com. Law

as provided for in Md. Code Ann., Commercial Law, § 13-408, in an amount equal to all amounts paid by Named Plaintiff and the Class for rent during the period where the Property was unlicensed or pursuant to leases entered into or renewed during the period that the Property was unlicensed." *See* First Amended Complaint, Count IV, *Ad Damnum* Clause A. As noted above, although Defendants pointed out to Plaintiff that no damages were even alleged in the original Complaint, Plaintiff added zero factual allegations of any actual injury in the First Amended Complaint. Thus, Plaintiff's only alleged damages are the rental payments themselves.

Because an alleged violation of the MCDCA is the predicate of Plaintiff's MCPA claim, and because Plaintiff has failed to state a viable MCDCA claim, the MCPA claim is not sustainable. Moreover, Plaintiff's allegations are insufficient to state a viable MCPA claim against Defendants for the following additional reasons:

1. Controlling Legal Principles.

To state a MCPA claim against a landlord based on the absence of a rental license under local law, the tenant must show that the absence of a license is causally connected to an actual injury. The mere fact that a landlord's license temporarily lapsed (or even if the landlord never procured a rental license at all) does not, by itself, entitle the tenant to recover damages or to obligate the landlord to disgorge rents collected during the unlicensed period.

The seminal case of *CitaraManis v. Hallowell*, 328 Md. 142, 613 A.2d 964 (1992), governs this issue and demonstrates why, as a matter of law, Plaintiff fails to state a claim. In *CitaraManis*, the tenants leased residential property that was never licensed for rental as required by the Howard

§ 13-408(a). Notably, as stated above in Section IV.A, the subject City Code provision does not contain a similar authorizing provision.

County Code.[12] After the tenancy ended, the tenants sued the landlord under the MCPA, seeking restitution of the rents they paid during the 18-month tenancy. *Id.* at 145, 613 A.2d at 965. The Circuit Court for Howard County granted summary judgment for the tenants for the full amount of all rents paid during the tenancy. *Id.* at 146, 613 A.2d at 966. The Court of Special Appeals reversed, holding the tenants had not demonstrated the absence of a license had caused actual damages — a requirement for recovery under the MCPA. *Id.*

On appeal, the Court of Appeals affirmed the intermediate appellate court. The Court of Appeals held the absence of a license, standing alone, does not entitle a tenant to restitution of rents. That is because the purpose of the licensing ordinance is "the identification of premises to be inspected in order to determine compliance with housing codes. Determining whether particular landlords or their agents have necessary qualifications to render services as landlords is not the object of either licensing scheme. In effect, premises and not people are to be licensed." *Id.* at 162, 613 A.2d at 973. The Court of Appeals held:

> The approval of dwellings under a rental housing licensing scheme, from a public safety and welfare standpoint, is more like the approval of plans for the construction of buildings than the licensing of service occupations. Inasmuch as the construction manager in *Schloss* was permitted affirmatively to recover promised compensation, a fortiori, the [tenants], on the present record, are not obliged to refund rent paid. *On remand in this case, the task of the plaintiffs will be to show the degree of violation of the underlying housing code. The absence of a rental housing license in and of itself does not establish the right to recover rent paid.*

Id. at 163-64, 613 A.2d at 974 (emphasis added).

Consequently, the Court of Appeals remanded the case to the trial court "to determine whether the tenants are able to prove that they suffered 'actual injury or loss,' justifying recovery

[12] Here, as alleged in the First Amended Complaint and noted above, the license was in place when Plaintiff's tenancy began but allegedly lapsed and was renewed during the tenancy.

under § 13–408(a) of the CPA, or that the landlords' loss of all rent would be proportional to the purpose sought to be achieved by the licensing scheme." *Id.* at 164, 613 A.2d at 974–75.

Importantly, in reaching that conclusion, the Court of Appeals distinguished (and clarified) its earlier opinion in *Golt v. Phillips*, 308 Md. 1, 517 A.2d 328 (1986). In *Golt*, Mr. Golt, an elderly, disabled retiree rented an apartment that was not fit for habitation: "there were numerous housing code violations. These included the lack of the most basic health and safety measures: no toilet in Mr. Golt's apartment, no fire doors, defective door locks, and no fire exits." *CitaraManis*, 328 Md. at 147, 613 A.2d at 966. Rather than remediate the violations, the landlord evicted Mr. Golt during the lease term, forcing him to find another, more expensive apartment and incur moving expenses. *CitaraManis*, 328 Md. at 148, 613 A.2d at 966. The *CitaraManis* Court observed that, under the facts of *Golt*, the advertisement and rental of that particular unlicensed apartment was an unfair and deceptive practice prohibited by the MCPA that caused the tenant to sustain "compensatory damages consisting of restitution of the rent which he had paid for three months *for the uninhabitable apartment* and consequential damages*, such as the cost of moving from the premises and the additional cost of substitute housing for the remainder of the term of the lease which he had entered with Phillips Brothers*." *Id.* at 148-49, 613 A.2d at 967 (emphasis added).

Given the extreme facts at issue in *Golt*, the *CitaraManis* Court recognized that the suggestion that the landlord "'may not retain any benefits from the unlicensed lease, and Golt may recover his full damages'" does not apply in all cases. *Id.* at 150, 613 A.2d at 967. "Because of the obvious actual loss and damage suffered by the tenant in *Golt* who paid rent for what proved to be an uninhabitable apartment, we realize now, for the reasons hereinafter set forth, that we spoke much too broadly in making the statement just quoted." *Id.*

The foregoing analytical framework — namely, the absence of a rental license must be causally connected to the tenant's actual loss for the tenant to maintain a cognizable MCPA claim premised on the lack of that license — was reinforced more recently in *McDaniel v. Baranowski*, 419 Md. 560, 19 A.3d 927 (2011). The Court of Appeals contrasted *Golt*, in which the tenant "*demonstrated actual injury, in both the diminution of value of the premises due to defects in the unit, which did not even have toilet facilities, and also in the cost of securing suitable substitute housing*[,]" with *CitaraManis*, in which the tenants "had not alleged nor proved that the house they had rented "was unclean, unsafe, uninhabitable or unsuitable in any regard," or that they had suffered any diminution of the rental value of the property *as a result of the lack of licensure*." *McDaniel*, 419 Md. at 587–88, 19 A.3d at 587 (emphasis added). Thus, the *McDaniel* case was "analogous to *CitaraManis* because McDaniel failed to present any evidence that she sustained any actual damages, such as bills for medical treatment, loss of wages, or the cost of securing suitable substitute housing, for example." *Id.*; *see also Galola v. Snyder*, 328 Md. 182, 613 A.2d 983 (1992) (tenant *required to prove actual loss or injury stemming from the lack of licensure*).

2. The allegations of Plaintiff's MCPA claim are insufficient to support Plaintiff's request for restitution of rents and, therefore, this Court should dismiss the claim.

Against the backdrop of the foregoing legal principles, Plaintiff's allegations cannot support a MCPA claim for restitution of rents based on the absence of a rental license.

When Plaintiff became a tenant on April 1, 2019, the license was in place and did not allegedly expire until August 2019. ¶¶ 26-27. Hence, her decision to move into the apartment had nothing to do with any misrepresentation about the status of a rental license because the license did not allegedly lapse until well after she took possession.

Likewise, there are no specific allegations that the absence of a license was based on conditions that caused Plaintiff to sustain any actual damage, or that rent can no longer be collected

on reinstatement of the license. Nor is there any allegation that the first judgment of the Baltimore City District Court — a default against the tenant — is not *res judicata* as to all of these issues for this Plaintiff. The only allegations of any problem at the property that pertained specifically to Plaintiff appear in ¶¶ 28 and 29 of the First Amended Complaint, where she alleges she got stuck in the elevator. But, there is no allegation that any issue with the elevator triggered the absence of a rental license or disqualified the Building from getting a rental license. Moreover, there is no allegation that she sustained any actual damage or loss as a result of the elevator.

The only other allegations about issues in the Building appear in ¶ 12 of the First Amended Complaint ("issues with water pressure and plumbing, and rodent infestations, as well as various additional issues in numerous individual apartments"). Again, there is no specificity with respect to these blanket unsupported allegations, and Plaintiff does not connect these issues to the absence of the license or even allege these issues disqualified the Building from getting a license. In fact, the First Amended Complaint demonstrates the opposite because, while acknowledging that the Building was licensed through August 2019, Plaintiff alleges that "over the years" the issues identified in ¶ 12 were present. Hence, the inference is that these conditions had no relation to the rental license lapsing in August 2019, or that they prevented the reinstatement of the license, which occurred upon the inspection of the private inspector as required by the amendment to the Code in 2018. Moreover, Plaintiff does not explain that she herself experienced these problems or that the problems caused her to sustain any identifiable actual damages or losses.

And, significantly, Plaintiff fails to allege her unit was uninhabitable because of any of the issues identified in ¶ 12. The words "habitable" or "uninhabitable" appear nowhere in the First Amended Complaint.[13]

The Baltimore City Code cannot, and does not, change the requirement under the MCDCA and MCPA that actual damages be pled and proved. Even "voluntary payment of rent under *an unenforceable lease* does not entitle a tenant to restitution of that rent unless the tenant can establish that he or she was provided less than she had bargained for in the lease." *Galola v. Snyder*, 328 Md. 182, 186, 613 A.2d 983, 985–86 (1992) (emphasis added) (reversing restitution judgment and ordering a new trial on damages according to actual loss or injury) (citing its companion case, *CitaraManis*, 328 Md. at 158–59, 613 A.2d at 971–72).

Accordingly, Plaintiff is not entitled to restitution of rents and, therefore, this Court should dismiss Count IV.

3. To the extent Plaintiff's MCPA claim sounds in fraud, this Court should dismiss the claim.

Plaintiff's MCPA claim, in part, sounds in fraud because Plaintiff's First Amended Complaint (at ¶ 77) specifically relies on the misrepresentation-based provisions of the MCPA. *Id.* ("'Unfair or deceptive trade practices include . . . False, falsely disparaging, or misleading oral

[13] As noted above, had Plaintiff experienced any problems that rose to a serious level, her remedy was to file a rent-escrow claim. *McDaniel*, 419 Md. at 567 & nn. 8 & 12, 19 A.3d at 931 (noting plaintiff filed a claim for rent escrow in response to the eviction suit, and detailing the applicable section of the landlord-tenant statute). Here, Plaintiff has not done so, and has not even alleged that the conditions of the dwelling would implicate the rent escrow law. However, Plaintiff's faulty interpretation of the law does place the rent escrow statute at issue, because Plaintiff's interpretation of the Baltimore City Code provision — that a licensing issue whether stemming from some defect or not, means that rent is never collectible — is irreconcilable with other parts of the Code and State law regarding rent escrow which merely confer the right to set the rental payment aside upon compliance *by the tenant* with specific processes. *See* Balt. City Code of Public Local Laws § 9-9; Md. Code Ann., Real Prop. § 8-211.

or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers; [and] Failure to state a material fact if the failure deceives or tends to deceive.' Md. Code [Ann.], Comm. § 13-301 (1), (3)."

Accordingly, Plaintiff was required to plead fraud with the particularity required for stating a viable fraud claim.[14] *See, e.g.*, *Dwoskin v. Bank of Am., N.A.*, 850 F. Supp. 2d 557, 569 (D. Md. 2012) ("Because the MCPA claim sounds in fraud, it is also subject to the heightened pleading requirement of FRCP 9(b)."); *Marchese v. JPMorgan Chase Bank, N.A.*, 917 F. Supp. 2d 452, 465 (D. Md. 2013) (same); *Currie v. Wells Fargo Bank, N.A.*, 950 F. Supp. 2d 788, 799 (D. Md. 2013) ("MCPA claims that sound in fraud must be pleaded with particularity.").

As the *Dwoskin* Court held:

> Under Maryland law, to state a claim for fraud a plaintiff must have relied on a false misrepresentation and had the right to rely on it, and must have suffered compensable injury resulting from the misrepresentation. *Gourdine* [*v. Crews*, 405 Md. 722, 758, 955 A.2d 769, 791 (2008)]. Likewise, under the MCPA, an individual can only bring a claim if he can "establish the nature of the actual injury or loss that he or she allegedly sustained as a result of the prohibited practice." *Lloyd v. General Motors Corp.*, 397 Md. 108, 148, 916 A.2d 257, 280 (2007) (quoting *CitaraManis v. Hallowell*, 328 Md. 142, 149, 613 A.2d 964, 968 (1992)).

Dwoskin, 850 F. Supp. 2d at 570.

Plaintiff is "therefore required to allege the 'time, place, and contents of the false representations, as well as the identity of the person making the misrepresentation and what he

[14] Defendants recognize this Court has recently determined in another case some MCPA claims based on a violation of the MCDCA do not sound in fraud and, therefore, are not subject to the heightened pleading standards applicable to a fraud claim. *Harris v. Nationstar Mortgage LLC*, No. CCB-19-3251, 2020 WL 4698062, at *6 n.11 (D. Md. Aug. 13, 2020). However, as explained above, Plaintiff's First Amended Complaint does, in part, sound in fraud. *Id.* (noting some MCPA claims are subject to Rule 9(b)). In any event, a MCPA claim based on an alleged MCDCA violation is still subject to the pleading strictures articulated in *Twombly* and the cases that follow *Twombly*. *Id.* at *4 (applying the plausibility standard).

obtained thereby' for [Plaintiff's] MCPA claims." *Id.* at 569 (quoting *Harrison v. Westinghouse Savannah River Co.*, 176 F.3d 776, 784 (4th Cir. 1999)). Plaintiff fails to do so.

Additionally, where, as here, there are multiple defendants, a plaintiff must identify each individual defendant's participation in the alleged fraud. *Adams v. NVR Homes, Inc.*, 193 F.R.D. 243, 250 (D. Md. 2000); *Wang Labs., Inc. v. Burts*, 612 F. Supp. 441, 445 (D. Md. 1984) (same); *see also Wiener v. Napoli*, 760 F. Supp. 278, 284 (E.D.N.Y. 1991) (where "multiple defendants are involved in the alleged fraud, it is especially important that the fraud be particularized as to each one of them").

Applying these principles to the First Amended Complaint, to the extent Count IV sounds in fraud, this Court should dismiss that count. There are no allegations, much less particularized allegations of time, place, contents, and persons, that could support a fraud claim under this Court's heightened pleading standards. By not differentiating between ETG and Roizman and, instead, lumping them together (with each other and with the other two Defendants), Plaintiff has ignored the requirement of pleading fraud with particularity. Plaintiff's allegation regarding ETG and Roizman's corporate relationship to each other does not cure this defect. Plaintiff's statement that a general partner is liable for the actions of the partnership (¶ 8) is a legal conclusion, and not a well-pleaded factual allegation, let alone a particular allegation of fraudulent conduct. Plaintiff's failure to meet the requirements of Rule 9(b) must result in dismissal of her claim sounding in fraud.

C. This Court Should Dismiss Count V (Money Had and Received).

For at least two reasons, the Court should dismiss Count V (for money had and received): (1) the claim is a quasi-contract claim that cannot exist where an express written contract (the lease) governs the subject matter of the claim; and (2) the claim is not available where the plaintiff has received the benefit of the payments made.

First, the existence of a written contract, *i.e.*, the lease, precludes claims for money had and received. Such claims are unjust enrichment claims rooted in a quasi-contract theory. *See Alternatives Unlimited, Inc. v. New Balt. City Bd. of Sch. Comm'rs*, 155 Md. App. 415, 476, 479-80, 843 A.2d 252, 288, 290 (Md. 2004). A quasi-contract claim may not be asserted "when an express contract defining the rights and remedies of the parties exists." *J. Roland, Dashiell & Sons, Inc.*, 358 Md. at 101, 747 A.2d at 610 (citation omitted); *FLF, Inc. v. World Publications, Inc.*, 999 F. Supp. 640, 642 (D. Md. 1998) ("It is settled law in Maryland, and elsewhere, that a claim for unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties.").

Plaintiff's claim for money had and received is predicated on and arises out of the lease. *See, e.g.*, ¶ 24 ("Defendants are also aggressively pursuing *rent allegedly due under leases* that were entered into or renewed during that period."); ¶ 59 ("claim that 'ALL RENT AND ANY OTHER MONIES DUE UNDER YOUR *LEASE* ARE PAYABLE AS USUAL ON THE DUE DATE' was a false, deceptive, or misleading representation"); ¶ 82 ("By collecting and retaining rent for those periods and *pursuant to leases* that were entered into or renewed during those periods. Defendants ETG and Roizman have come into the possession of money in the form of payments that they had, and have no right to.") (emphasis added). Any contention by Plaintiff that the lease was rendered "illegal" or otherwise unenforceable by a violation of the Baltimore City Code's licensing provision does not change this result. The Court of Appeals has already expressly held that a tenant who makes rent payments — even under an unenforceable lease — is not entitled to an equitable remedy for those payments, but rather must prove the amount of actual damages if any, based on what was bargained for in that lease. *Galola*, 328 Md. at 186, 613 A.2d at 985–86.

Second, having received the benefits of the agreement pursuant to which money was paid,

Plaintiff cannot recover under a theory of money had and received. Only where an agreement has not been consummated could a plaintiff properly assert a money-had-and-received claim. *Bourgeois v. Live Nation Entertainment, Inc.*, 430 Md. 14, 18-19, 59 A.3d 509, 511 (2013) — where the plaintiff bought a concert ticket, attended the concert, and then filed a class-action suit seeking a refund of an allegedly illegal service fee — illustrates this point. In the same way the concertgoer in *Bourgeois* attended the concert and thus received the benefit of the ticket, Plaintiff lived in her apartment during the months for which she seeks a refund of rental payments. As to those months, the holding of *Bourgeois* precludes an award of the return of rents under a "money had and received" claim. At least as to those months, the lease is no longer executory.

Applying *Bourgeois*'s holding to Plaintiff's claim makes abundant sense when one considers what a "money had and received" claim is designed to redress. "[T]he gist of this kind of action is, that the defendant, upon the circumstances of the case, is obliged by the ties of natural justice and equity to refund the money." *Bourgeois*, 430 Md. at 47 (quoting authority omitted). Here, there is nothing offensive to natural justice and equity for a landlord to retain rental payments for the months during which Plaintiff occupied the unit, where there are no allegations that the lapsed license rendered her unit uninhabitable or caused actual injury. Unlike in *Bourgeois*, Plaintiff here asserts no additional service charges or other allegation that she received less than bargained for in return for her payments. There is nothing to refund.

For these reasons, Count V fails to state a claim and should be dismissed.

D. This Court Should Dismiss Count II (Maryland Declaratory Judgment Act).

Given the above-explained infirmities of the other counts against ETG and Roizman, Count II should dismissed because nothing remains for this Court to declare. Hence, this Court should exercise its discretion to decline to grant declaratory relief because a declaration serves no useful purpose. *See Society of Am. Foresters v. Renewable Natural Resources Found.*, 114 Md. App.

224, 238, 689 A.2d 662, 668 (1997) ("a court has discretion to refuse a declaratory judgment when it does not serve a useful purpose.").

This point comes into sharp focus considering that declaratory relief is not even available under any of Plaintiff's claims under the MCDCA or the MCPA. *See Winemiller v. Worldwide Asset Purchasing, LLC*, 09-02487-RDB, 2011 WL 1457749, at *7 (D. Md. Apr. 15, 2011) ("As this Court and other courts in this jurisdiction have stated, 'declaratory and injunctive relief is not available under the FDCPA, MCDCA, or the MCPA.'" (quoting *Bradshaw v. Hilco Receivables, LLC*, 765 F. Supp. 2d 719, 733 (D. Md. 2011) (citing *Hauk v. LVNV Funding, LLC*, 749 F. Supp. 2d, 358 (D. Md. Nov. 5, 2010))).

As this Court held in *Altenburg v. Caliber Home Loans, Inc.*, No. RDB-16-3374, 2017 WL 2733803, at *6 (D. Md. June 26, 2017), a case involving a putative class action alleging violations of the Fair Debt Collection Practices Act, the MCDCA, and the MCPA based on the defendant's filing of foreclosure actions against plaintiffs' properties on behalf of an entity that was not licensed as a consumer debt collector under the Maryland Collection Agency Licensing Act:

> This Court, as defendants note, has repeatedly rejected claims for declaratory relief premised on violations of the FDCPA, MCDCA, and MCPA. *Hauk v. LVNV Funding, LLC*, 749 F. Supp. 2d 358, 369 (D. Md. 2010) ("The principal deficiency with the plaintiffs' argument is that the amended complaint does not cite any federal or state statutes that independently entitle the plaintiffs to declaratory and injunctive relief."). *See also Bradshaw*, 765 F. Supp. 2d at 733 (same). Nor do the statutes themselves suggest the availability of declaratory relief. *See* 15 U.S.C. § 1692k, Md. Code Ann., Com. Law § 13-408, Md. Code Ann., Com. Law § 14-203. Accordingly, plaintiffs' claim for declaratory relief (Count I) is DISMISSED.

Declaratory relief is not an independent cause of action. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950); *Hauk*, 749 F. Supp. 2d at 368–69 (rejecting plaintiffs' claim that, even though declaratory relief is unavailable under FDCPA, MCDCA or MCPA,

declaratory relief is available under 28 U.S.C. § 2201 and Md. Code Ann., Cts. & Jud. Proc. § 3–406); *see also Brewster v. Brennan*, 567 F. Supp. 2d 791, 797 (D. Md. 2008).

Further, the MCDCA claim, the MCPA claim, and the claim for money had and received are based upon the identical allegations as the declaratory judgment action and resolution of the legal causes of action is a more efficient method of adjudicating those claims. Plaintiff has not set forth any rare and compelling circumstances that would warrant this Court's exercise of its discretion to permit legal causes of action and a request for declaratory relief, on the same issues, to be litigated in the same case.

V. ARGUMENTS FOR STRIKING PLAINTIFF'S CLASS-ACTION CLAIMS

On the face of the First Amended Complaint, the class-action allegations are deficient. This Court should strike those allegations. If this Court determines that any claims survive Defendants' motion to dismiss (none should), then this Court should require Plaintiff to proceed individually.

A. Plaintiff's Class-Action Allegations.

Plaintiff's allegations to support her position that this action should become a class action are found in ¶¶ 39 through 49 of the First Amended Complaint under the heading, "Class Action Allegations." Those paragraphs are devoid of any real factual allegations and instead, in conclusory fashion, parrot the operative provisions of Rule 23 of the Federal Rules of Civil Procedure.

Plaintiff defines the putative class (at ¶ 39) as:

> All tenants of 2601 Madison Ave, Baltimore, MD 21217 who rented an apartment or unit between August 15, 2019 and July 15, 2020 and/or who entered into or renewed a lease for an apartment or unit between August 15, 2019 and July 15, 2020.

In Plaintiff's view, if a person was a tenant at any time during August 15, 2019 through July 15, 2012, that person should be a class member, without regard to whether the person: (a) entered a lease before the license had lapsed; (b) paid rent during the period; (c) suffered any actual damages from the absence of the license or experienced any conditions in his or her unit that rendered the unit uninhabitable or unsafe as a result of the absence of the license; (d) was in non-monetary default under his or her lease; and/or (e) was sued in rent court.

In ¶ 42 (a) through (k), Plaintiff identifies ten questions of law and fact that she asserts are "common and predominating" across the putative class. Only subparagraph (a) of ¶ 42 (whether the property was properly licensed during the alleged class period) presents a question that could be answered uniformly as to all tenants. The other nine on their face, however, are highly individualistic and depend on the particular facts and circumstances of each tenant's experience.

Elsewhere, the First Amended Complaint contains only a few broad allegations concerning other tenants. *See, e.g.*, ¶ 16 (Defendants did not inform "the tenants" in general as to the license status and continued to pursue rent); ¶ 26 ("Like many of the other tenants in the Property, she was frustrated by the state of disrepair.").

B. Legal Standards Applicable to Class-Action Claims at the Pleading Stage.

Rule 23 authorizes the Court to strike class claims: "[a]t an early practicable time after a person sues or is sued as a class representative, the court must determine by order whether to certify the action as a class action." Fed. R. Civ. P. 23(c)(1)(A); *Ross-Randolph v. Allstate Ins. Co.*, No. DKC 99-3344, 2001 WL 36042162, at *4 (D. Md. May 11, 2001) ("There is no presumption that class action should be allowed. . . . a court does not have to wait until class certification is sought.")

(citations omitted).[15] Rule 23(d)(1)(D) authorizes the Court to issue orders that "require that the pleadings be amended to eliminate allegations about representation of absent persons and that the action proceed accordingly . . . ." Fed. R. Civ. P. 23(d)(1)(D);[16] *see, e.g.*, *Williams v. Potomac Family Dining Grp. Operating Co., LLC*, No. GJH-19-1780, 2019 WL 5309628, at *8 (D. Md. Oct. 21, 2019) ("[I]t is plain from the face of the Complaint that Plaintiff has 'fail[ed] to properly allege facts sufficient to make out a class.'"); *Ross-Randolph*, 2001 WL 36042162, at *4 (granting a motion to strike class allegations based on the pleadings alone).[17]

Plaintiff always maintains the burden to establish class certification. *Potomac Family Dining Grp.*, 2019 WL 5309628, at *4 n.5 (and also explaining that, while Rule 12(f) is often cited, the higher standard for striking material from pleadings in general does not apply to motions to strike class allegations). To establish a prospective class, the named plaintiff must meet four prerequisites under Rule 23(a): "(1) numerosity; (2) commonality; (3) typicality; and (4) adequacy of representation." *EQT Prod. Co. v. Adair*, 764 F.3d 347, 357 (4th Cir. 2014) (citing Fed. R. Civ.

[15] The timing of the determination whether to certify a class changed in 2003 from "as soon as practicable" to "at an early practicable time." Fed. R. Civ. P. 23, Adv. Comm. Notes, 2003 Amd.

[16] Rule 23 provides the procedural vehicle for this Motion and sets the standard for class certification, which Plaintiff always maintains the burden to meet; Rule 12(b)(6) sets the pleading standard at this stage. *Williams v. Potomac Family Dining Grp. Operating Co., LLC*, No. GJH-19-1780, 2019 WL 5309628, at *4 n.5 (D. Md. Oct. 21, 2019) (explaining that, while Rule 12(f) is often cited, the standard for striking material from pleadings in general does not apply to motions to strike class allegations). Whether this Motion is considered under Rule 12(b)(6) and/or Rule 12(f), it should be granted and the allegations related to any persons other than the Plaintiff should be eliminated from this case.

[17] Also, it goes without saying that no class may be certified if Plaintiff or any proposed members lack standing under the United States Constitution, Art. 3, § 2, cl. 1. Defendants ETG and Roizman reserve the right to raise standing as an issue at the appropriate juncture. *See* Fed. R. Civ. P. 12(h)(3).

P. 23(a)). The complaint must plead facts showing that all of these elements are met under the substantive law at issue in the complaint. *Potomac Family Dining Grp.*, 2019 WL 5309628, at *6.

In addition to satisfying each of those four elements, the plaintiff must plead facts showing that the putative class action fits one of the three categories pursuant to Rule 23(b): (1) inconsistent adjudications would risk imposing incompatible standards on defendants, or individual adjudications would impede other potential plaintiffs; (2) the injunctive or declaratory relief sought applies generally to the class; or (3) common factual and/or legal questions predominate over individual questions, and the class action form is superior to other available methods. *Mitchell-Tracey v. United Gen. Title Ins. Co.*, 237 F.R.D. 551, 558 (D. Md. 2006).

C. Analysis.

1. Rule 23(a)'s requirements of commonality and typicality are not met.

The allegations fail to satisfy the elements of commonality and typicality.[18] These elements are "are often analyzed together because they '[b]oth serve as guideposts for determining whether . . . the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected. . . .'" *Ross-Randolph*, 2001 WL 36042162, at *5 (quoting *Stott v. Haworth*, 916 F.2d 134, 143 (4th Cir. 1990)).

Here, class certification is not appropriate because this Court will be required to "make specific, individual inquiries as to each of the class plaintiffs regarding the critical issues," which

[18] For purposes of this Motion only, Defendants do not challenge Plaintiff's numerosity allegation. Plaintiff alleges that the Building contains 146 units (Compl. ¶ 41), but there is no allegation as to how many units were rented during the putative class period, or how many tenants actually suffered damages apart from paying their normal rent. Even assuming that the numerosity element has been pled, the allegations of commonality and typicality fail. Also, for purposes of this Motion, Defendants do not challenge the allegation as to the adequacy of representation by Plaintiff 's counsel (¶ 44), but reserve the right to do so. The allegation that Plaintiff's counsel "foresee little difficulty in the management of this case as a class action" is irrelevant, and, for the reasons stated below in Section V.B.2.c, incorrect.

demonstrates "there is no commonality and typicality, and certification is improper." *Ross-Randolph*, 2001 WL 36042162, at *5 (citing *Stott*, 916 F.2d at 145).

As mentioned above, each of the nine questions of law and fact that Plaintiff identifies in subparagraphs (b) through (k) of ¶ 42 as being "common and predominating" across the putative class are, on their faces, highly individualized and dependent on the particular tenants' circumstances. When one considers all of the different facts that might apply to a prospective class member — including, *e.g.*, when he or she entered a lease in relation to the expiration of the license; whether and how much rent was paid; whether and to what extent the person had any actual damages; the nature, frequency, and duration of, if any, alleged substandard conditions in the unit connected to the absence of the license; and so on — it becomes clear that the Court would become hopelessly bogged down in mini-trials for as many as 146 people, with different defenses available to Defendants as to different plaintiffs and time frames.

Plaintiff also omits to mention questions of law and fact demonstrating that commonality and typicality can never be met. Primarily, Plaintiff not only owes several months' worth of rental payments during the putative class period, but also has had a default judgment entered against her for the amount owed for two of those months. That judgment was never appealed and remains final, and has been satisfied by payment. Plaintiff's status as an adjudicated judgment debtor as to some months of the putative class period, while withholding (wrongfully) payment for other months, makes her an inadequate representative for the class she purports to represent.

Plaintiff's proposed class definition further confirms that reality. That definition purports to include all persons who were tenants at any time during the subject period. For the reasons stated above, that definition is so sweeping as to make it meaningless.

Most fundamentally, the critical issue (as discussed above) is whether a tenant can demonstrate actual damages. Because that question can only be answered on an individual basis, the class allegations are doomed as a matter of law. *See Sanders v. Apple Inc.*, 672 F. Supp. 2d 978, 991 (N.D. Cal. 2009) (striking overbroad proposed class defined by mere ownership of a certain computer, regardless of whether the putative class member had been injured by alleged false representations about the capability of the computer's color display); *Ross-Randolph*, 2001 WL 36042162, at *6 (under Rule 23(a), "certification is appropriate *only when a determinative critical issue overshadows all others*." (emphasis added)). Just as in *Ross-Randolph*, here, "to determine whether any Plaintiff is entitled to relief in this action, each Plaintiff will have to prove his or her entitlement to [damages]" as well as "whether each claimant actually relied on any alleged representations . . . ." 2001 WL 36042162, at *6.

2. Plaintiff's allegations do not and cannot satisfy Rule 23(b).

Plaintiff's allegations demonstrate that the individualized inquiries at issue make a class action unmanageable and improper under each subsection of Rule 23(b).

a. There is no risk of individual adjudications prejudicing other parties under Rule 23(b)(1).

Plaintiff has not pled facts that could show that adjudications in individual actions would prejudice the proposed class members or the Defendants. Plaintiff's conclusory statement that there is a danger of establishing inconsistent standards on Defendants (¶ 46) is a bare recitation of Rule 23(b)(1) without any facts to support that conclusion. In particular, each tenant is subject to his or her own lease, may or may not be current in his or her rent payments, and may or may not have complaints about the condition of the Building or specific unit. But, under the asserted causes of action, the adjudication of those individual questions — especially individual damages (if any) — would only govern in those individual cases and would not apply to other cases.

Moreover, Plaintiff seeks money damages, which under the respective causes of action she asserts, are tied directly to the fact and degree of any actual individual damages. *See Galola*, 328 Md. at 186, 613 A.2d at 985–86; *Ross-Randolph*, 2001 WL 36042162, at *8 (citing *Zimmerman*, 800 F.2d at 389 (finding Rule 23(b)(1)(A) inapplicable because defendants did not argue they would be prejudiced if the class was not certified)). When analyzing Rule 23(b)(1), "'the dangers of imposing incompatible standards of conduct' on a Defendant in an action for money damages are generally nonexistent." *Id.* Because any award of damages must be based on individual injury or lack thereof, separate actions for those individuals would not create any risk of establishing incompatible standards for Defendants or prejudice Plaintiff or any other individual. Thus, Rule 23(b)(1) cannot be satisfied.

b. No injunctive or declaratory ruling could provide any relief to any member of the putative class under Rule 23(b)(2).

Plaintiff's bare allegations (¶ 47) do not support a viable Rule 23(b)(2) class because she primarily seeks monetary relief. *Stanley v. Cent. Garden & Pet Corp.*, 891 F. Supp. 2d 757, 771 (D. Md. 2012). "In *Wal-Mart Stores, Inc. v. Dukes*, the Supreme Court made clear that Rule 23(b)(2) applies "only when a single injunction or declaratory judgment would provide relief to each member of the class. . . . [I]t does not authorize class certification when each class member would be entitled to an individualized award of money damages." 131 S. Ct. at 2557. Thus, Rule 23(b)(2) classes cannot combine class-wide injunctive relief with individualized damages. *Id.* at 2558. Because "[c]laims for individualized monetary damages 'belong in Rule 23(b)(3)[,]'" this Court in *Central Garden & Pet Corp.* granted the defendants' motion to strike allegations in support of a Rule 23(b)(2). *Id.*

Likewise here, the central theory of Plaintiff's claims, defective as those claims may be, is that tenants should be excused from having to pay rent during the subject period. But, Plaintiff

alleges that the unlicensed period ended because the Building is currently licensed. ¶ 37. Being currently licensed, Defendants currently have the right to collect and retain rental payments, even for the months during the unlicensed period. *See* Section IV.A (under MCDCA § 14-202(8) and *Fontell*, 870 F. Supp. 2d at 405–06, Plaintiff cannot, as a matter of law, challenge the validity of the underlying debt). And accordingly, no persons who paid or owe rent for the unlicensed period can be class members based on any challenge to the validity of those amounts. Plaintiff and any other individual claiming they are excused from making rent payments or should receive a refund must prove actual damages on an individual basis caused by collection tactics. Only tenants who were the subject of rent court suits during the unlicensed period could possibly fit this category, not any tenant as Plaintiff purports to define the putative class. The First Amended Complaint asserts no claims for injunctive relief, and Plaintiff's declaratory claim (Count II) is defective for the reasons set forth in Section IV.D above. Only individual money damages could hope to be recovered by Plaintiff. Therefore, no Rule 23(b)(2) class could ever properly be certified.

c. Individual issues predominate over any common legal or factual question under Rule 23(b)(3).

Rule 23 requires that "the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." "The matters pertinent to these findings include":

(A) the class members' interests in individually controlling the prosecution or defense of separate actions;

(B) the extent and nature of any litigation concerning the controversy already begun by or against class members;

(C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and

(D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(2).

"[T]he 'commonality' requirement of Rule 23(a)(2) is 'subsumed under, or superseded by, the more stringent Rule 23(b)(3) requirement that questions common to the class predominate over' other questions." *EQT Prod. Co.*, 764 F.3d at 365 (quoting *Amchem Prods. v. Windsor*, 521 U.S. 591, 609 (1997)). Although "[t]he same analytic principles' governing the Rule 23(a) commonality analysis apply to Rule 23(b)(3), [] the latter's predominance requirement is "more demanding." *Id.* (quoting *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013)).

As explained, individual issues predominate the questions of law and fact. Plaintiff, the putative class representative, has a default judgment entered against her for unpaid rent during the class period; this judgment is *res judicata* as to Plaintiff, and distinguishes her from the class. Moreover, now that the property's license is again in effect, the only redress that could potentially be at issue would be for collection efforts, if any, taken during the unlicensed period as to certain tenants. Under Rule 23(b)(2)(A), the only proper manner to conduct the inquiries into Plaintiff's claim, and any other tenants' claims, is on an individual basis. Importantly, discovery would serve no purpose because the answers to the wide-ranging relevant questions are unique to each tenant. *See Jones v. BRG Sports, Inc.*, No. 18 C 7250, 2019 WL 3554374, at *5-6 (N.D. Ill. Aug. 1, 2019) ("the individualized inquiries that pervade this case utterly destroy the plaintiffs' ability to satisfy Rule 23(b)(3)"; "discovery promises no hope of a remedy to this infirmity, nor could the class definitions themselves be narrowed sufficiently to address . . . the complex, ubiquitous individualized questions of harm and causation that pervade this case."). Rather than economies of time, effort, and expense, proceeding in this manner will multiply the proceedings with no benefit, because the actual damages question makes uniformity impossible. *Cf. Stanley*, 891 F. Supp. 2d at 772. A class action would be decidedly inferior under Rule 23(b)(3).

VI. CONCLUSION

For all the foregoing reasons, Defendants ETG and Roizman request that the Court grant their Motion, dismiss Counts II through V of the First Amended Complaint, and strike all class-action allegations.

Dated: February 2, 2021

Respectfully submitted

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*Specially admitted *pro hac vice*.

Counsel for Defendants E.T.G. Associates '94, LP and Roizman Development, Inc.

EXHIBIT A

RENAISSANCE PLAZA, * IN THE

Plaintiff * DISTRICT COURT

v. * OF MARYLAND

ALLISON ASSANAH-CARROLL, * FOR BALTIMORE CITY

Defendant * 2020301171

* * * * * * * * * * * * *

Hearing held on February 4, 2020 in front of Judge L. Robert Cooper in the District Court of Baltimore City.

Transcription Services By: CRC Salomon

Proceedings recorded by electronic sound recording; Transcript produced by transcription service.

P R O C E E D I N G S

FEMALE SPEAKER: Case number 301171, 2601 Madison Avenue, PH7.

JUDGE COOPER: Is this the same issue?

MALE SPEAKER: Yes, Your Honor. This is the same exact issue.

JUDGE COOPER: Fascinating. I've never had this issue before. All right.

MALE SPEAKER: It was passed.

JUDGE COOPER: All right. Good morning.

DEFENDANT'S COUNSEL: For the record, Andrew Revilis (phonetic) the Law Office of Taplin and Platto (phonetic) on behalf of the tenant. Your Honor, I do had asked them for a notice pursuant to --

JUDGE COOPER: Is this the same block number too, or a different black number?

DEFENDANT'S COUNSEL: It's the same address and what I'm passing forward here is a printout from the city code -- or website. If you look to the far right it actually has the block unit. I also have ASDAT (phonetic) here to show the block unit which correlates to that which is provided to you

via the --

JUDGE COOPER: Wait, the last address was 2601 Madison Avenue.

MALE SPEAKER: Yes, Your Honor.

JUDGE COOPER: I gotcha. But --

MALE SPEAKER: I was told when they did the reissuance of the license on this, this is something I've seen in the past, they did a -- they did an inspection on the property as a whole. They issued one license at one address --

JUDGE COOPER: That's crazy.

MALE SPEAKER: And that was 2502 Utah. I was able to pull up the same ASDAT for 2502 Utah that shows Renaissance Plaza as the owner. So it's the same exact property. There's a deficiency over at housing with them tying addresses together.

JUDGE COOPER: Well, you're going to bring -- you said you're going to bring them into court, I mean you're going to have to.

MALE SPEAKER: Absolutely, Your Honor.

DEFENDANT'S COUNSEL: Your Honor, I'm opposed to any, we've already been here before. The tenant has retained my services. For us to come back a third time they would

clearly --

JUDGE COOPER: It would be the second time, right?

DEFENDANT'S COUNSEL: We are here the second time. I would oppose to having to come back a third time. Your Honor, I think it's pretty clear, subtitle 3, license in rental dwellings specifically states each dwelling is supposed to have it's own license. I understand the argument that these are block units, it still has to have separate address. They cannot be block. This isn't some community that as you drive in, this is a strip on -- in the street. This is a large high rise condominium and any other unit isn't connected to them. They shouldn't be able to share a license.

It's pretty clear to me pursuant to subtitle 5 they're supposed to -- even further, Your Honor, the document that I've shown you of housing that shows that there is no license, it says there's an open violation on the property. There's no way for them to have obtained a license if there is an open violation. If they did, that the open violation was certainly override.

JUDGE COOPER: Do you want to respond to that? It says open violation 1850319.

MALE SPEAKER: Your Honor, I can tell you what that is, that is right across the street, they are both the same property, Renaissance Plaza. I do need a moment, I can --

JUDGE COOPER: What about the open --

MALE SPEAKER: -- (inaudible) housing --

JUDGE COOPER: -- open violation?

MALE SPEAKER: I cannot explain that.

JUDGE COOPER: Oh.

MALE SPEAKER: What I can explain the fact that the property is duly licensed with two different addresses.

JUDGE COOPER: All right. Thank you.

MALE SPEAKER: That has already been the case.

JUDGE COOPER: This case is a little different, there's an open violation. Landlord can explain open violations so I'm going to deny the request for the postponement. Judgement will in the favor of the tenant, no license. You can appeal it.

DEFENDANT'S COUNSEL: Your Honor, respectfully the Court would take notice that the license wasn't valid from 8/15/2019. My client's paid August, September, October, November, I would ask the Court to order them to grant the

return.

JUDGE COOPER: You can file a motion with me, Counsel, but I'm not prepared to do that orally today.

DEFENDANT'S COUNSEL: Thank you, Your Honor.

JUDGE COOPER: There's a lot of confusion in this case, okay.

DEFENDANT'S COUNSEL: Not a problem.

JUDGE COOPER: All right.

DEFENDANT'S COUNSEL: May I be excused?

JUDGE COOPER: You may. And please file a motion with them as well, because they'll probably appeal it and they're going to want to respond to that too, with the money.

MALE SPEAKER: Yeah, what case number was that, I'm sorry?

DEFENDANT'S COUNSEL: I believe it's 301171.

JUDGE COOPER: Thank you, have a nice day.

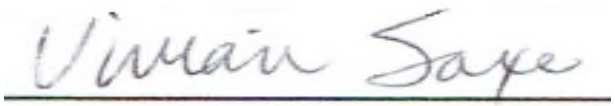
DEFENDANT'S COUNSEL: Thank you, Your Honor.

MALE SPEAKER: Thank you.

(End of Proceeding.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



September 30, 2020

VIVIAN SAXE, CERT**D 631 DATE

WORD INDEX

EXHIBIT B

RENAISSANCE PLAZA, * IN THE

Plaintiff * DISTRICT COURT

v. * OF MARYLAND

ALLISON ASSANAH-CARROLL, * FOR BALTIMORE CITY

Defendant * 2020301171

* * * * * * * * * * * * *

Hearing held on January 27, 2020 in front of Judge L. Robert Cooper in the District Court of Baltimore City.

Transcription Services By: CRC Salomon

Proceedings recorded by electronic sound recording; Transcript produced by transcription service.

P R O C E E D I N G S

FEMALE SPEAKER: Calling case number 30117, 12601 Madison Avenue.

DEFENDANT: My legal counsel --

MALE SPEAKER: She has -- actually she's retained counsel, he's across --

JUDGE COOPER: Okay.

MALE SPEAKER: He's walking in now.

DEFENDANT'S COUNSEL: Good afternoon, Your Honor.

JUDGE COOPER: Good afternoon.

DEFENDANT'S COUNSEL: Andrew Revilis (phonetic) in the Law Office of Taplin Platto (phonetic) on behalf of the Defendant.

MALE SPEAKER: Your Honor, in this matter I really haven't had the chance to speak with Counsel or the resident.

JUDGE COOPER: Okay.

MALE SPEAKER: If we could hold this over briefly, I'll be happy to discuss the case.

JUDGE COOPER: Okay.

(Proceeding was paused.)

JUDGE COOPER: All right. The Court will recall 14300, 301171, it's 2601 Madison Avenue.

DEFENDANT'S COUNSEL: Again for the record, Andrew Revilis from the Law Office of Taplin Platto. Your Honor, I've had a chance to speak with my client and opposing counsel. We are going to be requesting a consent postponement in this matter, so we can do some further investigation.

JUDGE COOPER: Okay. 2/4?

FEMALE SPEAKER: Yes.

JUDGE COOPER: Is February 4th in the morning?

DEFENDANT'S COUNSEL: Yes, Your Honor. That's --

MALE SPEAKER: Yes. Yes, Your Honor.

FEMALE SPEAKER: 8:15 A.M., Your Honor.

JUDGE COOPER: Yes, ma'am.

FEMALE SPEAKER: Okay.

DEFENDANT'S COUNSEL: May we be excused?

JUDGE COOPER: Of course.

DEFENDANT'S COUNSEL: Thank you. Nice to see you.

MALE SPEAKER: Thank you, Your Honor.

JUDGE COOPER: Thank you.

(End of Proceeding.)

CERTIFICATE

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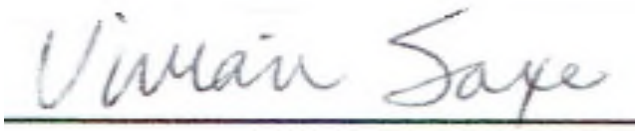

September 30, 2020

VIVIAN SAXE, CERT**D 631 DATE

WORD INDEX

EXHIBIT C

DISTRICT COURT OF MARYLAND FOR Baltimore City
City/County

Located at 501 E FAYETTE STREET
Court Address

Case No. 2020301171

STATE OF MARYLAND
OR
RENAISSANCE PLAZA
Full Name of Plaintiff(s)

vs.

ALLISON ASSANAH-CARROLL
Full Name of Defendant(s)

TO: KRAMON & GRAHAM P.A.
ONE SOUTH STREET #2600
BALTIMORE MD 21202

(fold line)

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09/28/20
Date

Clerk

EXHIBIT D

DISTRICT COURT OF MARYLAND FOR Baltimore, MD / Baltimore City
City/County

Located at 501 E. Fayette St. 21202 Case No. 301171
Court Address

STATE OF MARYLAND

Trial Date February 4, 2020

OR

Statewide Court Service, LLC
Renaissance Plaza
Plaintiff/Judgment Creditor

vs.

Alison Assanah-Carroll
Defendant/Judgment Debtor

1426 E. Joppa Rd.
Address

2601 Madison Ave. PH07
Address

Towson, MD 21286
City, State, Zip

Baltimore, MD 21217
City, State, Zip

MOTION

Requesting the return of rent paid for the months of Aug. 16-31, Sept., Oct., Nov. 2019 because the property was not licensed to operate as a rental dwelling* (Please refer to the attached exhibits)*

I am the ☐ Attorney for ☐ Plaintiff ☑ Defendant ☐ Other - Specify:

☐ Request Hearing on Motion

REC'D RENT DEP
2020 FEB -7 PM 5:

2/7/2020
Date

Alison Assanah-Carroll
Signature

Alison Assanah-Carroll
Printed Name

2601 Madison Ave. PH07
Address

443.509.1440
Telephone

N/A
Fax

aassanahcarroll@gmail.com
Email

CERTIFICATE OF SERVICE

I certify that I served a copy of this Motion upon the following party or parties by ☑ mailing first class mail, postage prepaid ☐ hand delivery, on 2/7/2020 to:
Date

Statewide Court Services, LLC
Name

1426 E. Joppa Rd. Towson MD 21286
Address

Renaissance Plaza
Name

Address

2/7/2020
Date

Signature of Party Serving

ENTERED
FEB 10 '20
TEL

ORDER

It is hereby ORDERED:

MAILED

☐ the hearing on Motion be set for _____ at _____ at the following location:

☐ the relief requested be granted

☑ the relief requested is denied

Comments: (T) matters should be filed under property - Not a rent court dispute

2/7/20
Date

DENIED

Judge

The Judge's signature appears on the original document

ID Number

DC-002 (Rev. 11/2014) Print Date (09/2016)

EXHIBIT E

RENAISSANCE PLAZA, * IN THE

Plaintiff * CIRCUIT COURT

v. * OF MARYLAND

ALLISON ASSANAH-CARROLL, * FOR BALTIMORE CITY

Defendant * 2019522802

* * * * * * * * * * * * *

Hearing held on December 9, 2019 in front of Judge Kent Boles, Jr., in the District Court of Baltimore City.

Transcription Services By: CRC Salomon

Proceedings recorded by electronic sound recording; Transcript produced by transcription service.

P R O C E E D I N G S

FEMALE SPEAKER: The following Petitions are being called for default judgments, beginning with case number 329008 ending with case number 522875.

MALE SPEAKER: In all these matters the amounts are still due and owing as of today's date. They consist of rent/lease only. The contain no open judgment amounts to the best of my knowledge. No rent escrow.

JUDGE BOLES: And for all the open amounts the amounts listed on line 8 of the respected Complaints?

MALE SPEAKER: Correct, Your Honor.

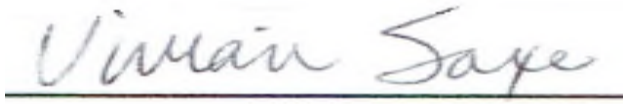
JUDGE BOLES: Based upon your testimony we'll enter judgment by default on behalf of landlord for possession of the premises for the amount listed in line 8 of the respective Complaints.

MALE SPEAKER: Thank you, Your Honor.

(End of Proceeding.)

CERTIFICATE

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.



September 30, 2020

VIVIAN SAXE, CERT**D 631 DATE

WORD INDEX

EXHIBIT F

DISTRICT COURT OF MARYLAND FOR Baltimore City
City/County

Located at 501 E FAYETTE STREET
Court Address

Case No. 2019522802

STATE OF MARYLAND
OR
RENAISSANCE PLAZA
Full Name of Plaintiff(s)

vs.

ALLISON ASSANAH-CARROLL
Full Name of Defendant(s)

TO: KRAMON & GRAHAM P.A.
ONE SOUTH STREET #2600
BALTIMORE MD 21202

(fold line)

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09/28/20
Date

Clerk

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
–Northern Division–

ALISON ASSANAH-CARROLL, *et al.*, *Plaintiffs* –v– LAW OFFICES OF EDWARD J. MAHER, P.C., *et al.*, *Defendants.*	Civil Action No.: 20-02376-CCB The Honorable Catherine C. Blake

PLAINTIFFS' OPPOSITION TO DEFENDANTS E.T.G. AND ROIZMAN'S MOTION TO DISMISS
–Hearing Requested–

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TABLE OF CONTENTS

TABLE OF AUTHORITES

CASES

STATUTES

OTHER AUTHORITIES

TREATISES

I. INTRODUCTION

When Baltimore City enacted its new licensing regime in 2018 to assure safety in rental housing, it took an extraordinary step to protect renters and incentivize compliance by landlords; Baltimore passed an ordinance explicitly providing that "no person may… [c]harge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy." Article 13, § 5-4(a)(2) of the Baltimore City Code. That section does not contain any qualification requiring that the dwelling be uninhabitable, or that the license be absent for any particular reason. Instead, the ordinance is clear; without a license at the time the occupancy is provided or offered, no rent can be collected or retained.

Yet despite this clear law prohibiting a landlord from, among other things, charging or retaining any rental payment for the period they were unlicensed, Defendants E.T.G. Associates '94 LP ("Defendant E.T.G.") and Roizman Development, Inc. ("Defendant Roizman") argue that Maryland law provides no avenue for a tenant to 1) get back money that an unlicensed landlord manages to illegally obtain from its tenant or 2) prevent the landlord from seeking to collect illegal rent. Defendants E.T.G. and Roizman actively avoid discussing the text of the ordinance at question throughout the entirety of their brief, and for good reason, because the text of the ordinance contradicts almost every argument that they make. None of the authorities cited by Defendants E.T.G. and Roizman involve an ordinance that lays out the consequences to a landlord of failure to comply with the licensing requirements like § 5-4(a)(2), which was clearly included in the 2018 Baltimore City rental licensing changes to avoid the outcomes in the very cases relied on by Defendants E.T.G. and Roizman.

II. STANDARD

When ruling on a motion to dismiss, the court must "accept the well-pled allegations of the complaint as true," and "construe the facts and reasonable inferences derived therefrom in the light most favorable to the plaintiff." *Ibarra v. United States*, 120 F.3d 472, 474 (4th Cir. 1997). Although a complaint must allege enough facts to state a plausible claim, "[a] claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Thus, a court must "draw on its judicial experience and common sense" to determine whether the pleader has stated a plausible claim for relief. *Id*. at 679.

III. BACKGROUND

A. Baltimore City Licensing Requirements

Baltimore City's 2018 revisions to the Baltimore City Code expanded licensing requirements and consequences for unlicensed landlords as part of an effort to protect renters from unsafe conditions and increase the quality of the rental housing in the City. Before Baltimore City Council Bill 18-0185, only multiple-family dwellings were required to be registered and licensed to rent in Baltimore City. Baltimore City Council Bill 18-0185 extended those requirements to all landlords and added in new requirements and consequences for unlicensed landlords.

Under the 2018 bill, all Baltimore landlords are required to register their properties with the Baltimore City Commissioner of Housing and Community Development. Article 13, § 4-5 of the Baltimore City Code. Additionally, Baltimore landlords must obtain a license to rent their property from the Baltimore City Commissioner of Housing and Community Development. Article 13, § 5-4 of the Baltimore City Code. In order to obtain the license, the property must, among other things, be 1) registered, 2) pass a public or private inspection by an authorized

inspector concluding that the property meets the health and safety standards set by the City, and 3) not have any open code violations that have not been addressed within 90 days of issuance. Article 13, § 5-6 and § 5-7 of the Baltimore City Code. There is no fee for the license. Article 13, § 5-8 of the Baltimore City Code.

Most critically for this case, Baltimore City Council Bill 18-0185 specified the consequences for a landlord who is unlicensed. Before, Article 13, § 5-4 of the Baltimore City Code provided: "No person may operate any multiple-family dwelling or rooming house without a license to do so from the Commissioner." That section now reads in relevant part:

> [N]o person may:
>
> (1) rent or offer to rent to another all or any part of any rental dwelling without a currently effective license to do so from the Housing Commissioner; or
>
> (2) charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy.

Article 13, § 5-4(a) of the Baltimore City Code.

Violations of Article 13, § 5-4(a) are criminal misdemeanors and are also punishable by environmental citations. Article 13, §§ 5-25(a) and § 5-26 of the Baltimore City Code. The Baltimore City Council also made it clear that those enforcement mechanisms are not intended to be exclusive, explicitly stating that "[t]he issuance of an environmental citation to enforce this subtitle does not preclude pursuing any other civil or criminal remedy or enforcement action authorized by law." Article 13, § 5-25(b) of the Baltimore City Code.

The various public entities that wrote reports in favor of the bill highlighted its important role in protecting the health and safety of Baltimore City renters. The Baltimore Development Corporation supported Baltimore City Council Bill 18-0185, writing:

> BDC believes that the cost of regulatory compliance in this case is relatively small, and all property owners should bear the cost of bringing a property into habitable, code-compliant condition. BDC believes that the potential negative effects of this legislation are far outweighed by the positive benefits of safe housing for Baltimore City residents. The licensing component of this legislation, in particular, provides a meaningful mechanism for reducing the amount of sub-standard housing offered by non-compliant landlords, and BDC hopes that it will lead to a substantial reduction in sub-standard housing throughout the City.

January 31, 2018 Memorandum from the Baltimore Development Corporation to Baltimore City Council Regarding Baltimore City Council Bill 18-0185.[1] The Baltimore City Department of Housing & Community Development similarly supported Baltimore City Council Bill 18-0185, stating of the new licensing requirements:

> The new requirements will largely eliminate substandard conditions in the one segment of the affordable housing market where such conditions are prevalent. This will improve the living standards of the many thousands of households that depend on the private market for affordable housing, and will also extend the amount of time that these units will remain part of the affordable housing inventory.

February 13, 2018 Memorandum Regarding Baltimore City Council Bill 18-0185 by the Baltimore City Department of Housing & Community Development.[2]

B. Defendants E.T.G. and Roizman's Collection of Illegal Rent

Defendant E.T.G. is a Pennsylvania limited partnership and is the owner of an apartment building located at 2601 Madison Ave, Baltimore, MD 21217 (the "Property"). First Amended Complaint, at ¶ 7. Defendant Roizman is the general partner of Defendant E.T.G. and, as the general partner, operates Defendant E.T.G.'s management of the Property. *Id*. at ¶ 8. Defendants E.T.G. and Roizman acquired the Property approximately 25 years ago, and over the

[1] Retrieved from https://baltimore.legistar.com/View.ashx?M=F&ID=5809521&GUID=31DD6536-47E0-4D2B-A174-3FA41A47E4CE.
[2] Retrieved from https://baltimore.legistar.com/View.ashx?M=F&ID=5803501&GUID=F1652546-12C4-45BC-AEF2-A87FB99206B3.

years have allowed it to deteriorate and develop numerous problems, including non-working elevators, issues with water pressure and plumbing, and rodent infestations. *Id*. at ¶ 12. As the First Amended Complaint states: "Whether out of that same general neglect, problems passing inspection, or intentional avoidance because they knew that the Property would fail the inspection required for a license, Defendants E.T.G and Roizman allowed their license to rent the Property to expire on August 15, 2019." *Id*. at ¶ 12. Defendants E.T.G. and Roizman were immediately aware of the lapse of the license, but at a minimum were made aware when, on February 4, 2020, a judge in the District Court of Maryland for Baltimore City explicitly ruled against them on the licensing issue. *Id*. at ¶¶ 14-15.

Despite the clear prohibition in Article 13, § 5-4(a)(2) of the Baltimore City Code from charging, accepting, retaining or seeking to collect rent unless a property is licensed both at the time the rental is offered and at the time the occupancy is provided, Defendants E.T.G. and Roizman did not inform their tenants at the Property that the Property was no longer licensed and that rent could no longer be collected. *Id*. at ¶ 16. Instead, Defendants E.T.G. and Roizman continued to aggressively pursue rent from the tenants of the Property during the entire period that the Property was unlicensed. *Id*.

Throughout the time that the Property was unlicensed, the Property itself was in such disrepair that it could not meet the health and safety requirements necessary to obtain a new license because of unresolved code violations. *Id*. at ¶ 22. Despite having an inspection performed in February of 2020 for the purposes of obtaining a license, Defendants E.T.G. and Roizman were not able to secure a new license until July 14, 2020. *Id*. Defendants E.T.G. and Roizman have not returned any of the rent collected from their tenants during the period that the

Property was unlicensed, and continue to pursue any unpaid rent from tenants allegedly incurred during that period. *Id*. at ¶ 23.

C. Facts Specific to Named Plaintiff

Named Plaintiff has lived at the Property since April 1, 2019. *Id*. at ¶ 26. She was unaware that Defendant E.T.G. and Roizman had lost their license to rent the Property and continued to pay rent into September of 2019 despite various issues with the disrepair at the Property. *Id*. at ¶ 27-28. However, on October 3, 2019, Named Plaintiff was trapped in an elevator at the Property (for the second time in her six months living at the Property). *Id*. at ¶ 29. She missed a job interview as a result and ended up asking for a rent concession from Defendants E.T.G. and Roizman, which was denied. *Id*. at ¶¶ 29-30. Subsequently, Named Plaintiff fell behind on her rent payments. *Id*. at ¶ 30.

In November, 2019, Defendants E.T.G. and Roizman, through Defendant Law Offices of Edward J. Maher, P.C. ("Law Office") and at the direction of Defendant Edward J. Maher ("Maher"), sued Named Plaintiff in a failure to pay rent action (the "First Failure to Pay Rent Case"). *Id*. at ¶ 30. The First Failure to Pay Rent Case sought to have Named Plaintiff evicted if she did not pay $772.54 in alleged rent due for October and November of 2019. *Id*. A default judgment was entered against Named Plaintiff when she was unable to make the December 9, 2019 trial date. *Id*.

Thereafter, Named Plaintiff discovered that the Property was unlicensed. *Id*. at ¶ 32. On January 8, 2020, Defendants E.T.G. and Roizman, through Defendant Law Office and at Defendant Maher's direction, filed a new failure to pay rent case against Named Plaintiff (the "Second Failure to Pay Rent Case") seeking an eviction if Named Plaintiff did not pay $1,680, representing rent for December 2019 and January 2020. *Id*. A February 4, 2020 trial occurred in

the Second Failure to Pay Rent Case and Named Plaintiff prevailed because the Property was unlicensed. *Id*. at ¶ 33. At the close of trial, Named Plaintiff requested that the trail court adjust her ledger to reflect that the rent was not owed, and the judge told her she could attempt to do so through a written motion but that the judge was not prepared to rule on that issue from the bench. Document 28-2 at 16:18-17:3. Named Plaintiff filed a motion, but the motion was denied on the stated basis that such relief is "not a rent court dispute." Document 28-5.

Despite the outcome of the Second Failure to Pay Rent Case, and with knowledge that a judge had ruled against them regarding the licensing issue, Defendants moved forward to try to evict Named Plaintiff under the default judgment that they obtained in the First Failure to Pay Rent Case. *Id*. at ¶ 34. Defendants obtained a warrant of restitution directing the Baltimore City Sheriff's Office to evict Named Plaintiff on February 18, 2020. *Id*. To avoid eviction, Named Plaintiff paid $800 to cover the $772.54 that represented rent for October and portions of November, 2019, while the Property was unlicensed, right before the sheriff would have otherwise evicted her at Defendants' direction. *Id*.

Named Plaintiff did not resume paying rent until she learned that the Property had gained a new license in July of 2020. *Id*. at ¶ 38. Defendants E.T.G. and Roizman have, on numerous occasions, sought to collect the unpaid rent from Named Plaintiff representing the period that the Property was unlicensed. *Id*. at ¶¶ 36-38. Although Defendants E.T.G. and Roizman, through Defendant Law Office and at the direction of Defendant Maher, filed a third failure to pay rent action on July 27, 2020 seeking to evict Named Plaintiff from her home for unpaid rent obligations incurred during the period that the Property was unlicensed, that matter was voluntarily dismissed by Defendants without prejudice. *See* Document 28-1 at 11.

IV. ARGUMENT

A. Article 13, § 5-4(a)(2) of the Baltimore City Code Controls the Outcome of this Case and Specifically Prohibits Defendants E.T.G. and Roizman from Collecting or Retaining the Rent at Issue in this Case

When Baltimore City passed an ordinance providing that no person may "charge, accept, retain, or seek to collect any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy," it made the public policy determinations that control the outcome of this case. Article 13, § 5-4(a)(2) of the Baltimore City Code. Defendants briefly acknowledge the existence of this provision, and then ignore it for the remainder of their Motion to Dismiss. For example, Defendants state "[e]ven if the license lapsed for any period of time, there is no legal basis to state that ETG and Roizman are not entitled to collect all past due rent through the date of this motion." Document 28-1 at 9 n. 7. Yet the plain language of § 5-4(a)(2) clearly prohibits a landlord from collecting, seeking to collect or retaining rent for any property that was unlicensed at the time that the occupancy was provided. Defendants E.T.G. and Roizman make similar statements throughout their Memorandum, such as "there are no specific allegations [ ] that rent can no longer be collected on reinstatement of the license" and "[b]eing currently licensed, Defendants currently have the right to collect and retain rental payments, even for the months during the unlicensed period." *Id.* at 18-19 and 33. These statements are directly contradicted by the plain language of § 5-4(a)(2), yet Defendants E.T.G. and Roizman provide no analysis for why this legislative determination by Baltimore City should not control this case.

Maryland courts have often cited to the Restatement (First) of Contracts with regard to the determining the rights of parties to an illegal contract. *See Gannon & Son, Inc. v. Emerson*, 291 Md. 443, 452, 435 A.2d 449, 454 (1981); *Harry Berenter, Inc. v. Berman*, 258 Md. 290,

294, 265 A.2d 759, 762 (1970). As explained in the Restatement (First) of Contracts § 580 cmt. a (1932): "[t]he legislature can prohibit the formation of any bargain and thereby make it illegal. The question whether the legislature has done so depends on interpretation of the legislative action." It is indisputable that § 5-4(a)(2) is an express prohibition on the collection or retention of rent where a property was unlicensed at the time the occupancy was provided or at the time it was offered.

There are three critical consequences to § 5-4(a)(2)'s express prohibition on the collection or retention of rent, something not present in any of the other landlord licensing ordinances that have been addressed by Maryland courts. First, Maryland law is clear that Defendants E.T.G. and Roizman are legally prohibited from recovering any unpaid rent from Named Plaintiff and the members of the putative class. Second, the express policy decision made in the prohibition found in § 5-4(a)(2) prevents the Court from making its own policy decision regarding whether to disregard the illegality as "slight." Finally, the express prohibition in § 5-4(a)(2) allows a party who is not *in pari delicto*, which is Latin for "in equal fault," to recover sums paid pursuant to the illegal contract.

1. **Article 13, § 5-4(a)(2) Prohibits a Landlord from Entitlement to any Unpaid Rent for the Period it Was Unlicensed or for Leases Entered Into When it was Unlicensed**

Under the Restatement (First) of Contracts § 598 (1932), "[a] party to an illegal bargain can neither recover damages for breach thereof nor, by rescinding the bargain, recover the performance that he has rendered thereunder or its value, except as stated in §§ 599- 609." *See also Thorpe v. Carte*, 252 Md. 523, 529, 250 A.2d 618, 621–22 (1969) ("Generally a party to an illegal bargain cannot recover either damages for its breach or, after rescission, the performance he has rendered or its value"); *Cunningham v. A. S. Abell Co.*, 264 Md. 649, 657, 288 A.2d 157, 161 (1972). There can be no question that § 5-4(a)(2) is part of a licensing regime put in place by

Baltimore City to protect the public interest, as the letters by the Baltimore Development Corporation and the Baltimore City Department of Housing & Community Development supporting Baltimore City Council Bill 18-0185 confirm.[3] As explained in the next subsection of this memorandum, the explicit prohibition found in § 5-4(a)(2) prevents Defendants E.T.G. and Roizman from fitting into the narrow exception to the general rule of unenforceability. Accordingly, Defendants E.T.G. and Roizman are not able to recover damages for any breach by Named Plaintiff or members of the putative class of the illegal provisions in their leases purporting to require tenants to pay rent in violation of § 5-4(a)(2).

2. **Article 13, § 5-4(a)(2) Acts to Prevent Any Avoidance of the Illegality of the Contract**

It is true that under the narrow circumstances, outlined in the Restatement (First) of Contracts § 600 (1932), a "slight illegality" can potentially be disregarded for public policy reasons, but this exception only applies where "the bargain is not prohibited by statute." *Id*. This is the exact principle that formed the basis for the rulings in the cases relied on by Defendants E.T.G. and Roizman. *See Citaramanis v. Hallowell*, 328 Md. 142, 613 A.2d 964 (1992); *Galola v. Snyder*, 328 Md. 182, 186, 613 A.2d 983, 985 (1992) and *McDaniel v. Baranowski*, 419 Md. 560, 587, 19 A.3d 927, 943 (2011). Critically, however, the public policy analysis engaged in by the *Citaramanis* Court and repeated by *Galola* and *McDaniel* can only be undertaken where the statute does not specifically address the issue.

In *Citaramanis*, the Court of Appeals addressed whether a tenant was entitled to recover rent voluntarily paid to an unlicensed landlord under the Howard County Code, either under

[3] The relevant text of the January 31, 2018 Memorandum from the Baltimore Development Corporation to Baltimore City Council Regarding Baltimore City Council Bill 18-0185 and the February 13, 2018 Memorandum Regarding Baltimore City Council Bill 18-0185 by The Baltimore City Department of Housing & Community Development is produced in Section III.A above.

restitution or the Maryland Consumer Protection Act, Md. Code, Comm. L., §13-101 *et seq.* (the "MCPA"). Critically, the ordinance at issue was silent as to the question of whether an unlicensed landlord could accept or retain rent. *Citaramanis*, 328 Md. at 145 n. 1, 613 A.2d at 965 n. 1 (producing the text of the relevant ordinance in full). The Court began its analysis with the notion that "[u]nenforceability of a contract because of illegality is a function of the strength of the public policy involved together with the degree of the violation of that policy under the facts of the case." *Id*. at 158, 613 A.2d at 971-72. The Court quoted extensively from *Schloss v. Davis*, 213 Md. 119, 124–25, 131 A.2d 287, 290–91 (1957), which ruled that a construction manager could still sue on a contract even though the construction manager violated a local building code by beginning work on the foundation and frame without a building permit. *Id*. The *Citaramanis* Court determined that because the purpose of the Howard County landlord licensing ordinance was simply "identification of premises to be inspected in order to determine compliance with housing codes," it was similar to the requirement for obtaining a building permit prior to building, and determined and since the construction manager in *Schloss* was able to recover on the contract despite the code violation, then a landlord should not have to pay back rent collected without a license. *Citaramanis*, 328 Md. at 162, 613 A.2d at 973.

However, nothing in *Citaramanis*, *Schloss* or any authority cited by Defendants E.T.G. and Roizman indicates that a Court may engage in this type of policy balancing where the legislature has already established the public policy by specifically prohibiting collection or retention of payment pursuant to an illegal contract. Indeed, the extensive quotation of *Schloss* in *Citaramanis* included reliance on the Restatement (First) of Contracts § 600 (1932) and other authorities that explicitly recognize that if the legislature has addressed the issue, the potential exception to the general rule of unenforceability is unavailable. Restatement (First) of Contracts

§ 600 (1932). *See also John E. Rosasco Creameries v. Cohen*, 276 N.Y. 274, 278, 11 N.E.2d 908, 909 (1937) ("if the statute does not provide expressly that its violation will deprive the parties of their right to sue on the contract, and the denial of relief is wholly out of proportion to the requirements of public policy or appropriate individual punishment, the right to recover will not be denied"). Any ruling to the contrary would be a massive shift away from traditional rules regarding separation of powers, allowing a court to override a legislature's policy determination that specifically prohibits collection or retention of payment on an illegal contract even without a showing of some constitutional infirmity.

The 2018 changes to the licensing regime in Baltimore City were very comprehensive and are much more extensive than the Howard County licensing regime addressed in *Citaramanis*. However, the analysis presented in this lawsuit is not whether the greater scrutiny given to landlords under the new licensing requirements of the Baltimore City Code means that public policy should prevent a non-compliant landlord from recovering. Instead, the Baltimore City Council has already explicitly made that public policy determination in § 5-4(a)(2). Defendants E.T.G. and Roizman can cite no authority for the proposition that such a specific determination can be overridden in the absence of some constitutional infirmity not raised in the Motion to Dismiss.

3. **Because Named Plaintiff and Members of the Putative Class are Not *In Pari Delicto*, Named Plaintiff and Members of the Putative Class can Recover Rent Payments Made in Violation of § 5-4(a)(2)**

For the reasons just explained, Defendants E.T.G. and Roizman cannot take advantage of the narrow exception for "slight illegality" outlined in the Restatement (First) of Contracts § 600 to the general rule of non-recovery in § 598. In contrast, Named Plaintiffs and the members of the putative class fall under the exception to the general rule of non-recovery for parties not *in pari delicto*. Restatement (First) of Contracts § 604 (1932). *See also Mitchell Tracey v. First*

Am. Title Ins. Co., 950 F. Supp. 2d 807, 811 (D. Md. 2013); *Bourgeois v. Live Nation Entm't, Inc.*, 3 F. Supp. 3d 423, 452 (D. Md. 2014), as corrected (Mar. 20, 2014). There can be no question that the tenants, who would have no reason to know that Defendants E.T.G. and Roizman were unlicensed and are members of the class of persons the relevant ordinance was attempting to protect, could be considered *in pari delicto* with Defendants. Notably, this ability to recover if not *in pari delicto* is available regardless of whether it is necessary to prevent unjust enrichment. *See* Restatement (Third) of Restitution and Unjust Enrichment § 32(1) (2011) (a person who renders performance under an agreement that is illegal may receive restitution "whether or not necessary to prevent unjust enrichment, if restitution is required by the policy of the underlying prohibition"). Thus, as the Restatement drafters noted, "[c]ases within [that rule] are those in which—although not specifically directed by statute—restitution is clearly required by the policy of the statute that makes the underlying contract illegal. If the demands of policy require a forfeiture, restitution need not depend on unjust enrichment (Illustrations 1-2)." *Id*. at cmt. c. The cited illustration is particularly helpful and applicable:

> Undercover police officers pay $50,000 in cash to a suspected drug dealer in exchange for his promise to deliver cocaine. Dealer performs the contract, the drugs are seized, and Dealer is arrested. City is entitled by the rule of § 32(1) to recover the $50,000 paid to Dealer. Restitution in this instance does not depend on a showing that Dealer has been unjustly enriched.

Id. at Illustration 1-2.

Accordingly, the plain language of § 5-4(a)(2) requires forfeiture of the prohibited rent regardless of whether there the apartments were uninhabitable. Defendants E.T.G. and Roizman's protests to the contrary are the equivalent of the drug dealer in Illustration 1-2 arguing that there was no unjust enrichment because there was nothing wrong with the cocaine. It is simply not germane to whether the explicit policy determination made in the legislation will allow the retention of the money illegally gained. Indeed, as extreme as that example may seem,

it is actually a weaker case, because unlike § 5-4(a)(2), the situation discussed in Illustration 1-2 does not indicate the existence of a law specifically criminalizing retention of funds from the sale of drugs. *Accord Vista Designs, Inc. v. Silverman*, 774 So. 2d 884, 887 (Fla. Dist. Ct. App. 2001) (New Jersey attorney must disgorge fees earned representing client in case in Florida where attorney was not admitted to practice in Florida). The mechanism for this recovery at common law is by way of an action for money had and received, which is discussed in more detail below.

With these guiding principles in place due to the illegality of the rental payments under § 5-4(a)(2), each of the challenges raised by Defendants E.T.G. and Roizman in their Motion should be denied.

B. Defendants E.T.G. and Roizman Are Liable Under the Maryland Consumer Debt Collection Act For Collecting Rent When Specifically Prohibited by Law

Named Plaintiff has set forth a viable cause of action under the Maryland Consumer Debt Collection Act, Md. Code, Comm. L. § 14-201 *et seq.* (the "MCDCA"). The MCDCA applies to "a person collecting or attempting to collect an alleged debt arising out of a consumer transaction." Md. Code, Comm. L. § 14-201. Notably, unlike the Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692-1692p (the "FDCPA"), the MCDCA applies to original creditors such as Defendants E.T.G. and Roizman. *Mills v. Galyn Manor Homeowner's Ass'n, Inc.*, 239 Md. App. 663, 674, 198 A.3d 879, 885 (2018), *aff'd sub nom. Andrews & Lawrence Prof'l Servs., LLC v. Mills*, 467 Md. 126, 223 A.3d 947 (2020). Alleged debts arising out of residential leasing are covered by the MCDCA. *See Spencer v. Hendersen-Webb, Inc.*, 81 F. Supp. 2d 582, 595 (D. Md. 1999). Under the MCDCA, a person subject to the act is prohibited from doing certain things while "collecting or attempting to collect an alleged debt," including threatening force, using

obscene language, or, most relevantly, claiming, attempting or threatening "to enforce a right with knowledge that the right does not exist" or doing anything that would violate §§ 804 through 812 of the FDCPA. Md. Code, Comm. L. § 14-202(8) and (11). As explained below, Defendants E.T.G. and Roizman are liable under both § 14-202(8) and § 14-202(11) of the MCDCA.

1. **Defendants E.T.G. and Roizman Knowingly Collected an Unauthorized Charge – the Rent that is Specifically Prohibited, and Thus are Liable Under § 14-202(8)**

As this Court has stated on numerous occasions, to plead a claim under § 14-202(8) of the MCDCA, the plaintiff must set forth factual allegations tending to establish two elements: "(1) the defendant did not possess the right to collect the amount of debt sought; and (2) the defendant attempted to collect the debt knowing that they lacked the right to do so." *Barr v. Flagstar Bank, FSB*, 303 F. Supp. 3d 400, 420 (D. Md. 2018) (internal quotation marks omitted) (quoting *Lewis v. McCabe, Weisberg, & Conway, LLC*, No. DKC 13–1561, 2014 WL 3845833, at *6 (D. Md. Aug.4, 2014)). *See also Pruitt v. Alba Law Grp., P.A.*, No. CIV.A. DKC 15-0458, 2015 WL 5032014, at *3 (D. Md. Aug. 24, 2015). Thus, the key to prevailing on a § 14-202(8) claim is to demonstrate that the defendants "acted with knowledge as to the *invalidity* of the debt." *Stewart v. Bierman*, 859 F.Supp.2d 754, 769 (D. Md. 2012) (emphasis in original). The knowledge requirement can be met with a showing of "reckless disregard as to the [ ] existence of the right" and the requirement "does not immunize debt collectors from liability for mistakes of law." *Spencer*, 81 F. Supp. 2d at 594-95 (D. Md. 1999).

When Defendants E.T.G. and Roizman collected the alleged rental debt from their tenants for a period when they were unlicensed, they clearly "enforce[d] a right with knowledge that the right does not exist." As the First Amended Complaint alleges, they were immediately aware that their rental license had expired, yet continued to collect rent. First Amended

Complaint at ¶ 14. Indeed, even if Defendants were able to establish the factual contention that they were unaware of the legal consequences of their lack of a license (which would be a factual contention inappropriate for resolution in a motion to dismiss), they would still be liable under § 14-202(8) because the knowledge requirement "does not immunize debt collectors from liability for mistakes of law." *Spencer*, 81 F. Supp. 2d at 594 (D. Md. 1999).

Defendants E.T.G. and Roizman rely on statements in *Fontell v. Hassett*, 870 F. Supp. 2d 395, 405 (D. Md. 2012) for the proposition that § 14-202(8) does not permit a challenge to the validity of the debt that is being collected. Although that caveat is not supported by the plain language of the MCDCA, the issue does not need to be decided in this case because both the Maryland Court of Special Appeals and the Fourth Circuit, as well as this Court, have resolved the tension between *Fontell* and the rulings previously cited by Named Plaintiff by concluding that if a person subject to the MCDCA is attempting to collect an "unauthorized charge" that the defendant "did not have the right to assess at all," as opposed to an incorrect amount on an otherwise valid debt, then recovery can be made under § 14-202(8). *Chavis v. Blibaum Assocs., P.A.*, 246 Md. App. 517, 530, 230 A.3d 188, 195 (2020), cert. *granted sub nom. Chavis v. Blibaum & Assoc, P.A.*, No. 185, SEPT. TERM, 2020, 2020 WL 6576108 (Md. Oct. 6, 2020) (§ 14-202(8) applies where defendant is attempting to collect "unauthorized charges" that the defendant "did not have the right to assess at all"); *Galyn Manor Homeowner's Ass'n, Inc.*, 239 Md. App. 663, 679, 198 A.3d 879, 888 (2018) ("unauthorized" charges covered by statute); *Conteh v. Shamrock Cmty. Ass'n, Inc.*, 648 Fed.Appx. 377, 381 (4th Cir. 2016); *Barr*, 303 F. Supp. 3d at 420 ("[a] debt can be considered invalid if a debt collector seeks to collect an amount that exceeded the amount owed 'as a result of the debt collector's inclusion of an unauthorized charge'"); *Lindsay v. Rushmore Loan Mgmt., Servs., LLC*, No. PWG-15-1031, 2017 WL

1230822, at *6–8 (D. Md. Apr. 4, 2017) (discussing the tension between the lines of cases and how the "unauthorized charge" approach resolves the tension). Here, it is clear that the rent itself is an "unauthorized charge" by operation of Article 13, § 5-4(a)(2) of the Baltimore City Code. This lawsuit does not allege that Defendants E.T.G. and Roizman are able to collect some rent for the period that they were unlicensed and are simply erroneous in their calculation of the proper rent. This lawsuit alleges that all rent that is prohibited by § 5-4(a)(2) is an unauthorized charge and prohibited. Because Defendants E.T.G. and Roizman were thus colleting illegal rent with knowledge that there was no license, and thus that the rent was an unauthorized charge under § 5-4(a), they are liable under § 14-202(8).

2. **Defendants E.T.G. and Roizman Are Also Liable Under § 14-202(11) Because Their Collection of an Illegal Debt Would Violate § 808 of the FDCPA.**

Moreover, Defendants E.T.G. and Roizman are liable under § 14-202(11) of the MCDCA. § 14-202(11) is a new provision that went into effect in 2018 which prohibits persons subject to the MCDCA such as Defendants E.T.G. and Roizman from "[e]ngag[ing] in any conduct that violates §§ 804 through 812 of the federal Fair Debt Collection Practices Act." Section 808 of the FDCPA, 15 U.S.C. § 1692f, prohibits the use of unfair or unconscionable means to collect or attempt to collect any debt, which includes, among other things, the "collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law." 15 U.S.C. § 1692f(1). That subsection clearly establishes that it is a violation of the FDCPA for a collector to collect illegal debts. *See Tuttle v. Equifax Check*, 190 F.3d 9, 13 (2d Cir. 1999). *See also* Staff Commentary on the Fair Debt Collection Practices Act, 53 Fed.Reg. 50,097, 50,108 (Fed. Trade Comm'n 1988).

Defendants E.T.G. and Roizman do not, and cannot, dispute that their collection of rent that is prohibited by Article 13, § 5-4(a)(2) would be unfair or unconscionable under Section 808 of the FDCPA. Instead, their only treatment of § 14-202(11) is to brush it off in a footnote with the statement, without citing any authority, that since they are original creditors that would not be subject to the FDCPA, § 14-202(11) does not apply to them. Document 28-1 at 9 n. 6. But this Court has already rejected that argument and explicitly held that § 14-202(11) applies to all persons subject to the MCDCA, not just persons who qualify as debt collectors under the FDCPA:

> Significantly, section 14-202(11) does not simply state that any violation of the FDCPA is also a violation of the MCDCA. As a matter of the plain language of section 14-202, while the MCDCA incorporates prohibited conduct under the FDCPA, the statute explicitly applies to the actions of a "collector," which is defined broadly under the MCDCA as a "person collecting or attempting to collect an alleged debt arising out of a consumer transaction." Md. Code Ann., Com. Law § 14-201 (b). This term encompasses a broader range of actors than the term "debt collector" under the FDCPA and would include a creditor such as NASA FCU that does not meet the federal definition of "debt collector." See 15 U.S.C. § 1692a(6). Where the statutory text provides that the MCDCA specifically uses the term "collectors" to refer to the entities and parties who can be held liable for engaging in "conduct" that violates certain sections within the FDCPA, the Court finds that violations under § 14-202(11) are measured based on the actions that would violate the FDCPA but apply to this broader set of actors covered under the MCDCA. Thus, the Court finds that the MCDCA prohibits "collectors" such as NASA FCU from engaging in the type of conduct described in the relevant provisions of the FDCPA, such as using "false, deceptive, or misleading representations or means" in connection with debt collection, 15 U.S.C. § 1692e, using "unfair or unconscionable means" to collect a debt, 15 U.S.C. § 1692f, or communicating "with a consumer in connection with the collection of any debt" knowing that "the consumer is represented by an attorney with respect to such debt," 15 U.S.C. § 1692c(a).

Armstead v. Feldman, No. CV TDC-19-0614, 2020 WL 4753837, at *5 (D. Md. Aug. 17, 2020). Accordingly, Defendants E.T.G. and Roizman are liable under both § 14-202(8) and § 14-202(11) of the MCDCA.

3. The Damages for Collecting Illegal Charges, Such as Rent Prohibited Under Article 13, § 5-4(a)(2) of the Baltimore City Code, is the Amount of Illegally Collected Charge

Named Plaintiff and the members of the putative class suffered damages in the amount of all illegal charges collected by Defendants E.T.G. and Roizman that were prohibited under Article 13, § 5-4(a) of the Baltimore City Code. The MCDCA provides that "[a] collector who violates any provision of this subtitle is liable for damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury." Md. Code, Comm. Law § 14–203. Defendants E.T.G. and Roizman violated § 14-202(8) and § 14-202(11) by collecting rent in violation of the City Code, and thus illegally took and are currently retaining money from Named Plaintiff and the members of the putative class. The proximate cause of Named Plaintiff and members of the putative class no longer having that money is Defendants E.T.G. and Roizman and their violations of § 14-202(8) and § 14-202(11), and all illegal rent constitutes damages under the MCDCA.

C. Defendants E.T.G. and Roizman Are Liable under the Maryland Consumer Protection Act Because They Collected Illegal Rent

Defendants E.T.G. and Roizman also violated the MCPA by collecting and retaining rent in violation of § 5-4(a)(2). The MCPA prohibits the use of any unfair or deceptive trade practice" in "[t]he offer for sale, lease, rental, loan, or bailment of consumer goods, consumer realty, or consumer services." Md. Code, Comm. L. § 13-303 (2). Under Md. Code, Comm. L. § 13-301 (14)(iii), any violation of the MCDCA is included in the definition of "unfair or deceptive trade practices." Moreover, "[u]nfair or deceptive trade practices include … False, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading

consumers; [and] Failure to state a material fact if the failure deceives or tends to deceive." Md. Code, Comm. L. § 13-301 (1), (3).

There can be little question that the collection or rent in violation of § 5-4(a)(2) is an "unfair or deceptive trade practice" under the MCPA. Damages are also clear, as § 5-4(a)(2) explicitly states that a landlord may not "accept [or] retain [] any rental payment" if they were unlicensed at the time the alleged rent was incurred or at the time the property was offered for lease. This is in sharp contrast to the ordinance at issue in *Citaramanis*, which was silent as to the question of whether an unlicensed landlord could accept or retain rent. *Citaramanis*, 328 Md. at 145 n. 1, 613 A.2d at 965 n. 1. The violation at issue in this case is not simply the unlicensed rental – it is the collection and retention of rent in direct violation of § 5-4(a)(2). Thus, while the plaintiffs in *Citaramanis* were obligated to specify some injury from the fact that the property was unlicensed, here, Named Plaintiff and the members of the class are only required to show how they were injured by paying money that they were not legally required to pay and Defendants E.T.G. and Roizman were not legally permitted to accept or retain.

Defendants E.T.G. and Roizman may argue that if this framing of the violation and damages were permitted to be successful, then the plaintiffs in *Citaramanis* should have used the same framing and succeeded in that case. However, because the ordinance at issue in *Citaramanis* was silent as to whether an unlicensed landlord could collect rent incurred while the landlord was unlicensed, that argument would have begged the question of whether a landlord would be entitled to seek such rent without a license under the Howard County ordinances. Indeed, the *Citaramanis* Court explicitly avoided that question: "[h]ere we need not decide whether lack of the required rental housing license, in and of itself and without regard to the condition of the premises, would be sufficient to bar a landlord's claim for unpaid rent or for use

and occupation. *Citaramanis*, 328 Md. at 158–59, 613 A.2d at 972. In contrast, because § 5-4(a)(2) explicitly decides that issue against the landlords and in favor of tenants, the collection of illegal rent constitutes damages.

D. Defendants E.T.G. and Roizman are Also Liable Under Money Had and Received

"The action for money had and received is a common count used to bring a restitution claim under the common law writ of assumpsit." *Benson v. State*, 389 Md. 615, 652, 887 A.2d 525, 547 (2005) (citing *Ver Brycke v. Ver Brycke*, 379 Md. 669, 698 n. 13, 843 A.2d 758, 775 n. 13 (2004)). A cause of action for money had and received "lies whenever the defendant has obtained possession of money which, in equity and good conscience, he ought not to be allowed to retain." *Benson*, 389 Md. at 652-53, 887 A.2d at 547 (*quoting State ex rel. Employment Sec. Bd. v. Rucker*, 211 Md. 153, 158, 126 A.2d 846, 849 (1956)). Moreover, "[a] money had and received count may lie where the defendant receives the money as a result of a mistake of law or fact and did not have a right to it" *Benson*, 389 Md. at 653, 887 A.2d at 547. That is precisely the situation presented in this case.

Thus, in *Bourgeois v. Live Nation Entm't, Inc.*, 430 Md. 14, 51, 59 A.3d 509, 530–31 (2013) the Court of Appeals explicitly held that:

> Maryland continues to recognize a common law action for money had and received. Unless otherwise precluded by statute, such an action will lie to recover money paid in excess of that allowed by statute, including the Baltimore City ordinances, if the agreement pursuant to which it was paid has not been fully consummated, *i.e.*, remains executory. Except with respect to a usurious contract, however, the action does not lie to recover money paid under a fully consummated contract as to which the parties may be regarded as being *in pari delicto*.

Defendants E.T.G. and Roizman's reliance on the Court of Appeals' decision in *Bourgeois* ignores the nature of the *in pari delicto* doctrine. Thus, the U.S. District Court for the District of Maryland has explored the doctrine as follows:

> "The common-law defense of *in pari delicto* prohibits a party from recovering damages arising from misconduct for which the party bears responsibility [or] fault, or which resulted from his or her wrongdoing." *Catler v. Arent Fox, LLP*, 212 Md.App. 685, 71 A.3d 155, 181 (Md.Ct.Spec.App.2013) (internal quotation marks omitted). In applying the doctrine, "a distinction is maintained between those cases in which one of the parties has by an illegal act taken an advantage of and oppressed the other, and those in which it is not possible to distinguish between the parties as to the degree of their criminality." *Rickards v. Rickards*, 98 Md. 136, 56 A. 397, 397 (1903). Thus, recovery is available for money had and received "whe[n] the law that creates the illegality in the transaction was designed for the coercion of one party and the protection of the other, or whe[n] the one party is the principal offender and the other only criminal from a constrained acquiescence in such illegal conduct." *Thomas v. City of Richmond*, 79 U.S. (12 Wall.) 349, 355, 20 L.Ed. 453 (1871).

Mitchell Tracey v. First Am. Title Ins. Co., 950 F. Supp. 2d 807, 811 (D. Md. 2013). § 5-4(a)(2) is precisely in this exception to the *in pari delicto* doctrine, as it is designed to compel the landlords to act and for the protection of the tenants. It is absurd to suggest that the tenants, who Defendants took efforts to deceive regarding the licensing status of the Property, could possibly be "in equal fault" to Defendants E.T.G. and Roizman. And indeed, that is exactly how the Court that certified the question in *Bourgeois* ruled after the Maryland Court of Appeals provided its response. *Bourgeois v. Live Nation Entm't, Inc.*, 3 F. Supp. 3d 423, 452 (D. Md. 2014), as corrected (Mar. 20, 2014). Thus, in *Bourgeois*, the plaintiffs were permitted to pursue their money had and received claim against Ticketmaster because Ticketmaster charged them a fee that a Baltimore City ordinance prohibited, even though the contracts were executory. *Id*. Similarly, in *Mitchell Tracy*, the plaintiffs were permitted to pursue money had and received claims against an insurance company that charged them fees when the plaintiffs were purchasing insurance that were prohibited by law, despite the fact that the illegal fees were disclosed to the

class members on their HUD–1 Settlement Statements and the contracts were executory. *Mitchell Tracey,* 950 F. Supp. 2d at 811.

Like their reliance on the *in pari delicto* doctrine mentioned by the Court of Appeals in *Bourgeois*, Defendants E.T.G. and Roizman's reliance on the existence of the lease as a defense is misplaced. It is well-settled that an unlawful contract is generally void and unenforceable. *See, e.g., White v. Pines Community Improvement Ass'n, Inc.*, 403 Md. 13, 44, 939 A.2d 165, 183 (2008) ("where there is an agreement that violates the law, that agreement is unenforceable in Maryland") (*citing State Farm Mut. Automobile Ins. Co. v. Nationwide Mut. Ins. Co.*, 307 Md. 631, 643, 516 A.2d 586, 592 (1986)); *see also Goldsmith v. Manufacturers' Liability Ins. Co. of New Jersey*, 132 Md. 283, 103 A. 627, 628 (1918). Accordingly, just like the contracts that contained provisions for the illegal payments in *Bourgeois* and *Mitchell Tracy*, the leases will not prevent Named Plaintiff and the members of the putative class from recovering under money had and received.[4]

E. Declaratory Relief is Available to Resolve the Contract Disputes Between the Tenants and Defendants E.T.G. and Roizman Regarding Whether Rent is Owed or a Balance Adjustment is Appropriate

Declaratory relief as to the validity and enforceability of any alleged rent obligation arising out of leases that violate § 5-4(a)(2) is available to resolve the current disputes between, on the one hand, Named Plaintiff and other members of the putative class, and on the other hand, Defendants E.T.G. and Roizman. Indeed, this declaratory relief would be appropriate even if Defendants E.T.G. and Roizman were correct that Named Plaintiff and the members of the putative class have no avenue to recover illegal rent paid to Defendants E.T.G. and Roizman,

[4] It is of no importance that the lease provisions requiring the payment of rent were not rendered illegal until Defendants E.T.G. and Roizman lost their license. Restatement (First) of Contracts § 608 (1932).

because that would still leave the matter of what to do about any unpaid balance and whether a balance adjustment is appropriate for tenants who paid rent that is prohibited by § 5-4(a)(2). As discussed above, it cannot be reasonably contended that Defendants E.T.G. and Roizman would be entitled to seek any unpaid rent that is prohibited by § 5-4(a)(2). *Thorpe v. Carte*, 252 Md. at 529, 250 A.2d at 621–22. Yet that is exactly what Defendants E.T.G. and Roizman are doing, continuing to aggressively pursue any unpaid rent for the period in question. First Amended Complaint at ¶ 23. With regard to Named Plaintiff, Defendants E.T.G. and Roizman have sent a letter on June 13, 2020 claiming that Named Plaintiff owed $5,605.75 in illegal rent, and as is made clear in their Motion to Dismiss, they clearly have not abandoned that incorrect assertion.

In the First Amended Complaint, Named Plaintiff seeks a declaratory judgment on behalf of herself and the members of the putative class that 1) Defendants E.T.G. and Roizman were not licensed to rent the Property from August 15, 2019 until July 14, 2020[5], and 2) "accordingly Defendants E.T.G. and Roizman are not entitled to collect or retain any rent for that period or pursuant to a lease entered into or renewed during that period." First Amended Complaint at p. 16. This Court has authority to resolve this dispute between the parties to the contractual leases under 28 U.S.C. § 2201 and Md. Code, Cts. & Jud. Proc., § 3-409. *See, e.g., Hanover Invs. v. Volkman*, 455 Md. 1, 15, 165 A.3d 497, 505 (2017); *Volvo Const. Equip. N. Am., Inc. v. CLM Equip. Co., Inc.*, 386 F.3d 581, 592 (4th Cir. 2004). Thus, the Fourth Circuit has stated that declaratory judgment is appropriate "when the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and ... when it will terminate and afford relief from the uncertainty, insecurity, and controversy giving rise to the proceeding." *Nautilus Ins. Co. v.*

[5] The First Amended Complaint mistakenly includes the date July 15, 2020 instead of the correct date, July 14, 2020.

Winchester Homes, Inc., 15 F.3d 371, 375 (4th Cir. 1994) (citations omitted). That is clearly the case here, as the parties are currently in an unsettled legal position from their dispute regarding the impact of § 5-4(a)(2).

None of the authorities cited by Defendants E.T.G. and Roizman involved a situation where the parties had a contract between them that one party was attempting to enforce while the other claimed illegality. Named Plaintiff and the members of the putative class do not need to show any violation of the MCDCA, MCPA or FDCPA in order to assert that Defendants E.T.G. and Roizman are not entitled to the contractual relief that Defendants E.T.G. and Roizman are aggressively pursuing against them. That matter is resolved by § 5-4(a)(2) and the principles of illegality discussed at the beginning of the argument section of this memorandum. Accordingly, Defendants E.T.G. and Roizman's arguments against the declaratory judgment count should be denied.

F. The Default Judgment Entered Against Named Plaintiff and the Denial of her Motion to Adjust Rent Because it was Not Relief Available in Rent Court have no *Res Judicata* Effect on this Case

Without citation, Defendants E.T.G. and Roizman assert that the default judgment entered against Named Plaintiff in the First Failure to Pay Rent Case has a *res judicata* effect that forecloses all of Named Plaintiff's arguments that the rent was illegal. Document 28-1 at 22. Preliminarily, this argument fails because at most that default would only apply as to two months at issue in that case. But further, with the exception of where personal service is requested and effectuated, which Defendants E.T.G. and Roizman do not and cannot allege occurred in the First Failure to Pay Rent Case, a summary ejectment action under Maryland law is an *in rem* proceeding. *See* Md. Code, Real Prop. § 8-401 (b)(4)(ii). Where a party does not appear in an *in rem* proceeding, any default judgment has no *res judicata* effect except as to the *res* at issue.

Fairfax Sav., F.S.B. v. Kris Jen Ltd. P'ship, 338 Md. 1, 20, 655 A.2d 1265, 1274 (1995). In this case, the *res* at issue in a summary ejectment rent court action is possession of the property, and this lawsuit is not seeking to establish who has a possessory right to any of the apartments in the Property. Yet further, because of the nature of the claims presented in the First Amended Complaint, claim preclusion would not apply even if there had been *in personam* jurisdiction. In *LVNV Funding LLC v. Finch*, 463 Md. 586, 612, 207 A.3d 202, 217 (2019), the Court of Appeals refused the plaintiffs' request to declare judgements obtained by an unlicensed debt collector to be void, leaving the judgments intact. However, the Court stated that the MCDCA provides the judgment debtors a cause of action for any attempts to enforce the judgments illegally obtained by the unlicensed debt collectors that is not prohibited by the collateral attack doctrine, reasoning:

> An unlicensed debt collector who, in the furtherance of its business, attempts to collect a debt through litigation unquestionably is attempting to enforce a right that, *for it*, does not exist. CL § 14-203, also part of MCDCA states that "[a] collector who violates any provision of this subtitle is liable for any damages proximately caused by the violation, including damages for emotional distress or mental anguish suffered with or without accompanying physical injury." *Mostofi v. Midland Funding*, 223 Md. App. 687, 702-03, 117 A.3d 639 (2015). It is hard to imagine, notwithstanding LVNV's importuning, a clearer expression of an intent to provide a private remedy for the violation of MCALA – a remedy that permits recovery of "any damages," including for emotional distress.

Id. at 611–12, 207 A.3d at 217.

Finally, Named Plaintiff's motion in the Maryland District Court regarding whether rent was owed has no *res judicata* or collateral estoppel effect on this case because it was denied for lack of jurisdiction. The decision denying Named Plaintiff's motion simply stated "Must file claim properly – not a rent court dispute." Document 28-5. Accordingly, this was not a ruling on the merits entitled to claim preclusive effect nor any factual determination regarding whether

rent was due that would be given issue preclusive effect. *See Mostofi*, 223 Md. App. 687, 117 A.3d 639.

G. Defendants E.T.G. and Roizman's Arguments Regarding Class Action Treatment Rest on the Faulty Assumption that Each Tenant Would Not be Entitled to Pursue Illegal Rent Without a Showing of Uninhabitability

Defendants E.T.G. and Roizman make several arguments challenging the class action allegations in the First Amended Complaint that all rest on the same general proposition: that a tenant who pays rent that is prohibited under § 5-4(a)(2) must show uninhabitably or other defects in their apartment to be entitled to the return of their rent or to avoid paying unpaid rent. As outlined above and under the plain language of § 5-4(a)(1), Defendants E.T.G. and Roizman are incorrect, and their arguments based on this false assumption should be denied.

V. CONCLUSION

In sum, the explicit guidance provided under § 5-4(a)(2) distinguishes much of the authority raised by Defendants E.T.G. and Roizman in their Motion to Dismiss. Plaintiffs need not show individualized defects in their apartments or damages beyond having paid rent that Defendants were prohibited from collecting or retaining under § 5-4(a)(2). Accordingly, Defendants E.T.G. and Roizman's Motion should be denied in its entirety.

Dated: February 22, 2021

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Request for Hearing

Plaintiffs respectfully request a hearing on Defendants E.T.G. and Roizman's Motion to Dismiss

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/s/Joseph Mack_____
Joseph Mack

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

ALISON ASSANAH-CARROLL, Plaintiff, v. LAW OFFICES OF EDWARD J. MAHER, P.C., *et al.* Defendants.	Case No. 20-02376-CCB

DEFENDANTS E.T.G. ASSOCIATES '94, LP'S AND ROIZMAN DEVELOPMENT, INC.'S REPLY IN FURTHER SUPPORT OF MOTION TO DISMISS COUNTS II THROUGH V OF THE FIRST AMENDED COMPLAINT AND TO STRIKE CLASS-ACTION ALLEGATIONS

Nothing in Plaintiff's Opposition (ECF 29) should deter the Court from granting the motion to dismiss and to strike (ECF 28) filed by Defendants E.T.G. Associates '94, LP ("ETG") and Roizman Development, Inc. ("Roizman").

Plaintiff's Opposition confirms Plaintiff received nothing less than the full value of her rental unit and has sustained no actual damages under the MCDCA and the MCPA. Instead, Plaintiff's theory of recovery under the MCDCA and MCPA is premised on an incorrect belief that the Baltimore City Code created a new cause of action where none existed before. In Plaintiff's view, despite that her unit was habitable and she sustained no discernable losses from the alleged absence of a rental license, the rental payments themselves constitute "actual damages" and, as such, she should be entitled to recover as damages the amount she paid in rent during the unlicensed period. Even if that had been the legislative intent of the amendments to the Baltimore City Code (as Plaintiff incorrectly argues), that Code provision does not create any

such new cause of action as a matter of law and does not supplant the requirement of actual damages.

Because Plaintiff concedes that the absence of a license did not affect the condition of her apartment or the value of her bargained-for leasehold, her claim for money had and received must likewise fail. Having received the full value of her rental payments during the months in question, there is nothing inequitable about ETG and Roizman retaining the rent payments and collecting any unpaid rent for the period in question.

Further, nothing in Plaintiff's Opposition alters the fact that the class action allegations are nothing more than a conclusory recital of the elements for obtaining class certification. The class action allegations rest on Plaintiff's defective theories of recovery and, therefore, must be struck. This Court should dismiss the entire Complaint because there is nothing to "declare."

I. Plaintiff fails to state a claim under the MCPA or the MCDCA.

Plaintiff attempts to address the fact that she sustained no damages, no loss of value, and no harm associated with having the full use and enjoyment of her apartment while the license had allegedly lapsed by suggesting her "actual damages" are the rental payments themselves. This position is based on an incorrect belief that, by virtue of the Baltimore City Code provision, she sustained *de facto* damages by having to pay any rent while the license was not in place. The MCDCA claim is the predicate for the MCPA claim. The alleged conduct and "damages" are the same for the claims asserted under both statutes, based solely on a violation of the Baltimore City Code. For the following reasons, Counts II and III fail to state a claim upon which relief could be granted and should be dismissed.

A. The Baltimore City Code does not change the elements of the MCPA and MCDCA.

Plaintiff is incorrect that the specific language of the City code provision renders inapplicable the holdings of the controlling Court of Appeals of Maryland cases – *CitaraManis*, *Galola*, or *McDaniel*. Specifically, City Code, Art. 13 § 5-4(2) provides that:

> no person may . . . **charge, accept, retain, or seek to collect** any rental payment or other compensation for providing to another the occupancy of all or any part of any rental dwelling unless the person was licensed under this subtitle at both the time of offering to provide and the time of providing this occupancy

(Balt. City Code, Art. 13 § 5-4(2) (emphasis added). Although the local code provisions at issue in the Court of Appeals cases do not contain the emphasized language above, they provide that a landlord may not rent residential properties without a license: "No building or structure, or part thereof, shall be leased, rented or let or subleased, subrented or sublet without first obtaining a rental housing license from the department of public works and paying the requisite fee or charge therefor . . . ." *CitaraManis v. Hallowell*, 328 Md. 142, 146 n.1, 613 A.2d 964, 966 n.1 (1992) (quoting Howard County Code Sec. 13.102). There is no substantive difference between the code provision at issue here and the provisions at issue in the Court of Appeals cases. The code provisions in the Court of Appeals cases provide that unlicensed landlords cannot enter a lease, allow a tenant to live at the property, charge rent, collect rent, or any other aspect of renting. Simply put, conducting business as a residential landlord in any form is not permitted by the Howard County version of the provision. Hence, the collection or retention of rent — which is part and parcel of leasing residential property — is prohibited without a license under the Howard County provision.

The Court of Appeals' analysis in *CitaraManis* bears this out. There, the issue was whether the landlord, having never been licensed either before or during the lease term, could retain the rent. *Id.* at 164 (holding the landlords were not required to return the rent paid as

opposed to the amount of any actual damages). The Court of Appeals rejected the tenants' position, and nothing in the opinion suggests the result would have been different under the present Baltimore City provision. There is simply no difference between a code provision that precludes renting or leasing (Howard County) and a code provision that prohibits collecting rent (Baltimore City). *CitaraManis*'s holding that the landlord was not required to return the rental payments demonstrates that Plaintiff is incorrect that the opinion was "silent as to the question of whether an unlicensed landlord could accept or retain rent." *See* Opp. 19-20. With or without the differences of word choice in the Baltimore City Code, the collection and retention of rent was front and center in *CitaraManis*, as well as *Galola* and *McDaniel*, and the theory advocated by Plaintiff here was rejected by the Court of Appeals in those cases.[1]

Additionally, Plaintiff's reliance on the Restatement (First) of Contracts is unavailing. Opp. 8-9. To the extent the Restatement informs the interpretation of Maryland law, the position Plaintiff advocates was rejected by the express holding of the Court of Appeals in *Galola* (a case Plaintiff says, without any real analysis, does not apply (Opp. at 10)). *Galola*, a companion case to *CitaraManis*, held that a voluntary payment made pursuant to an illegal lease is not damages. 328 Md. 182, 186 (1992) (remanding for a trial on actual damages, as distinguished from mere restitution of rent collected when unlicensed). Given this clear pronouncement, Plaintiff's theory that rental payments pursuant to an "illegal" lease, without more, can give rise

[1] Plaintiff's interpretation that the Howard County Code bans leasing but permits collecting rent makes no sense. Any such interpretation would render the Howard County Code provision meaningless, something the rules of statutory construction strongly disfavor. *See, e.g.*, *Bourgeois v. Live Nation Entertainment, Inc.*, 3 F. Supp. 3d 423, 438-39 (D. Md. 2014) (setting forth the basic rules of interpreting Maryland statutory law).

to a MCPA claim under *CitaraManis* (Opp. 20-21) is incorrect.[2] Therefore, Plaintiff cannot state a MCPA claim.

For similar reasons, the distinction Plaintiff has attempted to draw between the invalidity of the underlying debt and the alleged unauthorized charges (Opp. 15-16) does not save the MCDCA claim. Plaintiff alleges no actual damages under the MCDCA. *Joy Family Ltd. Partnership v. United Fin. Banking Cos.*, No. ELH-12-3741, 2013 WL 4647321, at *12 (D. Md. Aug. 28, 2013) (dismissing MCDCA claim for failure to plead the necessary element of pecuniary loss). Rather, Plaintiff claims the rent itself constitutes damages in the form of an "unauthorized charge." *See* Opp. at 17. Plaintiff does not sufficiently explain how having to pay rent for a habitable unit constitutes actual damages. Opp. 19. The only way the entire rental payment could constitute an unauthorized charge is if the debt obligation itself is entirely invalid. The MCDCA is not a vehicle for that type of challenge. *See, e.g., McKlveen v. Monika Courts Condo.*, 208 Md. App. 369, 382–83, 56 A.3d 611, 619–20 (2012); *Ben-Davies v. Blibaum & Assocs., P.A.*, 421 F. Supp. 3d 94, 99 (2019). Nothing about the Baltimore City Code changes this result. By contesting the validity of the entire rental payment, and seeking to recover only the underlying rental payment, Plaintiff has pled herself out of any MCDCA claim.

[2] Plaintiff's claim that the lease is unenforceable in the context of her equitable claim is similarly incorrect. Opp. at 11-12 (citing *Schloss v. Davis*, 213 Md. 119, 124–25, 131 A.2d 287, 290–91 (1957), and Restatement (First) of Contracts § 600 (1932)). Plaintiff does not explain why the public policy at issue in *CitaraManis*, ensuring habitable rental dwellings, is any different from the public policy that underlies the Baltimore City Code. *See* Section I.B, below. And, as Plaintiff's brief confirms, the degree of violation here is tantamount to a mere technical and non-substantive violation given that Plaintiff has failed to expressly identify any actual damages flowing from the absence of a license. Opp. at 11 (citing *CitaraManis*).

B. The legislative history cited by Plaintiff shows the opposite legislative intent.

The holdings of the Court of Appeals and this Court should end the inquiry. However, even if it were necessary to discern the legislative intent underlying the Baltimore City Code amendment, the materials cited by Plaintiff do not support her position. On the contrary, those materials support Defendants' position and in no way suggest that the legislative intent was "clearly" to avoid the decisions of the Court of Appeals. Opp. at 1. Notably, the Court of Appeals' decisions are not referenced in the materials — a fact that undermines the suggestion that City legislators intended to avoid the holdings of the Court of Appeals.

In the same way the operative Court of Appeals cases make clear that the absence of the rental license must be connected to actual damages (*i.e.*, substandard, uninhabitable conditions) before a plaintiff may recover, the legislative history makes clear that the purpose of the City Code provision is to address substandard housing conditions. The statement of the Baltimore City Department of Housing and Community Development (quoted by Plaintiff in her Opposition) confirms this: "The *new* requirements will largely eliminate *substandard conditions* in *the one segment of the affordable housing market* where such conditions are prevalent." Opp. at 4 (emphasis added). The same point is demonstrated by the letter Plaintiff cites, which states that "all property owners should bear the cost of *bringing a property into habitable, code-compliant condition*." Opp. at 3-4 (quoting Baltimore Development Corporation, a City agency) (emphasis added). The BDC noted that "the cost of regulatory compliance is relatively small." *Id.*

The materials relied upon by Plaintiff do not discuss, contemplate, or even address granting tenants the right to live rent free in habitable dwelling units. Nor do the materials discuss requiring landlords to disgorge rents where the properties are habitable and in good

condition. Moreover, the materials in the bill file do not discuss the creation of a private cause of action under the provision. *See, e.g.*, Ex. A, Approval of Bill 18-0125, Balt. City Dept. of Law (Feb. 15, 2018) (observing the bill is ministerial and recommending certain minor changes to the bill; no mention by the Law Department that anything substantive had changed as result of the amendments).[3] Thus, to the extent the materials relied upon by Plaintiff are at all instructive, they demonstrate that there was no legislative intent to avoid the Court of Appeals' holdings and, if anything, the materials reinforce those holdings because the materials reflect that the purpose of the licensing legislation is to address substandard housing conditions and the Court of Appeals' holdings make clear that "actual damages" are required to sustain a claim based on the alleged lapse of a license.

C. Baltimore City may not create a new cause of action.

Even if Plaintiff were correct that Baltimore City intended to expand the MCDCA and MCPA, and she is not, the Baltimore City Code cannot create such a new cause of action. Yet that is what Plaintiff is attempting to do.

As Plaintiff recognizes (Opp. at 3), the Baltimore City Code does not contain its own private cause of action, but only allows civil actions authorized by law. The law under which Plaintiff has sued is the MCDCA, both in Count III and as the basis for the MCPA claim in Count II. The City Code cannot change the elements required to sustain MCPA and MCDCA claims. *See, e.g.*, *CitaraManis*, 328 Md. at 155 (noting the MCPA requires actual damages, unlike other states' consumer protection laws that provide for a complete refund). She alleges no incorrect rental amounts or additional charges, or any condition constituting actual damages.

[3] Available at https://baltimore.legistar.com/View.ashx?M=F&ID=5806751&GUID=03C76AD2-3095-4EB7-8BF4-4550FA5454F5.

Rather Plaintiff claims that the entire rental amount constitutes "actual damages" notwithstanding that Plaintiff received everything she bargained for.

Moreover, Baltimore City could not have created a cause of action based on the absence of a rental license that gives a tenant the absolute right to recover rents paid where the unit was habitable at all times even had it intended to (and it did not intend to). It is well-established that "a county may not create a new cause of action between private parties concerning matters of statewide concern." *Gunpowder Horse Stables, Inc. v. State Farm Auto. Ins. Co.*, 108 Md. App. 612 (1996). The MCPA and the MCDCA address matters of statewide concern and, under Plaintiff's interpretation, the Baltimore City Code amendment would greatly affect not only Baltimore City landlords, but any person that participates in the process of charging, collecting, or retaining rental payments pursuant to a Baltimore City lease. *Holiday Universal, Inc. v. Montgomery County*, 377 Md. 305, 317, 833 A.2d 518, 525 (2003) (local law, even with primarily local effect, that has major impact of the rest of the State exceeds county's power to enact). Besides the co-Defendants, other examples of those who may be implicated under Plaintiff's reading of the Baltimore City Code include property management companies that accept payments from tenants and banks that deposit them. This would be contrary to the policy underlying the Baltimore City Code (to ensure livable rental conditions, Opp. at 2-3), but it is not within Baltimore City's power to do. Plaintiff is incorrect that there is a separation of powers issue, or that only a violation of the United States Constitution could preclude her interpretation of the Baltimore City Code. Opp. at 12. *See Baker v. Montgomery County*, 201 Md. App. 642, 679 n.29 (2011) (counties do not have the power to enact a new claim for damages, because "the creation of new causes of action in the courts has traditionally been done either by the General Assembly or by [the Court of Appeals] under its authority to modify the common law of this

State." (quoting *McCrory Corp. v. Fowler*, 319 Md. 12, 20, 24, 570 A.2d 834 (1990), *superseded by statute as stated by Wash. Suburban Sanitary Comm'n v. Phillips*, 413 Md. 606, 994 A.2d 411 (2010))). This Court need not reach this point because Plaintiff's reading of the Baltimore City Code is erroneous.

D. The FDCPA-based claim under the MCDCA does not, as a matter of law, apply to ETG and Roizman.

Plaintiff concedes that ETG and Roizman are not subject to the FDCPA because they are not debt collectors covered by the statute. Plaintiff is incorrect, however, that liability under MCDCA § 14-202(11), based on a FDCPA violation, can apply to ETG and Roizman. Exemption from the FDCPA precludes, as a matter of law, liability under this subsection of the MCDCA. *See Austin v. Lakeview Loan Servicing, LLC*, No. CV RDB-20-1296, 2020 WL 7256564, at *4 (D. Md. Dec. 10, 2020). In *Austin*, this Court dismissed a claim under the MCDCA § 14-202(11), holding that:

> Even if the Plaintiff's Complaint adequately alleged that LoanCare was engaged in debt collection within the meaning of the MCDCA—allowing this Court to reach the question of whether LoanCare has violated § 14-202(11)—LoanCare's conduct in this case falls squarely within the loan servicing exemption of the FDCPA. Without alleging a violation of the FDCPA, the Plaintiff cannot allege a violation of § 14-202(11) of the MCDCA.

Id. Here, the result here should be the same. ETG and Roizman are, as a matter of law, exempt from the FDCPA; therefore, a FDCPA violation cannot be the predicate violation for purposes of sustaining the MCDCA claim against ETG and Roizman. *Id.*

ETG and Roizman acknowledge another Judge of this Court has concluded that "violations under § 14-202(11) are measured based on the actions that would violate the FDCPA but apply to this broader set of actors covered under the MCDCA." *Armstead v. Feldman*, No. CV TDC-19-0614, 2020 WL 4753837, at *5 (D. Md. Aug. 17, 2020). However, the basis for denying the motion to dismiss in *Armstead* was that the defendant "has not established that it is

not a 'collector' under the MCDCA[.]" *Id.* Whether the plaintiff alleged any "actions that would *violate* the FDCPA" was not the basis for the denial. *Id.*

Here, while there is no dispute that the MCDCA as a whole covers ETG or Roizman as a "collector," the plain language only penalizes engaging "in any conduct that *violates* §§ 804 through 812 of the federal Fair Debt Collection Practices Act." MCDCA § 14-202(11) (emphasis added).[4] A person who is not a "debt collector" and hence not covered by the FDCPA, cannot engage in conduct that *violates* the FDCPA. *See Armstead*, 2020 WL 4753837, at *5 (dismissing claim against same defendant as not covered by FDCPA); *Austin*, 2020 WL 7256564, at *4 (violation of FDCPA cannot be alleged against exempt defendant). In full consideration of the entire provision, *Austin* is the better interpretation of the statute — even assuming coverage under the MCDCA, only a *violation* of the FDCPA constitutes a violation of § 14-202(11). Accordingly, Plaintiff cannot state a claim pursuant to MCDCA § 14-202(11) against Defendants ETG and Roizman.

II. The money-had-and-received claim fails.

Plaintiff's attempt to obtain restitution is precluded by her own admission that there is no claim for any diminished value of the rental property or other damages separate from the rental payments themselves. In essence, Plaintiff claims she has been unlawfully precluded from living rent-free in a habitable apartment during the alleged lapse of the rental license.

The discussion of the concept of a windfall in *Bourgeois*, 3 F. Supp. 3d at 453-54, is particularly relevant here. In *Bourgeois*, after enjoying a concert, the concertgoer-plaintiff

[4] ETG and Roizman note that Plaintiff's arguments regarding Defendants' knowledge (Opp. 16-18) do not address the fraud standard or how any facts pled could meet that pleading burden. By failing to address the requirements of Rule 9(b), Plaintiff concedes she has not met that standard as to all claims.

sought to recover service fees prohibited by the City Code; the concertgoer did *not* seek a refund of the ticket price. *Id.* at 453. This Court distinguished *CitaraManis*, recognizing that there was no unjust enrichment in that case because the tenants received everything they bargained for and there was no evidence that the unlicensed status caused them to pay more than they otherwise would have. *Id.* at 454 ("*CitaraManis* might have been on point if Bourgeois were seeking to recover the *face value* of the ticket solely because of Ticketmaster's failure to obtain a license."). This Court's reasoning for why *CitaraManis* was inapposite in *Bourgeois* demonstrates why *CitaraManis* controls here. Here, unlike the concertgoer in *Bourgeois*, Plaintiff *does* seek to recoup the "face value" — *i.e.*, the entire rental amount — while conceding there was nothing wrong with the apartment, she enjoyed the full benefit of living there, and she was not forced to pay more than the value of the rental. Opp. at 21.

Plaintiff's argument that she is not in *pari delicto* is based on a cramped understanding of the doctrine. Opp. 12-14, 22-23. No one is saying Plaintiff is herself at "fault" in a culpable sense, *e.g.*, in the same way the purchaser of illegal drugs is in *pari delicto* with the drug dealer. However, it cannot be denied Plaintiff received the benefit of residing in the unit during the months in question and gave up nothing more than she otherwise would to obtain that benefit. Again, Plaintiff's reliance on a secondary source, this time as authority for the proposition that restitution furthers public policy even where there has been no unjust enrichment, is misplaced. Opp. at 13 (citing Restatement (Third) of Restitution and Unjust Enrichment § 32(1)). The Court of Appeals disagrees with Plaintiff's position. Even though, generally speaking, an unlawful contract could be void and unenforceable (Opp. at 23), *Galola* specifically held that a plaintiff is not entitled to an equitable refund of rent paid under an unlawful lease. 328 Md. at 186.

In this respect, Plaintiff's drug dealer transaction analogy (Opp. 13) misses the mark and, in actuality, makes Defendants' point. Plaintiff wanted the apartment as a place to reside, entered into the lease for that purpose, and used the apartment for its intended lawful purpose. Unlike the drug transaction, the lease transaction was legal. And, unlike the concertgoer in *Bourgeois*, Plaintiff here *is* seeking a refund of the "face value" of the ticket (*i.e.*, the full rental amount) while expressly stating that there was nothing about the concert (*i.e.*, the apartment during those months) that entitles her to a refund. The alleged licensure lapse alone, without any actual damages — no unlawful or incorrect charge as in *Bourgeois*; no habitability issues affecting the value of the leasehold — does not implicate public policy.

Consequently, there is nothing inequitable about paying rent pursuant to a lease for an apartment, which the tenant does not allege was worth any less as a result of a licensing lapse. By conceding that the full rent is the only damages she seeks, Plaintiff forecloses her equitable claim for money had and received.

III. Declaratory Judgment

Because of the above-described fundamental defects in Plaintiff's statutory and equitable claims, Plaintiff is not entitled to any refund or forgiveness of past-due amounts. There should be nothing left for this Court to declare. Plaintiff's lease and payment history will determine "the matter of what to do about any unpaid balance . . . ." Opp. at 24. Those proceedings should remain in the District Court of Maryland for Baltimore City. Md. Code, Real Prop. Article, Title 8; Balt. City Code of Public Local Laws, Title 9. Relatedly, whether the state court's denial of Plaintiff's motion for return of rent is *res judicata* is beside the point. Opp. 25. The judgment in the landlord's favor for that amount of rent remains unchallenged. *See* First Am. Compl. ¶ 30. Defendants submit it would not be proper for this Court to revisit that judgment in the context of a declaratory action. This Court should decline Plaintiff's request to act as an appellate court to

determine whether final, unappealed judgments in state rent court should be set aside. The declaratory claim should be dismissed.

IV. The class action allegations are defective and should be struck at this stage.

Finally, Plaintiff barely responds to Defendants' motion to strike the class allegations. To the extent the Court does not find that the lack of response has completely conceded the point, the class allegations are still subject to dismissal.

At bottom, Plaintiff does not even deny that the First Amended Complaint recites only the elements of Rule 23 without factual support. Opp. at 27.[5] And, Plaintiff does not state any need for discovery to determine whether a class could ever be certified. Like Plaintiff's individual claims, whether the class allegations are sufficient turns on a legal question. The answer is that the mere allegation of a lapse in licensing does not turn otherwise proper rent payments into "damages," and neither Plaintiff, nor any tenant of the Property, could be entitled to any relief without demonstrating actual damages. No class could ever exist on the terms alleged in the First Amended Complaint. These allegations should be struck.

V. Conclusion

For the foregoing reasons, and the reasons set forth in the motion to dismiss, ETG and Roizman respectfully request that this Court dismiss Counts II through V of the First Amended Complaint and strike the class action allegations.

[5] Plaintiff suggests that her claims based on a Baltimore City Code violation should only be dismissed if there is "some constitutional infirmity not raised in the Motion to Dismiss." Opp. 12. The Code as interpreted by Plaintiff would be unconstitutional at least as to some putative class members in violation of the Contracts Clause.

Dated: March 8, 2021

Respectfully submitted,

/s/
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Counsel for Defendants E.T.G. Associates '94, LP and Roizman Development, Inc.

CERTIFICATE OF SERVICE

I certify that, on this 8th day of March, 2021, copies of the foregoing reply brief were served via CM/ECF on all counsel of record.

/s/
David J. Shuster

CITY OF BALTIMORE
CATHERINE E. PUGH, Mayor

DEPARTMENT OF LAW
ANDRE M. DAVIS, CITY SOLICITOR
100 N. Holliday Street
Suite 101, City Hall
Baltimore, Maryland 21202

February 15, 2018

The Honorable President and Members
of the Baltimore City Council
Attn: Executive Secretary
Room 409, City Hall
100 N. Holliday Street
Baltimore, Maryland 21202

Re: City Council Bill 18-0185 Non-Owner-Occupied Dwelling Units, Rooming Houses, and Vacant Structures – Rental Dwellings – Registration and Licensing

Dear President and City Council Members:

The Law Department has reviewed City Council Bill 18-0185 for form and legal sufficiency. The bill would add certain non-owner-occupied 1 and 2 family dwellings to the licensing, inspection, and related requirements for multi-family dwellings and rooming houses ("rental dwellings"); modify the procedures and prerequisites for the registration of certain non-owner-occupied dwellings, rooming houses, and vacant structures; modify the procedures and prerequisites for the licensing of rental dwellings; provide for the denial, suspension, or revocation of a rental dwelling license under certain circumstances; provide for judicial and appellate review of administrative decisions relating to the registration or the licensing of these structures; amend the underlying definition of "rooming house" to clarify its applicability to a bed and breakfast facility; define and redefine certain other terms; impose certain penalties; correct, clarify and conform related language; provide certain transition rules for pre-existing licenses; and provide for a special effective date.

First, the bill adds a judicial and appellate review section to the registration subtitle. Since the process is largely ministerial, the Law Department recommends deleting this section, as the right to judicial review already exists in the form of a mandamus action. In the alternative, the Law Department recommends adding an administrative hearing section, so as to provide a meaningful review for the court.

Second, the bill provides for third-party home inspections. Only "ministerial or administrative functions may be delegated to subordinate officials." *City of Baltimore v. Wollman*, 123 Md. 310, 342 (1914); *accord Andy's Ice Cream v. City of Salisbury*, 125 Md. App. 125, 161 (1999); *see also* 72 Op. City Sol. 18, 20 (1980)(citing 73 C.J.S. §75, p. 381-382)("In general, administrative officers and bodies cannot alienate, surrender or abridge their powers and duties, and they cannot legally confer on their employees or others authority and functions which under law may be exercised only by them or by other officers or tribunals ... mere ministerial functions may be delegated."). Therefore, the third party home inspectors must only perform

ministerial, nondiscretionary functions. A checklist provided by the Commissioner, for example, would ensure that discretion is not improperly delegated. The rules adopted for this section should provide for this. The Law Department can review the rules to ensure that discretion is not delegated and to ensure that the rules do not exceed the scope of the law. "Rules and regulations adopted by an administrative agency must be reasonable and consistent with the letter and policy of the statute under which the agency acts." *MCC v. Koons*, 270 Md. 231, 237 (1973).

With these recommendations, the Law Department approves the bill for form and legal sufficiency.

Very truly yours,

Ashlea H. Brown
Assistant Solicitor

cc: Andre M. Davis, City Solicitor
Karen Stokes, Director, Mayor's Office of Government Relations
Kyron Banks, Mayor's Legislative Liaison
Elena DiPietro, Chief Solicitor, General Counsel Division
Hilary Ruley, Chief Solicitor
Victor Tervala, Chief Solicitor
Avery Aisenstark, Director of Legislative Reference

Law Department's Proposed Amendments to City Council Bill 18-0185

1. On page 6, strike lines 10-24.

   OR

   On page 6, after line 9 and before line 10, add § 4-10 "Notice and hearing." On the next line, add "The Commissioner shall provide for an administrative hearing in the rules and regulations adopted under this subtitle."

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July 13, 2021

VIA ECF

The Honorable Catherine C. Blake
United States District Judge
United States District Court
for the District of Maryland
101 West Lombard Street, Chambers 3C
Baltimore, Maryland 21201

Re: *Assanah-Carroll v. Law Offices of Edward Maher, P.C., et al.*
Civil Action No.: 20-02376-CCB

Dear Judge Blake:

I write on behalf of Defendants E.T.G. Associates '94, LP ("ETG") and Roizman Development, Inc. ("Roizman") to alert the Court that, on July 6, 2021, the Court of Special Appeals of Maryland issued its opinion in *Karunaker Aleti, et ux. v. Metropolitan Baltimore, LLC, et al.*, No. 459, September Term, 2020 (courtesy copy enclosed).

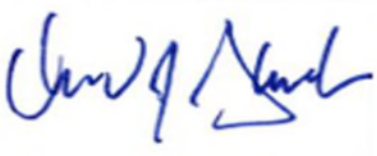
ETG and Roizman believe that *Aleti* further supports the pending Motion To Dismiss Counts II Through V of the First Amended Complaint and To Strike Class Allegations (ECF 28) filed by ETG and Roizman. *Aleti* holds:

- There is no private cause of action for a violation of Balt. City Code, Art. 13 § 5-4(a): "We see nothing in the statutory scheme broadly or in § 5-4(a)(2) specifically that suggests an intent to specially benefit tenants by providing them with free, unlicensed housing." (slip op. at 20);
- A tenant has sustained no cognizable harm by having paid rent for an otherwise habitable apartment notwithstanding that the rental license had lapsed. Slip op. at 28 ("consistent with those cases in which the Court of Appeals concluded that tenants could not recover rent voluntarily paid to unlicensed landlords due solely to the lack of a license. *See, e.g.*, *Galola v. Snyder*, 328 Md. 182, 185-86 (1992) (holding that a tenant is required to prove actual loss or injury arising from the lack of licensure); *McDaniel v. Baranowski*, 419 Md. 560, 587-88 (2011) (same); *CitaraManis v. Hallowell*, 328 Md. 142, 157-58 (1992) (same).");

- In the context of a claim for money had and received, "where a landlord has provided all that was bargained for, there is no injustice in permitting the landlord to keep rent and other fees paid under the lease based solely on the landlord's lack of licensure. *See Galola*, 328 Md. at 186 (stating that 'voluntary payment of rent under an unenforceable lease does not entitle a tenant to restitution of that rent unless the tenant . . . was provided less than [the tenant] had bargained for in the lease'). '[E]quity and good conscience' do not require restitution of those amounts. *Bourgeois*, 430 Md. at 46 (quoting *Benson*, 389 Md. at 652)." (slip op. at 32-33).

Because *Aleti* was decided after the motion to dismiss was fully briefed, we wanted to bring this new case to the Court's attention. If the Court perceives it would be helpful to receive any supplemental briefing limited to addressing the new case, I will be pleased to coordinate with Plaintiff's counsel on an agreed deadline in that regard.

Respectfully submitted,



David J. Shuster

DJS/sas
Enclosure
cc: All counsel of record (via ECF)

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July 14, 2021

ECF Filing

The Honorable Catherine C. Blake
United States District Court
For the District of Maryland
101 West Lombard Street
Chambers 7D
Baltimore, MD 21201

RE: ***Alison Assanah-Carroll, et al. v. Law Offices of Edward J. Maher, et al.***
Civil Action No.: 20-02376-CCB
In the U.S. District Court for the District of Maryland

Dear Judge Blake,

This letter is filed in response to the Letter filed yesterday as ECF 31 in this matter by Defendants E.T.G. Associates '94, LP and Roizman Development, Inc. regarding the July 6, 2021 opinion by the Maryland Court of Special Appeals in *Karunaker Aleti, et ux. v. Metropolitan Baltimore, LLC, et al.*, No. 459, September Term, 2020.

Plaintiffs feel compelled to note that they disagree with Defendants' summary of the holding of that case, which ruled that the Baltimore City Council did not create an implied cause of action under § 5-4(a)(2) and that § 5-4(a)(2) would not form basis of a breach of contract action. In this case, Plaintiffs are not proceeding under either such theory of recovery, and *Aleti* does not address the collection of prohibited rental payments under the Maryland Consumer Debt Collection Act or the Maryland Consumer Protection Act. Further, *Aleti* explicitly reversed the lower court's decision to dismiss a declaratory judgment count as to the status of unpaid rent, an issue that is also presented by Plaintiffs in this matter. Plaintiffs do concede that the ruling on the money had and received claim is on point, but it is Plaintiffs' understanding that all parties to *Aleti* plan to petition for review in the Maryland Court of Appeals.

Like Defendants, Plaintiffs would be happy to further brief the impact of *Aleti* on this case.

Sincerely,

Joseph S. Mack

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September 10, 2021

ECF Filing

The Honorable Catherine C. Blake
United States District Court
For the District of Maryland
101 West Lombard Street
Chambers 7D
Baltimore, MD 21201

RE: ***Alison Assanah-Carroll, et al. v. Law Offices of Edward J. Maher, et al.***
Civil Action No.: 20-02376-CCB
In the U.S. District Court for the District of Maryland

Dear Judge Blake,

I write on behalf of Plaintiffs to alert the Court that, on August 6, 2021, the Court of Appeals of Maryland issued its opinion in *Larry S. Chavis, et al. v. Blibaum & Associates, P.A.; Bryione K. Moore, et al. v. Peak Management LLC*, No. 30, September Term, 2020 (courtesy copy enclosed).

This case has direct bearing on the pending Motion to Dismiss (ECF 28), as the Court of Appeals explicitly ruled that the Maryland Consumer Debt Collection Act, Md. Code, Comm. L. § 14-201 *et seq.* (the "MCDCA"), applies not just to improper "methods" of debt collection, as urged in the Motion to Dismiss, but also "when the amount claimed by the debt collector includes sums that the debt collector, to its knowledge, does not have the right to collect." Slip Op. at 23-24. Accordingly, the Parties' disagreements over whether the collection of rent that is prohibited by Article 13, § 5-4 of the Baltimore City Code can be characterized as a "method" under the MCDCA has been rendered beside the point, as the MCDCA applies regardless.

Because *Chavis* was decided after the Motion to Dismiss was fully briefed, I wanted to bring this new case to the Court's attention. Plaintiffs would be happy to file any supplementary briefing on the impact of this ruling on the Motion to Dismiss should the Court desire.

Sincerely,

Joseph S. Mack

Enclosure
cc: All counsel of record (via ECF)

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September 17, 2021

VIA ECF

The Honorable Catherine C. Blake
United States District Judge
United States District Court
for the District of Maryland
101 West Lombard Street, Chambers 7D
Baltimore, Maryland 21201

Re: *Assanah-Carroll v. Law Offices of Edward Maher, P.C., et al.*
Civil Action No.: 20-02376-CCB

Dear Judge Blake:

I write on behalf of Defendants E.T.G. Associates '94, LP ("ETG") and Roizman Development, Inc. ("Roizman") in response to Plaintiff's letter (ECF 33) noting supplemental authority from the Court of Appeals of Maryland in *Chavis v. Blibaum & Associates, P.A.*, No. 30 Sept. Term, 2020.

Defendants ETG and Roizman acknowledge that the Court of Appeals held that the MCDCA is not limited to methods of collection, but that holding in *Chavis* (and the companion case *Nationstar Mortgage LLC d/b/a Mr. Cooper, as Successor by Merger to Nationstar, Inc., et. al. v. Donna Kemp*, No. 43, September Term 2020), does not change the other points in Defendants' briefing (*see, e.g.*, Reply at 5 (regardless of any distinction between debt-collection methods and the underlying debt, Plaintiff failed to plead any damages)), or the applicability of the recent landlord-tenant decision of the Court of Special Appeals in *Aleti v. Metropolitan Baltimore, LLC*, 251 Md. App. 482, 254 A.3d 533 (2021) (holding that Balt. City Code Article 13, § 5-4(a)(1) provides no avenue for relief sought by tenants who sustain no cognizable harm), that Defendants provided on July 13, 2021 (ECF 31). Defendants note that no petition for a writ of certiorari has been filed in *Aleti*.

If the Court desires further briefing in light of any of these cases, we are happy to coordinate with Plaintiff's counsel in that regard.

Respectfully submitted,

David J. Shuster

DJS/sas
cc: All counsel of record (via ECF)

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September 20, 2021

ECF Filing

The Honorable Catherine C. Blake
United States District Court
For the District of Maryland
101 West Lombard Street
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Baltimore, MD 21201

RE: ***Alison Assanah-Carroll, et al. v. Law Offices of Edward J. Maher, et al.***
Civil Action No.: 20-02376-CCB
In the U.S. District Court for the District of Maryland

Dear Judge Blake,

In their September 17, 2021 Letter regarding the *Chavis* case (ECF No. 34), Defendants E.T.G. Associates '94, LP and Roizman Development, Inc. incorrectly (and no doubt inadvertently) stated that no petition for writ of *certiorari* had been filed after the Maryland Court of Special Appeals' decision in *Karunaker Aleti, et ux. v. Metropolitan Baltimore, LLC, et al.*, No. 459, September Term, 2020. In fact, the plaintiff-tenants in that matter filed a petition for writ of *certiorari* on August 5, 2021 and the defendant-landlord filed an opposition on August 20, 2021, as can be seen from the attached printout from Maryland Judiciary Case Search. No ruling has yet been made on that petition.

Sincerely,

Joseph S. Mack

Enclosure
cc: All counsel of record (via ECF)

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Northern Division

ALISON ASSANAH-CARROLL,

Plaintiff,

v.

LAW OFFICES OF EDWARD J. MAHER, P.C., et al.

Defendants.

Case No. 20-02376-CCB

ORDER CERTIFYING QUESTIONS OF LAW TO THE COURT OF APPEALS OF MARYLAND

Pursuant to the Maryland Uniform Certification of Questions of Law Act, Md. Code, Cts. & Jud. Proc. §§ 12-601, *et seq.*, this Court requests that the Court of Appeals of Maryland answer the following questions of law:

1. Can a tenant who paid rent to a landlord in Baltimore City who lacked a license pursuant to Baltimore City Code, Art. 13 § 5-4 maintain a lawsuit under either the Maryland Consumer Debt Collection Act (the "MCDCA") or the Maryland Consumer Protection Act (the "MCPA") to recover the rent paid without a showing of any damages separate from the rental payment itself?
2. Does a currently licensed landlord violate either the MCDCA or the MCPA by collecting rent from a tenant or pursuing ejectment actions against a tenant who has failed to pay rent during a prior period when the landlord, or a prior landlord, was not licensed under Baltimore City Code, Art. 13 § 5-4, where the tenant does not allege any damages separate from the rental payment itself?

This Court considers it appropriate to certify these questions of law to be answered by the Court of Appeals of Maryland, where the answers will be determinative of an issue in pending litigation and there is no controlling appellate decision that interprets whether the alleged violations of the Baltimore City Code can support a cause of action under either the MCDCA or the MCPA.

The Court of Appeals of Maryland, acting as the receiving court, may reformulate the questions of law presented herein.

Procedural Background

Currently pending before this Court is a motion to dismiss filed by Defendants E.T.G. Associates '94, LP and Roizman Development, Inc. (in which Defendants Law Offices of Edward J. Maher, P.C. and Edward J. Maher have joined). This Court is aware that, on October 12, 2021, the Court of Appeals of Maryland granted *certiorari* following the Court of Special Appeals of Maryland's reported opinion in *Aleti v. Metropolitan Baltimore, LLC*, 251 Md. App. 482, 254 A.3d 533 (2021). Before ruling on the motion to dismiss, this Court, with the parties' consent, has determined it advisable to consider the Court of Appeals of Maryland's responses to the certified questions and the Court of Appeals of Maryland's opinion to be issued in *Aleti*.

Relevant Facts

The alleged facts relevant to the questions of law are set forth below. If the Court of Appeals of Maryland would like additional information, this Court will forward the papers filed by the parties in the instant matter.

- Plaintiff alleges that she leased an apartment in a residential multi-unit building in Baltimore City, owned and operated by Defendants E.T.G. Associates '94, LP and Roizman Development, Inc.

- Plaintiff alleges that, when she began living at the apartment, the property was licensed pursuant to the Baltimore City Code. She alleges that, during part of the time she lived in the building, the license lapsed for approximately one year, and then the property was again properly licensed. Plaintiff alleges that the property is currently properly licensed.
- Plaintiff alleges that she made rental payments during the period when the property's license had lapsed. Plaintiff alleges that she stopped making rental payments when she learned that the property's license was not in effect. Plaintiff alleges that, when she learned the property was again licensed, she resumed making rental payments.
- Plaintiff alleges that Defendants Law Offices of Edward J. Maher, P.C. and Edward J. Maher filed ejectment actions in the District Court of Maryland for Baltimore City to collect unpaid rent. Plaintiff alleges that she made a payment for rent incurred during the period the property was unlicensed in order to redeem her lease pursuant to a final judgment of the Baltimore City District Court.
- Plaintiff alleges that the collection of rent during the unlicensed period violated the Baltimore City Code, and those payments constitute damages under the MCDCA and MCPA and must be refunded.
- Plaintiff alleges that attempting to collect unpaid back rent for months when the property was not licensed, even though the property is currently licensed, violates the Baltimore City Code, and the full amount of the unpaid rental payments constitutes damages under the MCDCA and MCPA that she is never required to pay Defendants for the period that the property was unlicensed.
- Plaintiff does not allege that her dwelling unit was uninhabitable or that the value of the lease was diminished by any condition of the property caused by the lack of licensure,

separate from the mere fact that the property was not licensed. Instead, Plaintiff alleges that the entire rental payment for any unlicensed period constitutes damages.

Counsel of Record

Counsel of record in this matter are as follows:

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It is requested that Plaintiff be designated as Appellant.

Because of the importance of the questions of law presented, this Court will stay the instant case until the Court of Appeals of Maryland has had the opportunity to respond to the certified questions.

Pursuant to Md. Rule 8-305(b), the Clerk of the Court shall transmit this Certification Order and seven certified copies to the Court of Appeals of Maryland, together with the filing fee of $61.00, payable to the Clerk of the Court of Appeals, and a copy of the docket entries for this case. Upon receipt of a written request and without further order of the Court, the Clerk of Court shall transmit to the Court of Appeals of Maryland certified copies of any other portions of the record of this case.

So ORDERED this 26th day of October, 2021.

/S/ CCB
Catherine C. Blake
United States District Judge