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Superior Court
of the District of Columbia

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Abigail Nichols, on behalf of herself and all others similarly situated, C/O Migliaccio & Rathod, LLP 412 H Street NE, Ste. 302 Washington, D.C. 20002, *Plaintiff*, v. **300 M Street Development Group, LLC,** 850 Cassatt Rd., Suite 300 Berwyn, PA 19312 ***Serve on:*** Corporation Service Co., Reg. Agent 1090 Vermont Ave. NW Washington, D.C. 20005, and **LCOR Asset Management Limited Partnership,** 850 Cassatt Rd., Suite 300 Berwyn, PA 19312 ***Serve on:*** Corporation Service Co., Reg. Agent 1090 Vermont Ave. NW Washington, D.C. 20005, *Defendants*.	Case No. 2024-CAB-007450 **JURY TRIAL DEMANDED**

CLASS ACTION COMPLAINT

INTRODUCTION

This is a consumer protection class action brought by Plaintiff Abigail Nichols, a tenant, against her housing providers, Defendants 300 M Street Development Group, LLC ("M Street") and LCOR Asset Management Limited Partnership ("LCOR"). Plaintiff is a tenant at the Cielo Modern Residences ("Cielo"), an apartment building managed by Defendants with over 400 units in the NoMa neighborhood of Washington, D.C.

Defendants unlawfully charge Plaintiff and her fellow tenants numerous illegal fees, including excessive rental application fees, common area utilities that tenants have no ability to control, and junk fees for basic in-unit utilities necessary to the apartment's habitability. Making matters worse, Defendants did not disclose utility-related fees to tenants in their advertisements or at the time tenants filed their rental applications, in violation of District law.

Altogether, Defendants' perpetrated a slew of unfair and deceptive trade practices prohibited by the District of Columbia Consumer Protection Procedures Act (CPPA). Plaintiff sues under the CPPA to stop these unlawful trade practices and recover damages for herself and her fellow tenants at Cielo.

PARTIES

1. Plaintiff Abigail Nichols is a resident of the District of Columbia. She is a tenant at Cielo who signed her lease on December 5, 2023 and has resided in the building since January 2024.

2. Defendant 330 M Street Development Group, LLC is a Delaware corporation with a corporate address of 850 Cassatt Road, Suite 300, Pennsylvania, PA 19312. M Street transacts business in the District by leasing rental property. M Street is Plaintiff's landlord and is the signatory on her lease as the lessor.

3. Defendant LCOR Asset Management Limited Partnership is a Delaware corporation with a corporate address of 850 Cassatt Road, Suite 300, Pennsylvania, PA 19312. LCOR transacts business in the District by managing rental properties, including Cielo.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action under D.C. Code §§ 11-921, 28-3905(k), and 13-423.

5. Venue is proper in this Court because the acts and transactions giving rise to this action occurred in the District of Columbia.

FACTUAL ALLEGATIONS

A. Plaintiff's Residence at Cielo and Relationship with Defendants.

6. Cielo is an apartment building located in the NoMa neighborhood at 300 M Street NE, Washington, D.C. Cielo has over 400 residential apartment units.

7. On December 5, 2023, Plaintiff signed a lease ("Lease") to reside at Apartment No. 214 at Cielo.

8. Plaintiff moved into her apartment in January 2024 and has resided there since.

9. M Street is the lessor on Plaintiff's lease.

10. LCOR also appears in Plaintiff's lease, which expressly requires her to purchase a liability insurance policy that names LCOR as an "Additional Interest" in the insurance policy.

11. LCOR is primarily responsible for property management at Cielo and served as Plaintiff's primary point of contact relating to her lease and tenancy.

12. For example, an LCOR representative named Petros Fentahun, who has an email address with an "@lcor.com" domain name, generated Plaintiff's lease agreement and provided her with a move-in checklist before moving into Cielo.

13. Mr. Fentahun also served as the primary point of contact when Plaintiff had issues or questions about her tenancy.

14. Plaintiff's payments for rent, utilities, and other fees are made to and received by LCOR.

15. M Street is a "housing provider" under D.C. Code § 42–3501.03(15) because it is Plaintiff's lessor.

16. LCOR is a "housing provider" under D.C. Code § 42–3501.03(15) because it performs the function of a landlord, is M Street's agent, and is a person who has received rents and benefits paid by Plaintiff for her occupancy of her rental unit at Cielo.

B. The Illegal Application Fee.

17. On December 2, 2023, Plaintiff filed her rental application with Defendants to lease a unit in Cielo.

18. Defendants required Plaintiff to pay both a $50 "Application Fee" and an additional $250 fee at the time she filed her application before they would evaluate her application. Defendants represented that the $250 fee was required to "hold" her apartment.

19. On December 5, 2023, Plaintiff received an email from Defendants informing her that her application was approved.

20. The $250 fee is an illegal application fee under District law, which prohibits housing providers from charging prospective tenants fees relating to their rental applications in excess of $50. *See* D.C. Code § 42-3505.10(b)(1), (3) ("(1) A housing provider may require a prospective a tenant to pay an application fee. Such an application fee will be no more than $50. .

. . (3) A housing provider **shall not charge a prospective tenant any fee other than an application fee prior to signing a lease with the tenant**.").[1]

21. District law defines "application fee" to "mean[] the total of all costs or fees that a prospective tenant is required to pay to a housing provider at the time of application or at any time prior to signing a lease as a prerequisite to evaluating or approving a prospective tenant's application for rental housing, including processing, reviewing, or screening the prospective tenant's application, but not including holding deposits"). D.C. Code § 42-3501.03(2A).

22. The $250 fee is not a "holding deposit" because it was paid **before** Defendants approved Plaintiff's rental application—and to qualify as a holding deposit, a payment must be paid post-approval. *See* D.C. Code § 42-3501.03(13A) (defining "holding deposit" to "mean[] the amount a housing provider requires a prospective tenant to pay **after a housing provider approves a tenant's application**, which temporarily makes a unit unavailable to other prospective tenants and which if a tenant accepts a unit becomes prat of the prospective tenant's first month's rent or security deposit").

23. In addition, Defendants' practice of charging excessive application fees is an unfair trade practice. As large, sophisticated housing providers, Defendants took advantage of potential tenants who cannot reasonably be expected to know that such a fee is excessive and illegal. Requiring prospective tenants to pay hundreds of dollars just to apply for rental housing causes substantial injury by taking funds that they are not permitted to receive. This practice also prevents tenants from filing multiple rental applications and comparison shopping between housing providers. Such a practice also lacks any discernible countervailing benefits to

[1] At the time Plaintiff submitted her application, the statutory cap on application fees was $50. In 2024, the application fee cap was adjusted upward to $52. *See Rental Housing Commission Publishes Rental Application Fee Cap for 2024*, D.C. Office of the Tenant Advocate (Jan. 16, 2024), https://ota.dc.gov/release/rental-housing-commission-publishes-rental-application-fee-cap-2024.

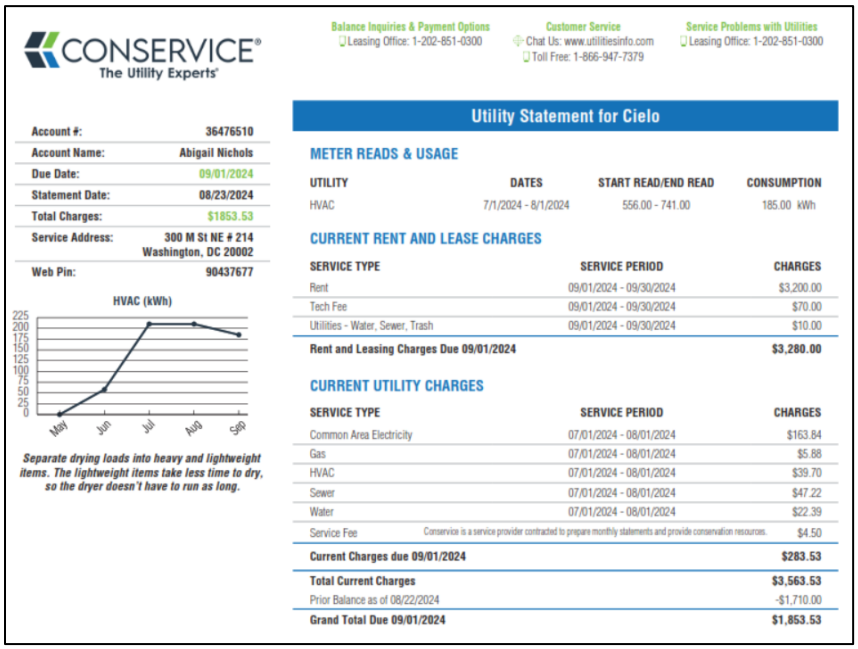
consumers or competition and cannot be reasonably avoided as it is a requirement to proceed with the application.

24. Plaintiff and similarly situated prospective tenants of Cielo have been injured by paying illegal application fees in excess of the District's statutory maximum.

C. The Illegal Common Area Electricity and Trash Fees.

25. Defendants bill Plaintiff and other Cielo tenants for rent and utilities through a third-party named Conservice, LLC.

26. Defendants send Plaintiff and other Cielo tenants monthly bills, which include their monthly rent, utility fees, and other assorted fees.[2] A screenshot of Plaintiff's monthly bill from August 2024 is provided below, which includes a $163.84 charge for "Common Area Electricity" and $10.00 for trash (the "Trash Fee"). Both the Common Area Electricity and Trash Fees are illegal under District law.



CONSERVICE®
The Utility Experts®

Balance Inquiries & Payment Options
Leasing Office: 1-202-851-0300

Customer Service
Chat Us: www.utilitiesinfo.com
Toll Free: 1-866-947-7379

Service Problems with Utilities
Leasing Office: 1-202-851-0300

Account #:	36476510
Account Name:	Abigail Nichols
Due Date:	09/01/2024
Statement Date:	08/23/2024
Total Charges:	$1853.53
Service Address:	300 M St NE # 214 Washington, DC 20002
Web Pin:	90437677

HVAC (kWh)

Separate drying loads into heavy and lightweight items. The lightweight items take less time to dry, so the dryer doesn't have to run as long.

Utility Statement for Cielo

METER READS & USAGE

UTILITY	DATES	START READ/END READ	CONSUMPTION
HVAC	7/1/2024 - 8/1/2024	556.00 - 741.00	185.00 kWh

CURRENT RENT AND LEASE CHARGES

SERVICE TYPE	SERVICE PERIOD	CHARGES
Rent	09/01/2024 - 09/30/2024	$3,200.00
Tech Fee	09/01/2024 - 09/30/2024	$70.00
Utilities - Water, Sewer, Trash	09/01/2024 - 09/30/2024	$10.00
Rent and Leasing Charges Due 09/01/2024		**$3,280.00**

CURRENT UTILITY CHARGES

SERVICE TYPE	SERVICE PERIOD	CHARGES
Common Area Electricity	07/01/2024 - 08/01/2024	$163.84
Gas	07/01/2024 - 08/01/2024	$5.88
HVAC	07/01/2024 - 08/01/2024	$39.70
Sewer	07/01/2024 - 08/01/2024	$47.22
Water	07/01/2024 - 08/01/2024	$22.39
Service Fee	Conservice is a service provider contracted to prepare monthly statements and provide conservation resources.	$4.50
Current Charges due 09/01/2024		**$283.53**
Total Current Charges		**$3,563.53**
Prior Balance as of 08/22/2024		-$1,710.00
Grand Total Due 09/01/2024		**$1,853.53**

[2] As discussed below, each of these charges is "rent" under the District's statutory definition of the term.

27. While Conservice issues Plaintiff her monthly utility bills, Plaintiff pays the amount billed to LCOR through a Cielo payment portal.

28. In charging Plaintiff and Class members a Common Area Electricity Fee, Defendants required Plaintiff and Class members to pay for electric utilities used by common areas. This is spelled out in plain terms in the bill's description of "Common Area Electricity," which provides: "Common area electric service is provided by Pepco. Service provider issues bill, amount is allocated to residents using a formula based on the number of occupants and the unit's square footage."

29. Plaintiff's $10 Trash Fee is set out in her lease, which provides that trash will be paid by "[Plaintiff] when trash bills are billed by the service provider to us and then allocated to you based on . . . [a] flat rate of $10 per month."

30. Defendants impose Common Area Electricity and Trash Fees under the threat of eviction. Plaintiff's Lease provides: "The late payment of a bill or failure to pay any utility bill is a material and substantial breach of the Lease and we will exercise all remedies available under the Lease, up to and including eviction for nonpayment." (Hereinafter, the "Utility Eviction Clause").

31. Plaintiff has been charged substantial Common Area Electricity Fees during her tenancy at Cielo. Between April – September 2024, Plaintiff was charged $597.43 in Common Area Electricity fees, which are disaggregated by month in the table below.

Month	Common Area Electricity Fees Charged
April	$108.64
May	$35.09
June	$84.62
July	$116.76
August	$163.84
September	$88.48

32. Upon information and investigation, Class members have paid similar amounts.

33. The common area electricity utilities and trash service are the responsibility of, or under the control of Defendants, as Plaintiff and Class members have no ability to control the electricity used in common areas of Cielo, nor do they have any ability to control their trash/refuse service. Both services are required and the responsibility of Defendants under District law.

34. As a result, the Common Area Electricity Fees and Trash Fees are illegal. Under District law, housing providers are prohibited from requiring tenants to pay for utilities which are the responsibility of, or under the housing provider's control. The District's Housing Code includes a Chapter captioned "Facilities, Utilities, and Fixtures," codified at DCMR Title 14, Chapter 6. Within this chapter, DCMR 14-600.3 provides: "Where a utility (such as water, electricity, gas or other fuels, or sewer or refuse service) is the responsibility of, or under the control of, the owner or licensee of any residential building, the utility shall be **furnished** and maintained by the owner or licensee in the quantities needed for normal occupancy."

35. By requiring housing providers to "furnish[]" utilities under their control, DCMR 14-600.3 requires housing providers to pay for such utilities. Defendants violated this provision of the Housing Code by requiring Plaintiff and Class Members to pay for common area utilities and trash services that were within Defendants' exclusive control.

36. Defendants' practice of charging tenants Common Area Electricity and Trash Fees is also an unfair trade practice. The practice substantially harms consumers because tenants are forced to pay for fluctuating utilities that they lack any ability to control—and are also Defendants' responsibility to maintain under the implied warrant of habitability. In essence, Defendants are unfairly shifting costs they are responsible for onto their tenants. Consumers are

also injured because they are stripped of regulatory protections that would otherwise apply were they billed directly by a publicly-regulated utility—such as protections bearing on notice, billing, and the right to appeal a utility bill. Consumers also could not reasonably avoid such a trade practice, as Defendants failed to disclose these fees, discussed more in Section E, *infra*. Finally, Defendants' practice lacks any discernible countervailing benefits to consumers or competition.

37. Plaintiff and similarly situated Cielo tenants have been injured by paying the illegal Common Area Electricity and Trash Fees.

D. The Illegal Service Fee.

38. Defendants also charged Plaintiff and Class members a new account fee of $10.00 and a monthly "Service Fee" of at least $4.50.

39. Plaintiff's bill provides the following description of the Service Fee: "Conservice is a service provider contracted to prepare monthly statements and provide conservation resources."

40. The Service Fee is illegal under D.C. Code § 42-3505.10(b-2)(1), which prohibits housing providers from charging tenants fees for services necessary to maintain the implied warranty of habitability or are the housing provider's responsibility under the Housing Code:

> A housing provider **shall not charge a fee** to a prospective tenant before move-in, **during a tenancy**, or after move-out for **services required of the housing provider to maintain a unit in a condition consistent with the implied warranty of habitability** and with Titles 12 and 14 of the District of Columbia Municipal Regulations, or substantially similar subsequent regulations; except, that nothing in this subsection prohibits a housing provider from withholding a tenant's security deposit to replace damaged items if the tenant has caused damage to the unit beyond the standard of ordinary wear and tear as defined in § 42-3502.17(c)(3).

(emphasis added).

41. The D.C. Council made the purpose of Section 3505.10(b-2)(1) clear in the law's legislative history: "Housing providers have a duty to maintain units in a condition rendered

habitable under the implied warranty of habitability and under designated housing code regulations. **The purpose of this section was to make sure housing providers are not passing the costs for which they are responsible onto tenants**."[3]

42. Under the implied warranty of habitability and the Housing Code, housing providers are required to provide tenants with utilities such as water and electric. DCMR 14-600.1 ("The owner or licensee of each residential building shall provide and maintain the facilities, utilities, and fixtures required by this section."); DCMR 14-500.1 ("The owner of a building used for residential purposes shall provide that building with adequate facilities for heating, ventilating, and lighting.").

43. The Service Fee imposes a fee upon Plaintiff and Class members to use their utilities, as failing to pay the Service Fee subjects them to the threat of eviction under the Utility Eviction Clause.

44. Thus, the Service Fee violates Section 42-3505.10(b-2)(1) because it is a fee charged by Defendants to maintain a unit consistent with the implied warranty of habitability and Housing Code.

45. Defendants' practice of charging Service Fees is also an unfair trade practice. The practice causes substantial injury to consumers because it requires them to pay a fee for access to basic utility services—a fee they would not have to pay were they dealing directly with a publicly-regulated utility. Consumers also could not reasonably avoid such a trade practice, as Defendants failed to disclose these Service Fees, discussed more in Section E, *infra*. Finally, Defendants' practice lacks any discernible countervailing benefits to consumers or competition.

[3] D.C. Council Committee Report re: Bill B25-0074 at 4 (June 22, 2023), https://lims.dccouncil.gov/downloads/LIMS/52171/Committee_Report/B25-0074-Committee_Report1.pdf?Id=164697.

46. Plaintiff and similarly situated Cielo tenants have been injured by paying the illegal Service Fee.

E. Defendants Failed to Disclose the Utility Fees and Service Fee in Violation of District Law.

47. Defendants violate D.C. Code § 42-3502.22(b)by using a drip and partitioned pricing scheme ("drip-pricing")[4] in which they advertise the monthly rent amount without including mandatory fees, and by failing to disclose such mandatory fees as part of the rent at the time a tenant files an application. Only after prospective tenants have paid the application fee and been approved, do they have the opportunity to learn of the fees which are part of their rent.

48. District law requires housing providers to disclose a unit's "rent" at the time they submit their rental applications. D.C. Code § 42-3502.22(b)(1), (A) ("At the time a prospective tenant files an application to lease any rental unit, the housing provider shall provide on a disclosure form . . . [t]he applicable rent for the rental unit.").

49. District law defines "rent" broadly to include "the entire amount of money . . . charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities." D.C. Code § 42-3501.03(28). "Related services" is in turn defined to mean 'services provided by a housing provider . . . to a tenant in connection with the use and occupancy of a rental unit, including . . . the provision of **light, heat, hot and cold water, air conditioning** . . . ." D.C. Code § 42-3501.03(27). "'Related facility' means any facility… made available to a tenant by a housing provider, the use of which is authorized by the

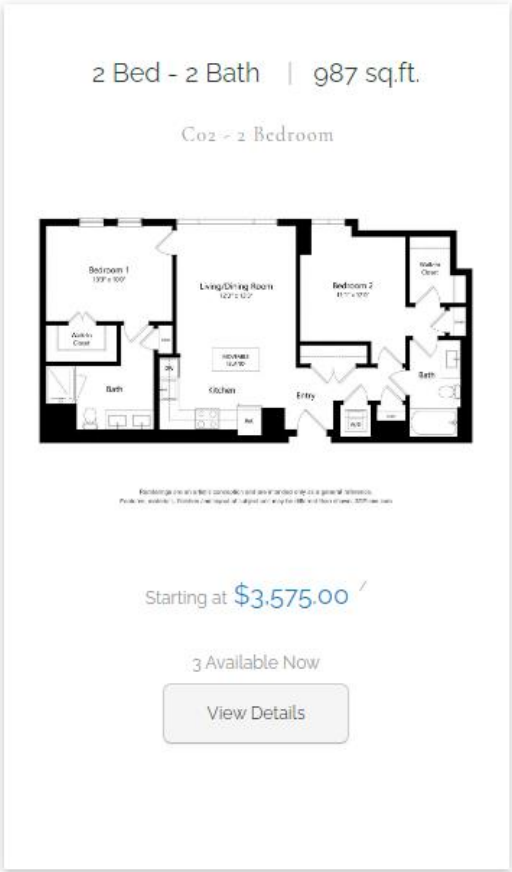
[4] "Drip pricing" is a predatory pricing practice in which companies advertise a low rate but sneak in additional fees throughout the life of a transaction. "Partitioned pricing" is another predatory practice in which companies advertise a total price for a good or service separate and apart from a portion of the cost. An example of drip and partitioned pricing is in the travel industry, in which consumers are led to believe they will pay the advertised price for a hotel room through an online reservation but then are compelled to pay an additional mandatory "resort fee" on top of the advertised rate.

payment of the rent charged for a rental unit, including … **the common use of any common room, yard, or other common area**." D.C. Code § 42-3501.03(26).

50. Defendants advertise Cielo units for lease on its website Livecielodc.com. Prospective tenants can also apply on the website. Below is an example of the purchase flow for a prospective tenant to receive a price quote and apply for an apartment Cielo.

51. On the website, a prospective tenant can search the building for available units by first selecting the desired floor plan (*e.g.,* studio, 1-bedrrom, 2-bedroom, etc.).

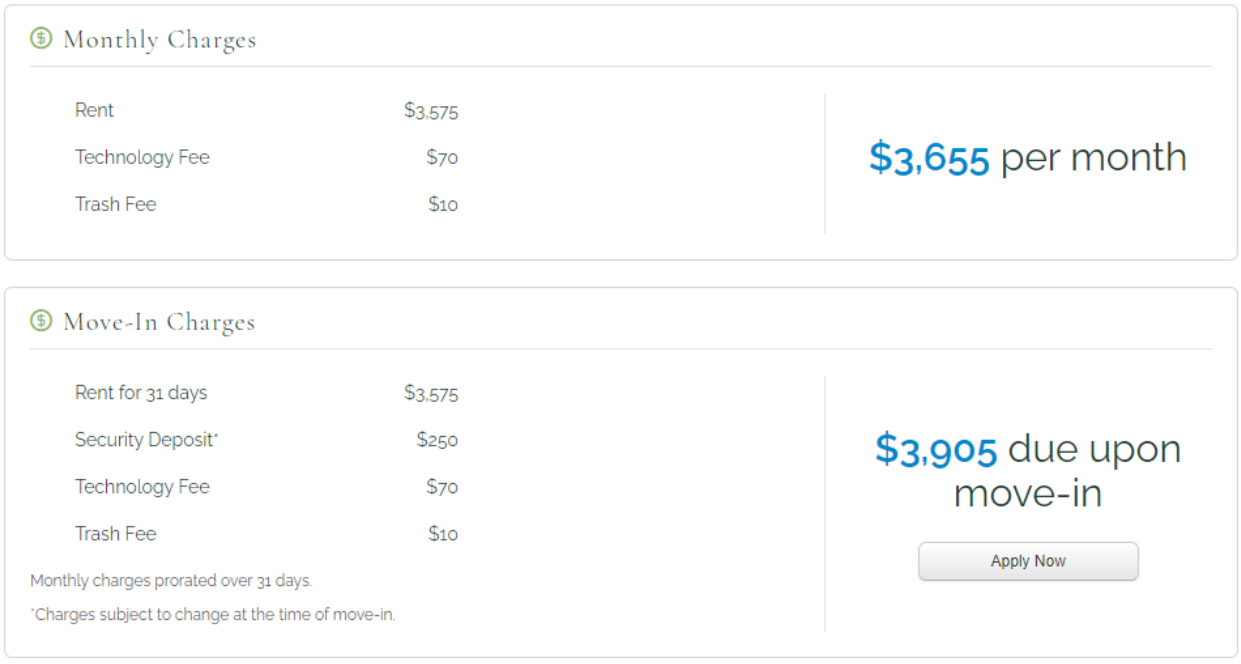
52. When the prospective tenant selects the desired number of bedrooms, they are shown several floor plans with different square footage. Each floor plan contains a rent price (here, $3,575.00), as seen in the screenshot below:



53. When the prospective tenant clicks "View Details," they are shown the specific units with that floor plan.

Apartment	Sq.Ft.	Rent	Date Available
#0337	987	$3,575	Available
#0833	987	$3,680	Available
#0437	987	$3,625	Available

54. If a prospective tenant selects Apartment #0337 listed with the rent price of "$3,575" they are taken to the next page entitled "Quote Sheet" (screenshot below). On this page, the prospective tenant learns that they cannot rent the apartment for $3,575 despite the clear advertisement on the previous two pages. Instead, they must pay a "Technology Fee" of $70 per month and a "Trash Fee" of $10.00 for a total of $3,655. A prospective tenant can then file an application by clicking "Apply Now":



55. However, even after Defendants tack on these extra fees, the displayed monthly rent amount is still not the true monthly rent charged by Defendants. As seen in the Conservice bill in Section C, supra, Defendants charge Plaintiff and other Cielo tenants monthly utility-related fees for Common Area Electric, Gas, HVAC, Sewer, and Water (collectively referred to as Utility Fees), as well as the additional Service Fee. None of these fees are disclosed on Cielo's application screenflow and were not disclosed to Plaintiff when she filed her rental application.

56. Plaintiff filed her rental application through Cielo's website, which looked substantially similar to the example purchase flow screenshotted above and contained substantially similar information for the rent quoted and types of fees disclosed.

57. Critically, at no point during Plaintiff's application filing process, nor before payment of the application fee, did Defendants disclose the Utility Fees and Service Fee.

58. The Utility Fees and Service Fees fall within the statutory definition of "rent" because they are paid to Defendants as a condition of occupancy or use of the rental unit and its related services (light, heat, hot and cold water, air conditioning) and facilities (use of the common areas), given that Defendants retain the right to evict Plaintiff for non-payment of those fees under the Utility Eviction Clause. In addition, such fees also fall within the statutory definition of "rent" because they are charges related to use of the rental unit, as Plaintiff is required to pay the fees in order to receive and pay for utility services. Thus, the fees were required to be disclosed at the time of application.

59. Plaintiff did not learn about the Utility Fees and Service Fees until she was presented with her lease, where these fees were buried in a 64-page contract of adhesion.

60. Even then, Defendants' attempted disclosure was inadequate and confusing. Defendants use a standard Utility Addendum for Water, Sewer, Gas, Trash and Electric Service.

The Utility Addendum is a preprinted form that allows housing providers to check boxes and fill in blank spaces to state whether the tenant is responsible for payment of the specific utility, whether the tenant will be billed by the building or directly from the utility company, the amount or manner in which the tenant will be charged, and whether a private third party, like Conservice, will be involved in the billing.

61. Adding to the confusion, the Utility Addendum states that Plaintiff is responsible for payment for electricity and gas directly to the utility provider such as Pepco (for electric) and Washington Gas (for gas). Plaintiff does pay a monthly electricity bill to Pepco, but does not have a monthly gas bill from Washington Gas.

62. Only in the last paragraph of the Utility Addendum does it state that Plaintiff and Class members will have a second and third monthly electricity charge for Common Area Electricity and the electricity used for HVAC services, and how these and other utility fees would be calculated. This paragraph provided:

> Gas and Common Area Electric will be allocated using a combination of occupants and square footage of the unit. HVAC is sub metered using Partial Allocation / Average Rates: Rates will be calculated by dividing the Landlord's electricity bills by the consumption contained on those bills. Your monthly charges for Water, Sewer, Common Area Electricity and Common Area Gas will be calculated using an allocation formula based on the number of occupants in and square footage of your unit compared with the number of occupants in and total square footage of all the units in the community.

63. This disclosure was inadequate and confusing to Plaintiff and reasonable consumers because it did not provide any clarity or approximation on the amounts that would be assessed for the slew of Utility Fees. For example, Plaintiff did not expect and was surprised to later learn that her Common Area Electric fees would routinely exceed $100/month.

64. Defendants' drip-pricing scheme unfairly pressured Plaintiff and other Cielo tenants to agree to leases that contained illegal and undisclosed utility charges. By springing

these utility charges on Plaintiff at the time of lease-signing—after she had already invested $300 in application-related fees—Defendants unfairly exploited a situation where Plaintiff was more likely to agree to a take-it-or-leave-it lease.

65. Defendants drip pricing scheme also violates several subsections of D.C. Code § 28–3904 including, but not limited to, subsection (h) which makes it a violation of District law to "advertise or offer goods or services without the intent to sell them or without the intent to sell them as advertised or offered" as Defendants did not intend to lease the apartments for the advertised price. D.C. Code § 28–3904(h).

66. In addition, Defendants' drip-pricing scheme is an unfair trade practice because it unfairly withholds material price information from tenants, depriving them of their ability of comparison shop for rental housing. Such a practice causes substantial injury to consumers who face surprise, mandatory, and monthly fees that were never disclosed to them at the time they were deciding whether to rent an apartment. Notably, the CPPA's prohibition on unfair trade practices was passed specifically to "protect consumer independence by stopping business practices that impede a consumer's ability to make informed choices."[5] Consumers could not reasonably avoid such a trade practice due to Defendants' non-disclosure. Defendants' failure to disclose the true price of renting at Cielo also lacks any discernible countervailing benefits to consumers or competition.

67. Defendants' drip-pricing scheme injured Plaintiff and similarly situated Cielo tenants by forcing them to pay rent in excess of the disclosed and advertised price, and by depriving them of their statutory right to truthful information under the CPPA. This information

[5] D.C. Council Committee Report on Bill 22-185 at 4 (Mar. 20, 2018), https://chairmanmendelson.com/wp-content/uploads/2018/03/B22-185-Consumer-Protection-Clarification-and-Enhancement-Amendment-Act-Packet.pdf.

related to monthly recurring fees was material to Plaintiff and other Cielo tenants, as such fees effectively increased their monthly rent obligations.

CLASS ALLEGATIONS

68. Plaintiff brings this lawsuit as a class action pursuant to D.C. Superior Court Rule of Civil Procedure 23.

69. Plaintiff seeks certification of the following Classes:

> **Application Fee Class.** All prospective tenants of Cielo who were assessed and paid fees related to their rental applications in excess of the statutory maximum prior to approval of their applications within one year preceding the filing of this action.
>
> **Common Area Electricity Class.** All current and former tenants of Cielo who paid Common Area Electricity Fees within three years preceding the filing of this action.
>
> **Trash Fee Class.** All current and former tenants of Cielo who paid Trash Fees within three years preceding the filing of this action.
>
> **Service Fee Class.** All current and former tenants of Cielo who paid Service Fees within three years preceding the filing of this action.
>
> **Drip-Pricing Class.** All current and former tenants of Cielo who were assessed and paid Utility Fees and/or Service Fees that were not disclosed to them in the initial advertisement and/or at the time they submitted their rental applications within three years preceding the filing of this action.

70. **Numerosity.** Plaintiff is informed and believes that there are hundreds of members of each Class and that size makes joinder of all members impracticable. Cielo has over 400 rental apartments and the exact number of members for each Class can be determined from information in the possession and control of Defendants.

71. **Commonality.** Defendants' violations of the CPPA are predicated on common conduct applicable to all class members. For example, Defendants maintained consistent policies relating to the challenged Application Fee, Utility Fees, Common Area Electricity Fee, Trash Fees, and Service Fees that apply to all tenants. Defendants used form rental applications, leases,

Utility Addenda, and monthly billing forms that were substantially similar for all tenants. The use of form documents and policies present common proof that can answer common questions of law and fact applicable to the entire class, including:

- Whether Defendants' Application Fees are illegal;
- Whether Defendants' Common Area Electricity Fees are illegal;
- Whether Defendants' Trash Fees are illegal;
- Whether Defendants' Service Fees are illegal; and
- Whether Defendants' drip-pricing scheme is illegal.

72. **Typicality.** Plaintiff's claims are typical, if not identical, to the claims that could be asserted by all members of the Classes. Plaintiff's claims arise from Defendants' practices that apply to all class members.

73. **Adequacy.** Plaintiff is a member each Class and will adequately represent the interests of those class members because there are no conflicts between Plaintiff and those class members, and because Plaintiff's counsel has the experience and skill to zealously advocate for the interest of class members.

74. **Predominance.** Common issues predominate over individualized inquiries in this action because Defendants' liability can be established as to all members of the Classes.

75. **Superiority.** Proceeding as a class action is superior to any alternatives, including for the reasons that it will provide a realistic means for members of the Classes to recover damages; it would be substantially less burdensome on the court and parties than hundreds of individual proceedings; and because issues common to all class members can be efficiently managed in a single proceeding.

CAUSE OF ACTION

COUNT I: VIOLATION OF THE D.C. CONSUMER PROTECTION PROCEDURES ACT
(On Behalf of the Classes against Defendants)

76. Plaintiff incorporates the foregoing allegations into this Count.

77. Defendants are "merchants" under the CPPA because they "lease . . . either directly or indirectly" and supply consumer goods or services. D.C. Code § 28-3901(3).

78. Rental housing and related utilities fall within the definition of "goods or services," which are defined to include "any and all parts of the economic output of society . . . and includes . . . real estate transactions, and consumer services of all types." D.C. Code § 28-3901(7); *see also* D.C. Code 28-3905(k)(6) (private right of action established by CPPA "shall apply to trade practices arising from landlord-tenant relations").

79. Plaintiff is a consumer because she "lease[d] . . . consumer goods or services" by signing a Lease with Defendants, as well as receiving consumer goods and services from Defendants in the form of rental property management services. D.C. Code § 28-3901(2)(A).

80. Defendants' charging of illegal fees and their drip-pricing scheme are "trade practices" as defined by the CPPA because they are "acts which . . . directly or indirectly . . . effectuate, a sale, lease, or transfer, of consumer goods or services." D.C. Code § 28-3901(6).

81. The CPPA provides a private right of action authorizing Plaintiff to "seek[] relief from the use of a trade practice in violation of a law of the District." D.C. Code § 28-3905(k)(1)(A).

82. Defendants violated the CPPA as to Plaintiff and the Classes in numerous ways, including, but not limited to, the following. As used in this paragraph, the term "Section" refers to sections of the CPPA.

a. **Application Fee Claim.** Defendants' charging of illegal Application Fees in violation of D.C. Code § 42-3505.10(b)'s statutory cap is: (i) a "trade practice in violation of a law of the District" actionable under Section 3905(k)(1)(A); (ii) a deceptive and/or unfair trade practice prohibited by Section 3904; (iii) a transaction "prohibited by law" in violation of Section 3904(e-1); (iv) an unconscionable lease term prohibited by Section 3904(r); (v) a failure to state a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f); and (vi) a use of ambiguity as to a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f-1).

b. **Common Area Electricity Fee Claim.** Defendants' imposition and collection of illegal Common Area Electricity Fees in violation of the Housing Code is: (i) a "trade practice in violation of a law of the District" actionable under Section 3905(k)(1)(A); (ii) a deceptive and/or unfair trade practice prohibited by Section 3904; (iii) a transaction "prohibited by law" in violation of Section 3904(e-1); (iv) an unconscionable lease term prohibited by Section 3904(r); (v) a failure to state a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f); and (vi) a use of ambiguity as to a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f-1).

c. **Trash Fee Claim.** Defendants' imposition and collection of illegal Trash Fees in violation of the Housing Code is: (i) a "trade practice in violation of a law of the District" actionable under Section 3905(k)(1)(A); (ii) a deceptive and/or unfair trade practice prohibited by Section 3904; (iii) a transaction "prohibited by law" in violation of Section 3904(e-1); (iv) an unconscionable lease term prohibited by Section 3904(r); (v) a failure to state a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f); and (vi) a use of ambiguity as to a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f-1).

d. **Service Fee Claim.** Defendants' imposition and collection of illegal Service Fees in violation of D.C. Code § 42-3505.10(b-2)(1) is: (i) a "trade practice in violation of a law of the District" actionable under Section 3905(k)(1)(A); (ii) a deceptive and/or unfair trade practice prohibited by Section 3904; (iii) a transaction "prohibited by law" in violation of Section 3904(e-1); and (iv) an unconscionable lease term prohibited by Section 3904(r); (v) a failure to state a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f); and (vi) a use of ambiguity as to a material fact (i.e., the illegality of the fee) that tends to mislead prohibited by Section 3904(f-1).

e. **Drip-Pricing Claim.** Defendants' use of a drip-pricing scheme that failed to disclose a unit's Utility Fees, Common Area Electricity Fees and Service Fees—which fall within the statutory definition of "rent"—at the time of a prospective tenant's application in violation of D.C. Code § 42-3502.22(b)(1) is: (i) a "trade practice in violation of a law of the District" actionable under Section 3905(k)(1)(A); (ii) a deceptive and/or unfair trade practice prohibited

by Section 3904; (iii) a misrepresentation as to a material fact (i.e., the advertised and disclosed price of a unit's rent) that tend to mislead prohibited by Section 3904(e); (iv) a failure to state a material fact (i.e., the undisclosed Utility and Service Fees) that tends to mislead prohibited by Section 3904(f); and (v) a use of ambiguity as to a material fact (i.e., the advertised and disclosed price of a unit's rent and the undisclosed Utility and Service Fees) that tends to mislead prohibited by Section 3904(f-1). In addition, independent of D.C. Code § 42-3502.22(b)(1), Defendants' failure to disclose a unit's Utility Fees and Service Fees are (vi) a violation of Section 3904(h)'s prohibition on advertising goods "without the intent to sell them as advertised as offered."

83. Plaintiff seeks all relief authorized by D.C. Code § 28-3905(k)(2) for herself and similarly situated class members, including:

a. Treble damages, or $1,500 per violation, whichever is greater;

b. Punitive damages;

c. Injunctive relief (such injunctive relief is sought by Plaintiff on behalf of himself and the general public pursuant to D.C. Code § 28-3905(k)(1)(B));

d. Additional relief as may be necessary to restore to the consumer money or property acquired by the unlawful practice, such as disgorgement of ill-gotten gains;

e. Reasonable attorney's fees;

f. Any other relief which the Court determines proper.

PRAYER FOR RELIEF

Plaintiff respectfully requests that this Court enter a judgment in its favor and grant relief against Defendants as follows:

a. Certifying the proposed Classes and designated undersigned counsel as Class Counsel;

b. Awarding Plaintiff and the Classes treble damages, or statutory damages in the amount of $1,500 per violation, whichever is greater as authorized by the CPPA;

c. Award Plaintiff and the Classes punitive damages;

d. Award Plaintiff and the Classes attorneys' fees and costs;

e. Enjoining Defendants from continuing to engage in the unlawful trade practices described above;

f. Extend the period of time in which Plaintiff must move for certification pursuant to Rule 23-I(b), given the complexity of this action, and enter a briefing schedule for class certification at the Initial Scheduling Conference for this action; and

g. Award all other relief which the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues triable as of right.

Respectfully submitted,

Date: November 25, 2024

/s/ Randolph T. Chen

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