IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA v. THE BENNINGTON CORPORATION, et al.	Case Number: 2018 CA 007253 B Judge Shana Frost Matini
DISTRICT OF COLUMBIA v. ASTOR PARTNERSHIP LLC, et al.	Case Number: 2019 CA 001845 B
DISTRICT OF COLUMBIA v. TAVANA CORPORATION, et al.	Case Number: 2019 CA 003718 B

MEMORANDUM OPINION AND ORDER

Before the Court is the Motion for Summary Judgment ("Mot."), Memorandum in Support ("Mem."), and Statement of Undisputed Material Facts ("SUMF") filed by the District of Columbia ("District") on April 8, 2021 in the matter of *District of Columbia v. Tavana Corporation, et al.*, Civil Action No. 2019 CA 3718. In its Motion, the District seeks summary judgment in its favor against Defendants Mehrdad Valibeigi and the Tavana Corporation ("Tavana"). The District contends that it is entitled to final judgment in the amount of $21,286,519.00. Mot. at 3.

On July 17, 2021, Mr. Valibeigi late-filed his opposition to the summary judgment motion ("Valibeigi Opp."). After requesting and receiving leave of Court to late-file an

opposition to the Motion,[1] Tavana filed a Memorandum in Opposition to the Motion ("Tavana Opp.") on September 27, 2021, to which the District filed a Reply on October 1, 2021.[2] After careful consideration of the filings, exhibits and testimony presented at the evidentiary hearing, the relevant law and the record herein, the Court grants in part and denies in part the District's Motion.

I. Factual and Procedural Background

This matter involves the Westwood Apartments, located at 1850 Kendall Street, NE ("1850 Kendall") and 1854 Kendall Street, NE, ("1854 Kendall"), Washington, D.C. (collectively, the "Property"). *See generally* Compl. The Property is owned by Tavana, which is a corporation organized under the laws of the District of Columbia, and is "engaged in the business of purchasing, selling, and managing real estate and other investments." Compl. ¶ 11. Mr. Valibeigi is the President of Tavana. *Id.*

The District of Columbia filed its Complaint in this matter on June 4, 2019, seeking a receiver under the District of Columbia Tenant Receivership Act ("TRA"), asserting that the "Property suffers from a demonstrated history of neglect and indifference" by the Defendants for "numerous years," resulting in the tenants suffering "from many dangerous conditions, including: lack of heat; severe rodent, roach and bedbug infestations; defective plumbing which

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[1] Tavana was ordered into default on November 24, 2020, as no attorney had entered an appearance on behalf of Tavana after the Court granted the consent motion of its former counsel to withdraw on October 28, 2020. *See* Dkt. (Nov. 24, 2020). On July 8, 2021, Dawn Stewart, Esq., entered a limited appearance on behalf of Tavana. *See* Dkt. (July 8, 2021).

[2] The instant Motion relates only to the claims made against Tavana and Mr. Valibeigi in the matter of *District of Columbia v. Tavana Corporation, et al.*, 2019 CA 3718 B ("*Tavana* Matter"). The *Tavana* Matter is consolidated with two other matters initially brought under the District of Columbia Tenant Receivership Act and the District of Columbia Consumer Protection Procedures Act: *District of Columbia v. The Bennington Corporation, et al.*, 2018 CA 7253 B ("*Bennington* Matter"), and *District of Columbia v. Astor Place Partnership, et al*, 2019 CA 1845 B ("*Astor* Matter"). Mehrdad Valibeigi, who is a principal in each of the corporate entities, is named as an individual defendant in all three matters.

has resulted in water damages and widespread leaks; electrical hazards; and missing fire suppression systems." Compl. ¶ 4. The District contended that the Defendants' refusal to abate the conditions justified appointment of a receiver pursuant to the TRA, which permits the Court to appoint a receiver "for a rental housing accommodation in the District of Columbia in order to safeguard the health, safety, and security of tenants from a landlord's continued failure to address housing conditions." Compl. ¶¶1-5; *see also id.* ¶¶ 50-52 (outlining the legal parameters for appointment of a receiver pursuant to D.C. Code § 42-3651.01 *et seq.*). The District also alleged that the Defendants committed unlawful trade practices under the District of Columbia Consumer Protections Procedures Act ("CPPA") by renting housing units that failed to substantially comply with the District's housing code.[3] *See* Compl. ¶¶ 57-68. The District sought injunctive relief under the TRA, and restitution, civil penalties, damages, costs, and fees under the CPPA. Compl. at ¶¶ 19-20.

The District also sought appointment of a receiver under the TRA. *See generally* Compl. After considering the various filings and proposed plans by the parties on the issue, the Honorable Jóse M. López declined to appoint a receiver, noting that Defendants acknowledged the District's objections to Defendants' proposed plan, and sought accommodation on certain grounds. *See* Order (Sept. 25, 2019). Given that the parties were amenable to working together to develop a plan, the Court set a status hearing to permit the parties the opportunity to conduct a walk-through of the Property to assess the work that needed to be completed, develop an

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[3] As used herein, the term "housing code" refers to Title 14, Chapters 1-16 of the District of Columbia Municipal Regulations ("DCMR") and encompasses the "property maintenance code," the "fire code" and "mold laws." The "property maintenance code" refers to Title 12-G of the DCMR. The term "fire code" refers to the Fire Code Supplement found in title 12-H of the DCMR and applicable provisions of the 2012 International Fire Code, available at https://codes.iccsafe.org/content/IFC2012. The term "mold laws" refers to the District of Columbia Air Quality Amendment Act of 2014, codified at D.C. Code §§ 8-241.01, *et seq.* and regulated at Title 20, Chapters 1-15 of the DCMR.

estimate based on the review of the Property of the cost of repairs, and determine a time frame for completion of the repairs. *See id.* (Sept. 25, 2019).

On October 24, 2019, the District filed a Pre-Hearing Status Update, advising the Court that since the September 24, 2019 hearing "the District conducted multiple inspections at the Property including, a mold assessment, pest inspection, and inspection by a contractor;" and that despite "multiple attempts to communicate its concerns with Defendants regarding their proposed abatement plan," the Defendants did not file "a modified plan that addresses the District's concerns." Status Update at 2 (Oct. 24, 2019). The District further stated that since the Complaint was filed, "the conditions at the Property have largely remained the same, if not worsened." *Id.*

The District further represented that a mold inspector inspected five units at the Property and "found active water leaks in ceilings, visible mold growth in bathrooms, kitchens and other living areas, and found elevated levels of toxic mild spores in the air samples." Status Update at 2 (Oct. 24, 2019). The District's entomologist expert inspected seven units of the Property for cockroach and mouse infestation issues, and noted in a "report that '[units inspected] were some of the most deplorable [he's] encountered in providing hands-on pest management services in the DMV area over the past 24 years.'" *Id.* at 3 (citing Ex. B, Pest Inspection Report) (alterations in District's filing). The expert cited significant structural issues, such as holes in walls under sinks, holes in tub surroundings, and lack of caulking in bathrooms and kitchens as the cause of cockroach infestation, and mouse movement between units due to holes in the HVAC closet floors. *Id.* The Status Update also advised the Court that its contractor observed "serious issues at the Property that needed to be immediately addressed" including "water infiltration in the basement units, entry points near the roof for rodents and other pests, cracks in the buildings'

exterior walls, and deteriorating fixtures and appliances." *Id.* at 4. The District's investigator also revisited the Property in October 2019 and concluded that the condition of the Property remained the same or had worsened since her prior inspections of the Property in November and December 2018. *Id.* at 4-5.

At the next Status Hearing on November 19, 2019, the District requested that the Court commence a Show Cause Hearing as Defendants had not addressed the abatement issues. Counsel for the District also advised the Court that there were three pressing issues that needed to be addressed prior to the next hearing: the fire suppression system, mold issues, and electrical issues, and provided the Court with reports of building code violations. *See* Dkt. (Nov. 19, 2019). Counsel for Defendants represented that she would work with the Defendants to address these issues prior to the next hearing. *Id.* A Show Cause Hearing was scheduled for January 6, 2020, but was continued to March 5, 2020 at the request of the District due to the unavailability of witnesses. *See* Consent Mot. to Continue Show Cause Hearing (Dec. 31, 2019); Order (Jan. 2, 2020).

On February 21, 2020, the *Tavana* Matter was consolidated with the *Bennington* Matter and the *Astor* Matter by Order of the undersigned, *see* Order (Feb. 18, 2020), and the March 5, 2020 Show Cause Hearing was converted to a Status Hearing, where the District represented that the Property was under contract for sale and expected to close on April 20, 2020 to a purchaser who was willing to work towards abatement. *See* Dkt. (Mar. 5, 2020). Soon thereafter, the Mayor enacted the COVID-19 public health emergency. The Court therefore continued a Status Hearing that was scheduled for March 19, 2020 until May 22, 2020, and ordered the parties to file a Status Report for the consolidated cases no later than March 26, 2020. *See* Am. Order (Mar. 19, 2020).

On March 26, 2020, the parties filed a Joint Status Report representing to the Court, with respect to the *Tavana* Matter, that sale of the Property remained scheduled for April 20, 2020. *See* Joint Status Report at 6 (Mar. 26, 2020). Throughout the spring, summer, and fall of 2020, however, settlement on the Property proved to be delayed, and eventually unsuccessful. *See* Dkt. (May 21, 2020, June 4, 2020, & June 19, 2020); *see also* Defs. Status Report at 2 (July 8, 2020); District Omnibus Pre-Hearing Update at 3 (July 10, 2020); Consolidated Status Report at 2 (July 23, 2020); District's Omnibus Pre-Hearing Update at 2 (July 24, 2020).

On October 16, 2020, the District of Columbia filed a Motion for Leave to amend its Complaint to add a request for judicial dissolution under the District of Columbia Business Corporations Act ("BCA"), and for injunctive and monetary relief under the Lead-Hazard Prevention and Elimination Act of 2008, *see* Mot. for Leave (Oct. 16, 2020), which the Court granted on November 3, 2020. *See* Order (Nov. 3, 2020).

Despite the many delays in selling the Property, settlement did appear hopeful after the tenant's association was able to successfully negotiate concessions on approximately $260,000 in outstanding debts and encumbrances on the Property. Notwithstanding this achievement, on October 21, 2020, the District filed a status report stating that Mr. Valibeigi withdrew from the sales contract and that he intended to place Tavana in bankruptcy.

At the October 26, 2020 Status Hearing, counsel for the District represented that the *Tavana* Matter had taken "a complete 180" from the last time the parties were before the Court due to Mr. Valibeigi's decision to withdraw from the sales contract, notwithstanding the success of the tenants in negotiating the debts against the Property to $0 with the understanding the Property would go to closing. In the meantime, conditions at the Property remained deplorable. *See* District's Omnibus Pre-Hearing Update at 2 (Sept. 22, 2020) (representing that while "pest

control and several security measures have been implemented…trash collection remains sporadic and [the Property] is still a hub of illegal activity."). Counsel for the tenants' association represented that there was now an ongoing leak at the Property that was resulting in a water bill of approximately $17,000 to $18,000 per month. The District further represented that it was seeking judicial dissolution of Tavana, and would further request that a receiver be appointed to manage the corporation and oversee the sale of the Property to a responsible owner.

In anticipation of the District's impending motion for judicial dissolution under the BCA, the Court scheduled an evidentiary hearing for November 24, 2020 as required by D.C. Code § 29-312.22. At that hearing, as no counsel had entered an appearance on behalf of Tavana,[4] the Court entered default against Tavana, heard testimony from several witnesses, and admitted into evidence hundreds of pages of documents. *See* Dkt. (Nov. 24, 2020).

On January 14, 2021, the primary lienholder for the Property foreclosed on the Property, and the Property was expected to go to closing by mid-February 2021. *See* District's Omnibus Status Update at 2 (Jan. 25, 2021). The District stated that it was working with the purchaser to submit the development agreement between the purchaser and the tenants as an abatement plan in the instant action. *Id.* As of the February 25, 2021 Status Hearing, the foreclosure sale date had been extended to March 24, 2021, and Mr. Valibeigi represented that he did not intend to challenge the foreclosure. The Property was sold on March 31, 2021.

On June 24, 2021, the Court granted the District's unopposed Motion for Judicial Dissolution of Tavana, ordered that Tavana be dissolved, and appointed a receiver *pendent lite* to take responsibility for all of Tavana's assets. *See* Order (June 24, 2021). Shortly thereafter, on

[4] The Court granted counsel's request to withdraw, with the consent of Mr. Valibeigi, on October 28, 2020. *See* Order (Oct. 28, 2020).

July 8, 2021, counsel entered an appearance on behalf of Tavana, and sought and received leave to oppose the pending summary judgment motion.[5]

II. Standard of Review

To prevail on a motion for summary judgment, the moving party must demonstrate, based on the pleadings, discovery, and any affidavits or other materials submitted, that there is no genuine issue as to any material fact and that it is entitled to judgment in its favor as a matter of law. *Wash. Invest. Partners of Del., LLC v. Sec. House, K.S.C.C.*, 28 A.3d 566, 573 (D.C. 2011) (citing *Grant v. May Dep't Stores Co.*, 786 A.2d 580, 583 (D.C. 2001)); Super. Ct. Civ. R. 56(a). The Court, when considering a motion for summary judgment, must view the pleadings, discovery materials, and affidavits or other materials in the light most favorable to the non-moving party, and may grant the motion only if a reasonable fact finder, having drawn all reasonable inferences in favor of the non-moving party, could not find for the non-moving party based on the evidence in the record. *Wash. Invest. Partners*, 28 A.3d at 573 (citations omitted).

The moving party has the initial burden of proving that there is no issue of material fact in genuine dispute. If the moving party carries its initial burden, then the non-moving party assumes the burden of establishing that there is an issue of material fact in genuine dispute. *Mixon v. Wash. Metro. Area Transit Auth.*, 959 A.2d 55, 57 (D.C. 2008). A conclusory allegation or denial is not sufficient to establish a genuine factual dispute. *Boulton v. Inst. of Int'l Educ.*, 808 A.2d 499, 502 (D.C. 2002). Rather, there must be "some significant probative evidence tending to support the complaint so that a reasonable fact-finder could return a verdict for the

[5] While the instant Motion was pending, the District sought leave to file a Second Amended Complaint, *see* Mot. for Leave (Sept. 3, 2021), to add the new owners of the Property, 1850-1854 Kendall Street, NE, LLC ("Kendall LLC"), as Defendants to the *Tavana* matter, arguing that, as the new owner, Kendall LLC was legally obligated to abate the housing code violations at the Property that are the subject of the TRA claims. The Court granted the District's Motion for Leave on September 20, 2021, and the Second Amended Complaint was deemed filed. *See* Order (Sept. 20, 2021). The addition of Kendall LLC has no impact on the instant Motion before the Court.

non-moving party." *Lowery v. Glassman*, 908 A.2d 30, 36 (D.C. 2006) (internal quotation marks omitted).

A party "cannot stave off the entry of summary judgment through [m]ere conclusory allegations." *Smith v. Swick & Shapiro, P.C.*, 75 A.3d 898, 902 (D.C. 2013) (quotation and citation omitted); *see also McFarland v. George Washington University*, 935 A.2d 337, 349 (D.C. 2007) (plaintiff's "conclusory statements about his own qualifications are not sufficient to defeat a motion for summary judgment" in an employment discrimination case). "The object of [the provision in Rule 56 requiring a declaration to set forth "specific facts"] is not to replace conclusory allegations of the complaint or answer with conclusory allegations of an affidavit." *Lujan v. National Wildlife Federation*, 497 U.S. 871, 888 (1990) (upholding grant of summary judgment in favor of defendant because plaintiff's affidavits were not specific enough to establish standing).

III. Undisputed Material Facts

As a preliminary matter, the Court notes that Tavana's Opposition does not fully comply with Superior Court Civil Rule 56 insofar as it does not correspond by number the facts it claims are in dispute with the numbers in the District's statement. *See* Super. Ct. Civ. R. 56(b)(2)(B) (an opposing party's "disputed material facts must be stated in separate numbered paragraphs that correspond to the extent possible with the numbering of the paragraphs in the movant's statement.").

Moreover, Tavana's Opposition relies heavily—if not exclusively—on an affidavit submitted by Mr. Valibeigi. *See* Tavana Opp. (Valibeigi Aff.). "A [party's] own, even self-serving testimony will often suffice to defeat summary judgment – particularly where he has firsthand knowledge of a fact or observed an event, and where the case depends on the jury's

resolution of competing testimony and witness credibility." *Montgomery v. Risen*, 197 F. Supp. 3d 219, 252 (D.D.C. 2016); *see Barrett v. Covington & Burling, LLP*, 979 A.2d 1239, 1244 (D.C. 2009) (the Court cannot "resolve issues of fact or weigh evidence at the summary judgment stage"). However, conclusory, self-serving statements by an opposing party do not necessarily create a genuine dispute of material fact for purposes of summary judgment, especially "when these statements are unsubstantiated by any non-self-serving evidence" or when other undisputed evidence in the record renders them unreasonable. *See Mokhtar v. Kerry*, 83 F. Supp. 3d 49, 74 (D.D.C. 2015).

Even a witness who has personal knowledge concerning the matter about which he offers testimony "may make a statement that is so conclusory" and unsupported by "concrete affirmative evidence" that it is "insufficient to defeat a motion for summary judgment." *Montgomery*, 197 F. Supp. 3d at 252, 262 (quotation and citation omitted). "Although, as a rule, statements made by the party opposing a motion for summary judgment must be accepted as true for the purpose of ruling on that motion, some statements are so conclusory as to come within an exception to that rule." *See Greene v. Dalton*, 164 F.3d 671, 675 (D.C. Cir. 1999); *Buie v. Berrien*, 85 F. Supp. 3d 161, 176-77 (D.D.C. 2015) ("Summary judgment for a defendant is most likely when a plaintiff's claim is supported solely by the plaintiff's own self-serving, conclusory statements.") (quotation and citation omitted); *Maramark v. Spellings*, 2006 U.S. Dist. LEXIS 6630, at *52-54 (D.D.C. 2006) ("In the post-discovery summary judgment context, a conclusory affidavit, supported by no evidence within the record, is insufficient to avoid summary judgment.").

With this legal standard in mind, the Court addresses Tavana's factual contentions herein as appropriate.

The Property consists of two apartment buildings with twenty-four rental units located at 1850 and 1854 Kendall Street, NE, in the District of Columbia. SUMF ¶ 15. Tavana was formed as a corporation on April 8, 1994 with the purpose of purchasing, selling, and managing real estate and other investments, and took title to the Property soon thereafter on May 6, 1994. SUMF ¶¶ 16-17. Mr. Valibeigi is the president and sole owner of Tavana, and leased rental units at the Property on behalf of Tavana. SUMF ¶¶ 19-20. The Property was sold to East West Development, LLC, a company owned and managed by Sam Razjooyan, on March 31, 2021. SUMF ¶ 18. As discussed thoroughly in its Order granting the District's request for judicial dissolution of Tavana, there is a robust record of numerous housing code violations that permeate the Property and have existed for many years.[6] For the purposes of the instant Motion, the Court makes the following factual findings.

1. Inspection of the Property by the District of Columbia Department of Consumer and Regulatory Affairs.

Between June 2009 and November 2018,[7] DCRA visited the Property on numerous occasions to conduct inspections for violations of the housing code. DCRA's inspections resulted in notices that cited Defendants for at least 279 violations of the housing code.[8] SUMF ¶34; *see*

[6] Investigator Renardra Brown from the Office of the Attorney General visited the Property on November 13, 2018 and December 28, 2018. SUMF ¶¶ 37-39. During those visits, she took numerous photographs and testified credibly at the November 24, 2020 evidentiary hearing regarding her photographs and her observations as to the conditions of the eight units she visited. *See* Order at 14-19 (June 24, 2021). While many of the conditions Ms. Brown observed were so deplorable—including pest infestations, active water leaks, and ceilings that were literally falling—that it would be obvious to a layperson that the premises were not properly maintained, and notwithstanding that the Court found Ms. Brown credible and relied on her observations in its ruling on judicial dissolution, the Court's focus for the purposes of this Motion are on the observations and conclusions of representatives of government agencies and licensed experts.

[7] The Court notes, for purposes of penalties under the CPPA, any violation cited before July 2018 is subject to a $1000 maximum penalty, and any violation cited after July 2019 is subject to a maximum penalty of $5000. *See* D.C. Law 22-140, Consumer Protection Clarification and Enhancement Amendment Act of 2018. Thus, some of the violations in these sections are subject to a greater penalty than others.

[8] The District has represented that there were 347 violations cited by DCRA between June 2009 and November 2018. *See* SUMF ¶ 34. The Court has reviewed the exhibits, and notes that there appear to be some duplicate

also Ex. 34, DCRA Inspection Documents, at TavanaDCRA0001-211).[9] These violations included failure to provide fire extinguishing equipment in an operable condition, *id.* & Ex. 34 (TavanaDCRA0100); failure to eliminate infestation of bed bugs and roaches, *id.* & Ex. 34 (TavanaDCRA0006); cracks in the ceiling, *id.* & Ex. 34 (TavanaDCRA0007); failure to provide heat, *id.* & Ex 34 (TavanaDCRA0017); and dampness in the ceiling, *id.* & Ex. 34 (TavanaDCRA0030).[10]

On March 13, 2019 and July 30, 2019, inspectors from the Department of Consumer and Regulatory Affairs ("DCRA") conducted a property-wide inspection of numerous units at the Property, and identified 161 Housing Code and Property Maintenance Code Violations. *See* Ex. 34.[11] These inspection reports identified the following violations:

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citations, *see, e.g.,* DCRATavana0077-0078, 0153-0158. There are also citations that do not provide a unit number (and do not address common areas of the building) which the Court has declined to consider as not providing proper notice. Also, as stated *infra* n.11, the Court has found that Tavana has demonstrated a material factual dispute as to certain alleged violations.

[9] The July 2009 notices of violation do not provide a unit number for the unit or units where violations were cited. *See* Ex. 34 (DCRATavana0001-0012). Thus, these notices are insufficient to demonstrate that no material factual dispute exists as to the existence of housing code violations.

[10] The Court notes that Tavana contends that "[t]he matter of *William Coleman v. Tavana Corporation*, 2015 CA 5625 (D.C. Super. Ct. July 27, 2015) was adjudicated and dismissed as all alleged violations were deemed abated." Opp. at 2. Review of that matter demonstrated that Mr. Coleman resided in Unit B-2 of 1854 Kendall. *See* Compl., *William Coleman v. Tavana Corporation*, 2015 CA 5625 (D.C. Super. Ct. July 27, 2015). According to the Docket, the case was closed on November 23, 2015 as repairs had been completed. The violations found by DCRA, however, were all cited prior to the July 27, 2015 filing of the complaint. *See* Mot. Ex. 34, TavanaDCRA0049-0052 (Sept. 23, 2010) (7 housing code violations); TavanaDCRA0057-0060 (April 25, 2010) (5 housing code violations); TavanaDCRA0174-0177 (Aug. 28, 2014) (10 housing code violations); TavanaDCRA0178-0180 (May 26, 2015) (4 housing code violations). No violations have been cited after the judicial determination that repairs had been completed, and the Court finds that Tavana's factual assertion that repairs were made after a five-year history of violations to be insufficient to create a material factual dispute that conditions in violation of the CPPA did in fact exist in the unit.

[11] Tavana, by way of Mr. Valibeigi's affidavit, asserts that certain tenants refused to provide access to their units to allow repairs to be made. Tavana Opp.; Valibeigi Aff. ¶¶ 5; 10 (averring that tenants in 1854 Kendall #T-4, and 1850 Kendall #101, #203, and #204 declined access for repairs to be made). The Court finds that this self-serving statement, which provides no indication of when or how many times access was requested and refused, or any evidence that attempts were made and declined—such as text messages or other communications—to be insufficient to create a factual dispute in light of the specific representations made by tenants in those units. *See* Mot. Ex. 5 (Wylie Aff.; Unit #T-4); Ex. 6 (Harley Aff.; Unit #101); Ex. 10 (Washington Aff.; Unit #203); Ex. 7 (Dyson Aff.; Unit 204). *See McFarland*, 935 A.2d at 349 (conclusory statements not sufficient to defeat a motion for summary judgment); *Mokhtar*, 83 F. Supp. 3d at 74 (conclusory statement "unsubstantiated by any non-self-serving evidence"

In Unit #101 of 1850 Kendall, the inspector found 19 violations, including failing to have proper carbon monoxide detectors present, failing to have a properly working lavatory, missing smoke detectors, a mechanical vent in the kitchen that was not working properly, windows and window frames that needed to be repaired or replaced, unsafe conditions in the bathroom, walls and ceilings throughout the unit that needed to be repaired and repainted, cracks and holes in walls and ceilings throughout the unit, and water leaking in the hallway and living room. Ex. 34 (TavanaDCRA0213-0228).

In Unit #104 of 1850 Kendall, the DCRA inspector found the following 17 violations: sink plumbing needing repair and to be secured to the lavatory wall; mechanical vents in the kitchen and bathroom that needed to be repaired or replaced; windows with loose window frames throughout the unit that needed to be weatherproofed or replaced; closet doors that had to be replaced; damaged cabinets in the kitchen; chipping and peeling paint throughout that unit with walls that needed to be repaired and repainted; dampness/leaks in the bathroom, living room, and rear sleeping room that needed to be corrected with cracks and holes in the walls; cracks and separations in the bathroom floor; torn carpet in the rear sleeping room. Ex. 34 (TavanaDCRA0255-0269).

Unit #202 of 1850 Kendall was cited for four housing code violations for not having a carbon monoxide detector or smoke detectors where required, and cracks in the bathroom ceiling. Ex. 34 (TavanaDCRA0270-0274).

Unit #204 of 1850 Kendall was cited for nine violations for failure to provide carbon monoxide and smoke detectors as required; a defective heating facility; windows not properly weatherproofed; a bathroom sink that was not secured to the bathroom wall; a light fixture in the kitchen with missing and defective parts; a door in a bedroom that was not properly attached to the hinges; all walls in the unit needed to be repainted; holes in the bathroom and both bedrooms that needed to be repaired and repainted; and all vents needed to be cleaned. Ex. 34 (TavanaDCRA0275-0284).

Unit #T1 of 1850 Kendall was cited for 12 violations including defective electrical wall outlets in the bathroom and living room; water leaks in the bathroom requiring the ceiling

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insufficient, particularly where other undisputed evidence in the record renders them unreasonable); *see also Greene*, 164 F.3d at 675 (noting an exception to the rule that statements made by a party opposing a summary judgment must be accepted as true for statements that are too conclusory in nature).

The Court does find, however, Mr. Valibeigi's statements that 1854 Kendall #101 was vacant, *see* Tavana Opp.; Valibeigi Aff. ¶ 9, in the absence of any evidence in the record to the contrary, to be sufficient to create a factual dispute as to whether Defendants had any obligation to maintain that unit within the housing code. Therefore, the Court has not considered the violations cited by DCRA for this Unit. *See* Ex. 34 (TavanaDCRA0031-0034).

Similarly, Mr. Valibiegi represents that 1850 Kendall #103 has been occupied by a trespasser for the last five years. Tavana Opp.; Valibeigi Aff. ¶ 8. The District offers no evidence to dispute this assertion, arguing only that there is no evidence that Defendants tried to oust the alleged squatter, and the fact that one was allegedly permitted to remain in the Property for five years "is more evidence of Tavana's lax management." Reply at 7. Considering the assertion in the light most favorable to Defendants, and finding no authority to support the position that a landlord is required to maintain a property in a habitable condition for a trespasser, the Court has not included the DCRA violations cited on March 13, 2019 in unit 103 of 1850 Kendall. *See* Ex. 34 (TavanaDCRA0229-0254).

to be repaired or replaced; and a hole in the bathroom ceiling. Ex. 34 (TavanaDCRA0301-0309).

Unit #T2 of 1850 Kendall was cited with three violations for water leaks in the bathroom and kitchen that needed to be repaired, and walls that needed to be replaced or repaired. Ex. 34 (TavanaDCRA0310-0312).

Unit #T4 of 1850 Kendall was cited for 27 violations and the landlord ordered to repair or replace the living room door so that it fit properly within the door frame, replace missing kitchen cabinets and kitchen cabinet doors; and to repair and repaint all surfaces in the unit and repair or replace all floor tiles in the unit; repair ceiling holes in the bathroom; locate source of water leak throughout the unit and repair or replace the ceiling. Ex. 34 (TavanaDCRA0313-0330).[12]

Unit #102 of 1854 Kendall was found to have eight violations for faulty outlets and receptacles throughout the unit; damaged components to the surfaces in the bathroom, bedroom, and living room; repairs that needed to be made so that the bedroom floor would be structurally sound; peeling and chipping paint in the kitchen; failure to exterminate unit; repairs required for all holes, cracks, and openings in the unit; missing hardware on the bedroom door, and defective components in the bedroom and bathroom. Ex. 34 (TavanaDCRA0335-0342).

Unit #201 of 1854 Kendall was cited for 13 violations for: an entry door that lacked proper insulation; failure to provide proper carbon monoxide detectors; failure to have a functioning exhaust vent in the kitchen; light fixtures that needed the globes replaced; a defective electrical wall outlet; missing smoke detectors; holes in the floor of one of the bedroom that were permitting rodents to enter the unit; cracks in the walls and ceilings throughout the unit; a water leak in one of the bedrooms; holes in a bedroom closet; and inoperable doors. Various repairs were required to the bathroom: recaulk the vanity to prevent leaks; repair the faucet and toilet to be operable and secure to the floor; repair cracks in shower to prevent leaks. Ex. 34 (TavanaDCRA0343-0355).

Unit #B3 of 1854 Kendall was inspected and found to have four violations: a defective HVAC system; missing smoke detectors; leaks in the bathtub, sink and toilet in the bathroom. Ex. 34 (TavanaDCRA0356-0360).

Unit #B4 of 1854 Kendall was inspected and found to have 17 violations: a missing carbon monoxide detector; exposed electrical wires in closets; missing smoke detectors; window that does not easily open or close; missing parts of the ceiling throughout the unit; black discoloration on closet wall; damaged entry door; no proper ventilation system

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[12] While Mr. Valibeigi states that "[a]ny issues in Unit #T-4 of 1850 Kendall were abated as of April 26, 2019, with the exception of painting the Unit and fixing some tiles on the floor," Opp.; Valibeigi Aff. ¶ 5, the Court finds that this assertion cannot create a material factual dispute as to the existence of housing code violations that also violated the CPPA given that the DCRA cited the violations more than one year before Mr. Valibeigi claims they were abated, and that DCRA also cited violations in December 2010. *See* Ex. 34 (TavanaDCRA0027-0033). Rather, Mr. Valibeigi's affidavit offers further proof that housing code violations did in fact exist and were allowed to remain in place for a lengthy period of time.

in bathroom; bathtub not properly installed; leaking pipe in utility closet. Ex. 34 (TavanaDCRA0361-0374).

The DCRA Inspectors also cited the landlord for 17 violations in the common areas of the Property. The first level of 1850 Kendall was found to be missing a vent cover, and the landlord was instructed to provide a vent cover to "prevent rodents and other things from entering" the Property. DCRA also cited the landlord for a hallway that had a defective light fixture, obstructed fire stairways, exit signs that were not consistently illuminated and emergency lighting, missing fire extinguishers, a fire extinguisher that was not properly serviced/tagged; defective gutters outside the building; defective hardware and cracked glass on the entrance door; graffiti and loose mortar between bricks in the hallway; floors and windows not maintained in a clean and sanitary condition; cracks and missing bricks in walls and ceilings of the hallways; missing tiles; corroded surfaces; loose handrails and guardrails on the stairs; garbage accumulated in the front of the building. Ex 34 (TavanaDCRA0285-0300).

DCRA conducted additional inspections in September and October of 2020, and cited Defendants for ten violations relating to the exterior of the Property. SUMF ¶ 59; Ex. 26. The violations include failure to maintain the exterior of the Property free from garbage and overgrown vegetation, failure to eliminate peeling or chipping paint, failure to maintain skylights and window frames in sound condition, and failure to maintain illuminated exit signs. *Id.*

2. **Violations cited by the Fire and Emergency Medical Services Department (FEMS)[13]**

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[13] While Tavana claims, through the affidavit of Mr. Valibeigi, that Omega Fire serviced the fire extinguishers at the Property, the only evidence provided to dispute the December 2018 violation reports is a ledger demonstrating a payment in May 2018 to Omega Fire in the amount of $140.87. *See* Opp.; Velibeigi Aff. ¶ 4 & General Ledger. This assertion is therefore insufficient to materially dispute that the FEMS inspector found numerous violations in December 2018, some of which remained in March 2019. Indeed, the FEMS violations were addressed at the November 19, 2019 status hearing and acknowledged by the Defendants at that time. *See* Dkt. (Nov. 19, 2019); *see also Mokhtar*, 83 F. Supp. 3d at 74 (self-serving statements that are not substantiated by non-self-serving evidence will not create a genuine issue of material fact when other undisputed evidence in the record makes them unreasonable).

A Fire Inspector from the District of Columbia Fire and Emergency Management Services Department ("FEMS") conducted two inspections at the Property on December 13, 2018 and December 31, 2018. SUMF ¶ 40. During the first inspection, the Fire Inspector found a total of 20 violations. SUMF ¶ 41; Mot. Ex. 11, Dec. 13, 2018 Fire Inspection Report Stamped. These included the following violations: missing fire extinguishers; missing pull station placards; fire alarm system not working properly; front door not closing and latching properly; missing or inoperable smoke detectors; improperly hanging light fixtures, and failure to provide illuminated exit signs. *Id.*

When the Fire Inspector returned to the property on December 31, 2018, the only violation abated by Mr. Valibeigi was the installation of smoke detectors in some of the units, but 17 violations remained. SUMF ¶ 42; Mot. Ex. 12, December 31, 2018, Fire Re-inspection Report. The Fire Inspector issued a Notice of Infraction on March 1, 2019, and fined Mr. Valibeigi $4,500 for failure to comply with a Notice of Violation and failure to maintain fire protection equipment systems as required by the Fire Code. SUMF ¶ 43.

3. **District of Columbia Department of Energy and the Environment**[14]

On March 13, 2019, Inspectors from the Department of Energy and Environment ("DOEE") inspected the Property and identified lead-based paint hazards on the common stairway rail at 1850 Kendall Street NE. SUMF ¶ 44. DOEE served an Administrative Order on April 5, 2019 requiring Defendants to hire someone trained in lead-safe work practices to use interim controls to repair deteriorating paint surfaces, to obtain a clearance report from a D.C.-certified lead risk assessor and have an additional clearance examination conducted 36 months

[14] Tavana has asserted legal arguments, and not factual arguments, with respect to the DDOE findings. *See* Tavana Opp. at 6-7. Those arguments will be addressed *infra.*

after completion of the interim control activities. SUMF ¶ 45. Defendants were required to remediate all lead-based paint hazards at the Property on or before April 27, 2019. *Id.* DOEE also sent Defendants an invoice for reimbursement of proactive inspection costs requiring Defendants to pay $1,675 to DOEE. SUMF ¶ 46.

4. **Mold Violations**

After OAG filed its lawsuit, the District engaged a mold expert, William Spearman of Arrowhead Consulting, to inspect several units at the Property for mold. SUMF ¶ 47; *see also* SUMF ¶¶ 48-50. Mr. Spearman testified at the November 24, 2020 hearing as an expert witness, and the Court previously made the following findings with respect to Mr. Spearman's observations, which are part of the record in this case and have not been disputed by Tavana or Mr. Valibeigi:[15]

> In Unit #101 of 1850 Kendall, Mr. Spearman observed visible mold growth and water damage on bathroom ceiling and walls; active leaks in bathroom ceiling and wall cavities; water damage to ceiling materials in the living room; and HVAC coils completely clogged with dirt, mold growth, and debris. Mot. Ex. 23 at 1.[16] Mr. Spearman also observed that an attempt to patch the bathroom ceiling had been made, but the leak had not been repaired before the patch was made, causing the patch to fail. Digital photos

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[15] Tavana argues that expert reports are not admissible to create a dispute of material fact. Tavana Opp. at 7. Tavana cites no law for its position. Rule 56 provides that a party must support its position that a fact cannot be or is genuinely disputed by "citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials." Super. Ct. Civ. R. 56(c)(1)(A). Here, the District has cited to the expert reports in the record. While the expert reports were not submitted under oath, the record also contains Mr. Spearman's sworn testimony from the November 24, 2020 hearing, where Mr. Spearman testified to the information contained in the reports. Thus, to the extent that Tavana claims that the reports are not presented in a form that would be admissible into evidence, *see* Super. Ct. Civ. R. 56(c)(2), Tavana's contention lacks merit as the reports were already admitted into evidence and are accompanied by sworn testimony. *Cf. Potts v. District of Columbia*, 697 A.2d 1249, 1252 (D.C. 1997) ("statements by experts which are not made under oath are insufficient to defeat a motion for summary judgment."). Moreover, Tavana has not supported its position that these facts are disputed by citing to materials in the record, as Rule 56(c)(1) requires. *See also Clay Properties v. Washington Post Co.*, 604 A.2d 890, 894 (D.C. 1992) (burden on non-moving party to show "sufficient evidence supporting the claimed factual dispute… to require a jury or judge to resolve the parties' differing versions of the truth at trial.") (quotations and citations omitted).

[16] Neither Mr. Valibeigi nor Tavana have offered any evidence to dispute the existence of mold in Unit #101 of 1850 Kendall. At most, Mr. Valibeigi has asserted that the ceiling and walls were repaired in this unit in April 2019, which is approximately six months before Mr. Spearman conducted his mold inspection. *See* Tavana Opp. (Valibeigi Aff. ¶ 6); Mot. Ex. 23.

taken by Mr. Spearman show mold growth in the bathroom, and water damage to the bathroom wall, and to the ceiling in the bathroom and the living room. *Id.* at 2. Another digital photo shows the coils of the HVAC unit completely clogged with dirt, mold growth, and debris. *Id.* An infrared photo taken with a thermal imaging camera shows the presence of an active leak into the bathroom wall and ceiling.[17] *Id.* Air samples were taken which found elevated Altemaria (33 spores per cubic meter inside with none detected outside), Curvularia and Pithomyces (both 33 spores per cubic meter inside with none outside), and hyphal elements four times higher inside than outside. *Id.* at 4.[18] Mr. Spearman's report noted that "the existing mold growth in the home is due to prior/current water event(s) from the unit above as well as improper/incomplete remediation attempts." *Id.* at 6. Mr. Spearman recommended mold remediation for affected areas, and the removal of 90 square feet of bathroom ceiling and wall materials and 60 square feet of living room ceiling materials impacted by mold. *Id.* at 8.[19]

In Unit #104 of 1850 Kendall, Mr. Spearman observed extensive mold growth and water damage on the bathroom ceiling and walls, active water leaks in the bathroom ceiling and wall cavities, and visible mold growth on the closet walls and ceiling in the bedroom. Mot. Ex. 24 at 1.[20] Similar to Unit #101, Mr. Spearman also observed prior attempts to patch the bathroom ceiling in Unit #104 without first attempting to repair the leak with the patching failing. *Id.* The active water leaks in the bathroom and bedroom closet were shown in infrared photos taken by Mr. Spearman, and photos also depicted the water damage in the bathroom and bedroom closet, and visible mold growth in the bedroom closet wall and ceiling. *Id.* at 2. Mr. Spearman took surface samples which conformed numerous Chaetomium spores, numerous hyphal elements, and numerous Penicillium/Aspergillus group spores. *Id.* at 4. Mr. Spearman likewise concluded that the "existing mold growth in the home is due to prior/current water event(s) from the unit above as well as improper/incomplete remediation attempts." Ex. 24 at 6. Mr. Spearman recommended that the abatement process include the removal of 120 square feet of bathroom ceiling and wall materials and 24 square feet of bedroom closet ceiling and wall materials. *Id*. at 8.

In his inspection of Unit #204 of 1850 Kendall, Mr. Spearman observed several tiles missing from the bathroom wall, extensive mold growth on the wall backing around the

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[17] Mr. Spearman testified that he uses a thermal imaging camera to detect surface temperatures of walls, floors, and ceilings. When the materials are wet, the surface temperature drops, and the camera is able to depict the temperature differentials and to depict the wet areas. A protemeter is also used to verify that the surface is in fact wet and not simply a cold surface.

[18] Mr. Spearman testified that he uses the lab results primarily to verify and validate that what he observed was in fact mold growth.

[19] In the District, where there is more than 2 square feet of contiguous mold growth, the remediation must be performed by a licensed mold remediator. D.C. Code § 8-231.10(g)(2) (creating exception to certification requirements for individuals and business entities conducting lead-based paint activities when "performance of maintenance, repair, or renovation work involving lead-based paint that results in disturbances of lead-based paint in a total of 2 square feet or less of surface area per room, except for window removal or replacement…."

[20] Neither Tavana nor Mr. Valibeigi have offered any evidence to dispute the existence of mold in this unit.

tub which could be observed from the bedroom closet wall cavity, water intrusion into the bathroom wall cavity, HVAC coils completely clogged with dirt, mold growth and debris; and visible mold growth under kitchen sink's base cabinet. Mot. Ex. 21 at 1.[21] Photos taken by Mr. Spearman show visible and extensive mold growth behind the wall of the shower and tub, and in the kitchen base cabinet. *Id.* at 2. Another photo shows a several-inch gap in the wall around the shower head where water was entering into the wall cavity, and a photo taken of the area behind the bathroom wall shows mold growth in the wall cavity where the drywall was removed. *Id.* An infrared photo shows an active leak behind the tiles in the tub and shower. *Id.* A photo of the HVAC unit show that the coils are completely clogged with dirt, dust, and mold with just a small portion of the coil visible. *Id.* Mr. Spearman testified that the HVAC unit could not properly condition the home and likely contributed in part to the airborne spore count in the unit. Laboratory testing of surface samples concluded that there were moderate levels of Penicillium/Aspergillus growth, numerous Stachybotrys (black mold, slow growing with need of constant source of water to grow, as opposed to an area that is wet and then dry, and then wet again) spores, and numerous hyphal elements. *Id.* at 4. Mr. Spearman recommended that the remediation include the removal of 18 square feet of the kitchen base cabinet and wall materials behind it, 40 square feet of bedroom closet wall materials, 74 square feet of bathroom wall materials, as well as the removal of the HVAC coils or removal of the complete HVAC system. *Id.* at 8.

Mr. Spearman inspected Unit #T4 of 1850 Kendall and observed extensive water damage to the ceiling materials in the living room, dining room, and kitchen; extensive mold growth on the HVAC diverters, and active water leak from the unit above into two locations of the bathroom ceiling cavity. Mot. Ex. 20 at 1.[22] Photos taken by Mr. Spearman show large portions of the living room wall and the bathroom ceiling with water damage and unsuccessful attempts to patch the damaged area. *Id.* at 2. Specifically, Mr. Spearman observed in the living room white patches on corners, across the ceiling, and down the wall, with the water staining over the top of the patch because the leak continued after the patch was completed without the leak actually repaired before the patch. This was also apparent in the bathroom of the unit. Other photos show mold growth and water damage to the kitchen cabinet and the wall behind the cabinet. *Id.* Infrared photos show the presence of active water leaks into the bathroom ceiling and walls. *Id.* Laboratory testing of air samples confirmed the presence of mold, with high levels of Curvularia (333 spores per cubic meter inside and none found outside), hyphal elements were found to be present at five times higher than outside, and extremely elevated Penicillium/Aspergillus group (42,667 spores per cubic meter found inside, as compared to 233 spores per cubic meter outside). *Id.* at 4. The air sample also included the presence of Stachybotrys, which Mr. Spearman testified is extremely rare; this type of mold is very slow growing slime type mold classified as potentially toxigenic mold, which is commonly known as black mold. Because it is a slime-type mold it is heavy and

[21] Neither Tavana nor Mr. Valibeigi have offered any evidence to dispute the existence of mold in this unit.

[22] While Tavana and Mr. Valibeigi have asserted that "[a]ny issues in Unit #T-4 of 1850 Kendall were abated as of April 16, 2019," *see* Tavana Opp. (Valibeigi Aff. ¶ 5), Mr. Spearman's inspection occurred in October 2019. *See* Mot. Ex. 20.

usually only found in surface samples and not in air samples unless there is a significant mold issue present. Mr. Spearman's surface samples confirmed elevated levels of Penicillium/Aspergillus, Ulocladium, and Hyphal Elements. Mr. Spearman opined that the presence of mold was caused by "prior/current water event(s) from the unit above as well as improper/incomplete remediation attempts." *Id.* at 6. Mr. Spearman recommended the removal of 110 square feet of the kitchen wall cabinet and the wall materials behind the cabinet, 140 square feet of living room ceiling and wall materials, 60 square feet of dining room ceiling and wall materials, and 140 square feet of bathroom ceiling and wall materials. *Id.* at 8.

Mr. Spearman inspected Unit #B1 of 1854 Kendall and observed visible mold growth and water damage to ceiling materials in the living room; extensive mold growth on the bedroom walls and in the bedroom closet, water damage and mold growth on bathroom ceiling and wall materials, an active leak from the unit above into the bathroom ceiling cavity, and evidence of prior flooding in the unit. Mot. Ex. 22 at 1.[23] Photographs show visible mold growth on large areas in the closet and bathroom, and infrared photos show the presence of an active leak into the bathroom ceiling and wall. *Id.* at 2. Mr. Spearman testified that in the closet, mold found on the ceiling, wall, and floor was caused by water leaking from above and running down the wall cavity and spreading out at the bottom. Laboratory testing of surface samples confirmed the presence of numerous Penicillium/Aspergillus group spores, numerous Chaetomium spores, numerous hyphal elements, and a few Chaetomium perithecia.[24] *Id.* at 4. Mr. Spearman recommended removal of 60 square feet of living room materials, 104 square feet of bedroom and bedroom closet ceiling and wall materials, and 110 square feet of bathroom ceiling and wall materials. *Id.* at 8.

Mr. Spearman also inspected Unit #T-1 of 1850 Kendall. *See* Mot. Ex. 19. Mr. Spearman observed extensive water damage and mold growth on the bathroom ceiling materials; extensive mold growth on the bedroom walls; and active water intrusion from the foundation wall into the bedroom wall cavities. *Id.* at 1.[25] Photographs show mold growth and water damage to the bathroom ceiling and bathroom ceiling materials, as well as extensive mold growth in the bedroom. *Id.* at 2. Thermal imaging shows an active leak into the bedroom wall cavities, which appeared to be coming through the foundation wall. *Id.* Mr. Spearman performed air sampling which confirmed very highly elevated presence of Penicillium/Aspergillus mold (20,933 spores per cubic meter, compared with an outside presence of 200 spores per cubic meter). *Id.* at 4. The results also determined that the presence of smuts, periconia, myxomycetes was nearly four times higher than the outside control. *Id.* Mr. Spearman also took surface samples that verified active growth of

[23] Neither Tavana nor Mr. Valibeigi have offered any evidence to dispute the existence of mold in this unit.

[24] This particular unit was not occupied at the time of inspection. Mr. Spearman testified that where a unit is heavily impacted by mold growth, it can also impact adjoining units through normal air tunnels flowing through wall and ceiling cavities, as well as plumbing and vents, and contaminate those other units with airborne spores.

[25] Neither Tavana nor Mr. Valibeigi have offered any evidence to dispute the existence of mold in this unit.

Cladosporium, Monodictys, Penicillium/Aspergillus and hyphal elements.[26] Mr. Spearman recommended the removal of 180 square feet of bedroom wall materials, 128 square feet of bathroom and ceiling wall materials, and the removal of bedroom porous items, including pillows, mattresses, box springs and cushioned furniture. *Id.* at 8. Mr. Spearman described the remediation effort needed to be made here as significant and not safe for the resident to remain during the remediation effort.

In each of the reports, Mr. Spearman noted that mold requires water and/or high humidity to grow; therefore, the moisture problem that caused the mold growth needed to be addressed in the abatement process so that the mold would not return. Mr. Spearman testified that overall, virtually every area of the building that he inspected had highly elevated levels of mold growth. There was evidence of long term consistent water events in each unit; it was very clear that patching and other repair attempts were made without first repairing the source of the moisture, so that the mold would return because the underlying problem was not addressed. Therefore, remediation will not be effective until the underlying water issue is resolved since the water issue is the cause of the continued mold growth. If nothing was done in these units, the mold problem will not repair itself, and would instead will get worse and impact adjoining units.

5. Entomology Inspection

The District engaged board-certified entomologist Richard Kramer to inspect the Property on October 16, 2019. SUMF ¶¶ 47; 51. Dr. Kramer's October 22, 2019 report included descriptions and photographs of pest infestations in multiple units. SUMF ¶ 51. Dr. Kramer found a heavy German cockroach infestation due to significant structural issues, e.g. holes in walls under sinks, holes in tub surrounds, and lack of caulking in bathrooms and kitchens. *Id.* Dr. Kramer also

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[26] Mr. Spearman explained that the hyphal elements are the root and stem of the mold structure – when you see high levels of hyphal elements it verifies growth. They are much heavier and sink to the ground much quicker so less likely to be detected in high levels in an air sample. Their presence in the surface sample in numerous or high levels verified mold growing at that spot.

observed that holes in the HVAC closets led to free access of rodents throughout several units. *Id.*

6. Construction Inspection

The District engaged Ken Rehfuss, a construction engineer and President of RKR Construction Company, LLC, who inspected 4 occupied units, one unlocked vacant unit, and an unlocked utility closet in one of the basements on October 23, 2019. SUMF ¶¶47; 52. Mr. Rehfuss noted serious issues with water infiltration in the basement units, entry points near the roof for rodents and other pests, cracks in the buildings' exterior walls, and deteriorating fixtures and appliances. SUMF ¶ 52. Mr. Rehfuss provide a list of repairs and an estimate of the overall cost of necessary repairs to make the Property habitable.

7. Testimony of Tenants

Several tenants have provided written testimony of the conditions in their respective units at the Property. Dorothy Wylie, who resides in Unit T-4 of 1850 Kendall stated in an affidavit that the apartment directly above her has a plumbing issue, and from May 2018 to May 2019, water has poured into her apartment as if she were "standing outside in a rainstorm." SUMF ¶ 26 & Ex. 5. Ms. Wylie also stated that she would report the leaks to Mr. Valibeigi, who would send someone to patch the ceiling, but water damage remains. SUMF ¶ 29 & Ex. 5 ¶ 7. She also stated that she uses her own funds to purchase supplies to catch the mice in her unit because Defendants refuse to resolve the issue of pest infestations in her unit. SUMF ¶26 & Ex. 5 at ¶ 6.[27]

Ms. Washington, who resides in Unit 203 of 1850 Kendall testified that she did not have consistent heat in her unit, and that "Washington Gas tagged the heating unit as not properly

[27] Tavana and Mr. Valibeigi claim that all issues with the exception of painting and fixing some floor tiles were abated as of April 2019. Tavana Opp.; Valibeigi Aff. ¶ 5. Even crediting this factual assertion, there is no material dispute that flooding conditions existed in Ms. Wylie's unit for nearly a year prior to the flooding.

connected. SUMF ¶ 27 & Ex. 10 ¶ 6.[28] Ms. Washington stated that Mr. Valibeigi was aware of the issue with the heating unit, and told her he would address it closer to the winter months. *Id.* In November 2018, she contacted him again but he never sent anyone to make the repairs, so she purchased four space heaters to keep her unit warm. *Id.*

Mr. Dyson, who resides in Unit 204 of 1850 Kendall also testified that his HVAC system has not worked properly for seven years. SUMF ¶27 & Ex. 7 ¶ 6. He averred that he has reported the issue to Mr. Valibeigi by phone and by text messages, but the issue has not been resolved. SUMF ¶ 29 & Ex. 7 ¶ 6.

Tenants also testified to electrical hazards in their apartments. Mr. Harley, who resides in Unit 101 of 1850 Kendall reported a short in the electrical outlet in his living room that makes a buzzing noise. SUMF ¶28 & Ex. 6 ¶10. Ms. Gibson testified that when she first moved into her unit, only one outlet in the entire unit worked, and when she tried to use other outlets the power would go off. SUMF ¶ 28 & Ex. 8 ¶6. She reported the issue to Mr. Valibeigi, who sent someone to fix the issue, but the fix was only temporary and the issue remained at the time Ms. Gibson submitted her affidavit. SUMF ¶ 29 & Ex. 8 ¶¶6-7.

Antonio Brown, President of the Tenants' Association for the Property, submitted an affidavit and also testified at the November 24, 2020 hearing. SUMF ¶ 60. Mr. Brown, who has resided in Unit 102 of 1850 Kendall since June 2015, testified that since he became a tenant, he has made constant repair requests since November 2017 to Defendants for issues that include pest infestations, mold and mildew, and leaks in his bathroom. SUMF ¶ 60 & Exs. 9 & 37. (*See* Ex. 9, Antonio Brown Aff; *see also* Ex. 37, 11/24/202 Hr'g Tr. 95:5-22).

[28] As noted previously, Tavana and Mr. Valibeigi contend that Ms. Washington, Mr. Dyson, and Mr. Harley declined to allow access to their units so that repairs could be made. *See supra* n.11. The Court has concluded that the unsubstantiated and conclusory allegations do not create a material factual dispute. *See id.*

Despite Mr. Brown's repeated requests for repairs, Defendants were unresponsive, which compelled Mr. Brown to undertake repairs for a water leak himself. SUMF ¶ 61 & Ex. 37. Mr. Brown also testified that he visited several of his neighbors' units, such as Ms. Dorothy Wylie, who lives at 1850 Kendall Unit T-4, and Mr. Charles Harley, who lives in 1850 Kendall Unit 101, and observed many of the same conditions he experienced in his unit, such as water intrusion, pest infestations, and missing kitchen cabinets. SUMF ¶62 & Ex. 37.

IV. Analysis

1. Consumer Protection Procedures Act ("CPPA")

The CPPA is a "comprehensive statute designed to provide procedures and remedies for a broad spectrum of practices which injure consumers." *District Cablevision Ltd. P'ship v. Bassin*, 828 A.2d 714, 722–723 (D.C. 2003) (quoting *Atwater v. District of Columbia Dep't of Consumer & Reg. Affairs*, 566 A.2d 462, 465 (D.C. 1989)). As such, the CPPA is meant to be "construed and applied liberally to promote its purpose." D.C. Code § 28-3901(c).[29] "The burden of proof for CPPA claims is clear and convincing evidence." *Frankeny v. Dist. Hosp. Partners, LP*, 225 A.3d 999, 1005 (D.C. 2020) (citing *Pearson v. Chung*, 961 A.2d 1067, 1073 (D.C. 2008)).

Tavana argues that the CPPA does not apply to landlord-tenant relations. *See* Tavana Opp. at 4 (citing *Falconi-Sachs v. LPF Senate Square, LLC*, 142 A.3d 550, 554 (D.C. 2016; *Childs v. Purll*, 882 A.2d 227, 237 (D.C. 2006); *Parker v. Afartin*, 905 A.2d 756, 763-64 (D.C. 2006). Alternatively, Tavana asserts that the CPPA can only apply to acts that took place after February 2019. Opp. at 5. The Court disagrees.

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[29] Section 28-3909(a) permits the Attorney General to bring a CPPA claim against any person the Attorney General has reason to believe "is using or intends to use any method, act, or practice in violation of…section 28-3904." D.C. Code § 28-3909(a).

First, the Court finds that the case law on which Tavana replies is not applicable here. In *Falconi-Sachs*, the Court of Appeals confirmed that in amending the CPPA, the Council "'did not intend…to extend the *private right of action* created by the CPPA into the realm of landlord-tenant relations.'" *Falconi-Sachs*, 142 A.3d at 554 (emphasis added) (quoting *Gomez v. Independence Mgmt. of Delaware, Inc.*, 967 A.2d 1276, 1286 (D.C. 2009)). Importantly, the *Gomez* Court was analyzing the private cause of action created by D.C. Code § 28-3905(k)(1), which permits consumers, other individuals, and nonprofit organizations to bring a private right of action for relief for unlawful trade practices. *See* D.C. Code § 28-3905(k)(1).[30] The instant matter is brought pursuant to the District's enforcement authority afforded by D.C. Code § 28-3909 which expressly permits the Attorney General to seek to restrain prohibited acts.

Second, the Court does not agree with Tavana's assertion that the District's enforcement authority under the CPPA for landlord-tenant matters only became permissible in February 2019. *See* Tavana Opp. at 5. In 2018 the Council amended the CPPA to clarify the District's authority pursuant to D.C. Code § 28-3909 to exercise its duties under the CPPA in situations involving landlord-tenant relations. *See* Reply at 4. As the District notes, the Council's amendment simply intended to make clear that the District already had the authority to seek to enjoin unlawful trade practices involving landlord tenant relations, and did not intend from the plain language of the provision to create a new duty under the CPPA.

Indeed, the Council's intent is made clear in the legislative history of the amendment. There, the Committee on the Judiciary and Public Safety stated that OAG's "enforcement authority [under D.C. Code § 28-3909] is not limited by the landlord-tenant exemption"

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[30] *Childs v. Purll* and *Parker v. Afartin* likewise involved cases where plaintiffs sought to bring a private right of action against their landlords under the CPPA pursuant to D.C. Code § 28-3905(k)(1). *See Childs*, 882 A.2d at 237-39; *Afartin*, 905 A.2d at 763-764.

applicable to DCRA. *See* Committee Report on Bill 22-0170, the "At-Risk Tenant Protection Clarifying Amendment Act of 2018 at 2-3. The Council made clear that:

> Though OAG is already bringing enforcement claims under the CPPA, the Committee Print is needed to make explicit the agency's power to do so. Due to the language in the CPPA that prevents *DCRA* from bringing actions related to landlord-tenant matters, there remains a concern that courts might wrongly question OAG's authority to bring such actions. This misguided interpretation of the CPPA could jeopardize active enforcement cases and non-public investigations.

Id. at 3 (emphasis in original).[31] Thus, the Court finds that, as the Council plainly states, the District has always had the ability to use its investigation and enforcement authority under the CPPA in landlord-tenant relations.

To establish a claim under the CPPA, the claimant must show the existence of a consumer-merchant relationship. *See Snowder v. District of Columbia*, 949 A.2d 590, 599 (D.C. 2008). A merchant is broadly defined as "a person…who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services or a person who in the ordinary course of business does or would supply the goods or services which are or would be the subject matter of a trade practice." D.C. Code § 28-3901(a)(3). A merchant is not limited to the actual seller of goods or services, but includes those connected with the supply side of a consumer transaction. *See Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003, 1004 (D.C. 1989) (citing *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981)).

The CPPA sets forth numerous types of communications and acts that are deemed to be unfair or deceptive trade practices. Such practices include a "misrepresent[ion] as to a material fact which has a tendency to mislead." *See* D.C. Code § 28-3904(e). The CPPA also includes any

[31] Moreover, such an interpretation is consistent with the CPPA's "broad spectrum" to provide remedies for injurious practices and the statute's "liberal interpretation."

violation of Title 16 of the District of Columbia Municipal Regulations, which encompasses the District's housing code. *See* D.C. Code § 28-3904(dd).

Likewise, a representation that "goods or services are of particular standard, quality, grade, style, or model if in fact they are of another" violates the CPPA. D.C. Code § 28-3904(d). Goods and services are defined broadly to include "any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, franchises, business opportunities, real estate transactions, and consumer services of all types." D.C. Code § 28-3901(a)(7). Real estate transactions have been deemed to include rental housing. *See Brandywine Apts., LLC v. McCaster*, 964 A.2d 162, 167 (D.C. 2009) (determining that rental housing is a form of real estate transaction); *see also DeBerry v. First Gov't Mortg. & Investors Corp.*, 743 A.2d 699, 702 (D.C. 1999). Moreover, rental housing is a "good" pursuant to D.C. Code § 28-3901. *See DeBerry*, 743 A.2d at 702.

Based on the undisputed facts set forth above, the Court finds that the District has demonstrated by clear and convincing evidence that the Defendants failed to maintain the rental units in compliance with the District's Housing Regulations for over ten years, and allowed serious hazardous conditions, including pest infestation, active water leaks, fire code violations, and mold to remain in the rental units unrepaired and unabated.

In renting the units at the Property to tenants, the Defendants impliedly represented that they would maintain the Property in compliance with the District's Housing Regulations. *See Javins v. First Nat'l Realty Corp.*, 428 F.2d 1071, 1072–73 (D.C. Cir. 1970) ("[A] warranty of habitability, measured by the standards set out in the Housing Regulations for the District of Columbia, is implied by operation of law into leases of urban dwelling units covered by those regulations. . . ."); *see also* 14 DCMR § 301 ("There shall be deemed included in the terms of

any lease or rental agreement covering a habitation an implied warranty that the owner will maintain the premises in compliance with [the Housing Regulations].").

The record contains ample and—except as noted *supra*—undisputed evidence that the Defendants failed to remediate violations cited by the FEMS, including failing to properly maintain a fire alarm system, fire extinguishers, and smoke detectors. There is also ample and undisputed evidence in the record of various types of mold throughout the Property and continuous water intrusion into the inspected units that appeared to Mr. Spearman to be caused by an active, long-term water source, and that created toxigenic mold. DCRA made numerous visits to the Property over more than ten years, citing scores of housing code violations that continued from year to year.

Moreover, consistent with DCRA's findings, several tenants testified to the squalid conditions of their units, including chronic water leaks, and constant infestation of mice and roaches. Tenants testified that they continued to complain to Mr. Valibeigi about the conditions in their units, but no serious effort was made to make repairs, and when repairs were attempted they were shoddy and short-lived. Based on the undisputed facts which document violations of the housing code, including the fire code and the District's mold laws, the Court finds that the District has demonstrated that the Defendants violated the CPPA by renting apartments with numerous housing code violations and failing to make timely and adequate repairs in violation of the implied warranty that the rental units would be maintained in a habitable condition.

2. Personal Liability under the CPPA

The Court further finds that Mr. Valibeigi is personally liable for the deceptive trade practices arising out of providing rental housing accommodations that were not compliant with

the housing code.[32] A corporate officer can be "personally liable for torts which they commit, participate in, or inspire even though the acts are performed in the name of the corporation." *Lawlor v. District of Columbia*, 758 A.2d 964, 974 (D.C. 2000) (citing *Vuitch v. Furr*, 482 A.2d 811, 821 (D.C. 1984)). Moreover, "[i]t is clear from the…CPPA that individuals may be held liable for CPPA claims committed by a corporation if the individual participated directly in the unlawful trade practice at issue, or had the authority to control, and knowledge of, the practice." *District of Columbia v. CashCall, Inc.,* 2016 D.C. Super. LEXIS 8, *11 (D.C. Super. July 11, 2016) (*citing POM Wonderful, LLC v. F.T.C.*, 777 F.3d 478, 498 (D.C. Cir. 2015); *see also District of Columbia v. Hofgard*, 2015 D.C. Super. LEXIS 15 *15-*16 (D.C. Super. Aug. 8, 2015) (*quoting Vuitch*, 482 A.2d at 821).

Our Court of Appeals has found that "[s]ufficient participation" in the alleged wrongful act "can exist when there is an act or omission by the officer which logically leads to the inference that he had a share in the wrongful acts of the corporation which constitute the offense." *Lawlor*, 758 A.2d at 975 (*quoting Dwyer v. Lanan & Snow Lumber Co.*, 141 Cal. App. 2d 838, 297 P.2d 490 (Cal. Ct. App. 1956)). Specifically, the Court found that there is to be "meaningful participation in the wrongful acts" and while in some instances, liability may "be based upon a corporate officer's failure to act to prevent a wrong, the plaintiff must show that the officer's omission bears some relationship to that wrong, *e.g.*, proof that a corporate officer was aware of a dangerous situation and nevertheless permitted reasonably preventable harm to occur." *Id.* at 977 (citations omitted); *see also Vuitch*, 842 A.2d at 823 (affirming that the

[32] In his Opposition to the instant Motion, Mr. Valibeigi made no assertions as to why he should not be personally liable for any wrongdoing. Rather, Mr. Valibeigi asserted generally that the Motion should be denied as the Property has been sold.

corporate officer had meaningful participation where the officer had both knowledge of the wrongful act and authority to act).

Thus, it is clear that a corporate officer's personal liability for wrongful acts, whether under the CPPA or otherwise, must be based on knowledge. Here, it is undisputed that Mr. Valibeigi was the sole owner of Tavana, and had the ability to control its actions. Mr. Valibeigi has offered no argument opposing his personal liability, other than his general assertion that he no longer owns the Property. *See generally* Valibeigi Opp. Tenants testified to their regular interactions with him. *See* Mot. Ex. 5-9. Mr. Valibiegi does not dispute that notices of the violations cited by DCRA and FEMS were sent or otherwise delivered to him. As in the other cases consolidated with the instant matter, the Court finds that the District has demonstrated, by clear and convincing evidence, that Mr. Valibeigi meaningfully participated in the wrongful acts described above, and is therefore personally liable under the CPPA for the existence of the housing code violations of which he was plainly aware and for which he declined to take proper action although he had the authority to do so.

Thus, the Court finds that the District has demonstrated by clear and convincing evidence that the District is entitled to judgment as to Defendants' violations of the CPPA and that Mr. Valibeigi is personally liable, and will enter judgment in the District's favor against the Defendants jointly and severally.

3. Remedies

As a remedy for the CPPA violations, the District seeks restitution and civil penalties, both of which are permitted by the CPPA. *See* D.C. Code § 28-3909. The Court addresses each remedy requested by the District in turn.

a. Restitution

First, the District seeks a restitution award to the tenants in the amount of $234,051.00 in rent refunds to tenants at the Property for the period of January 2015 through March 2021. Mem. at 15-16. Mr. Valibeigi did not address this issue in his Opposition, *see* Valibeigi Opp., and Tavana argues that the District has failed to provide evidence of rents paid. Tavana Opp. at 7.

The CPPA permits the Attorney General to "recover restitution for property lost or damages suffered by consumers as a consequence of the unlawful act or practice." D.C. Code § 28-3909(a); *see also District of Columbia v. Hofgard*, 2015 D.C. Super. LEXIS 15 *10 Aug. 8, 2015) (finding that it was "crystal clear that the District may seek relief based on past violations of the CPPA, including restitution and civil penalties...").

Here, the District has offered some of the rent rolls produced by Defendants, along with a chart prepared by the District that purports to suggest the amounts tenants paid in rent for which restitution is appropriate.[33] First, the Court finds the chart to be unreliable insofar as it is predominantly based on speculation, is not offered under oath by anyone that could personally attest to the facts, and would not otherwise be admissible at trial absent a proper foundation. For several entries on the chart, the District asks the Court to assume that rent was paid for many months for which there are no rent rolls for a particular unit, based solely on the fact that the tenants in question had leases. Even if the chart was admissible, given that the rent rolls that were produced to the Court reflect that a number of these same tenants paid no rent for several

[33] The District has explained that it calculated its restitution request based on "Defendants' rent rolls, partial rent ledgers, and leases identifying the dates some of the tenants moved into the Property." Mem. at 16 n.9. The District blames Defendants' "poor recordkeeping and incomplete document production" on the District's inability to provide more information to support its restitution claim. The Court is unclear why the District did not seek such information from the tenants themselves, given that the District has worked with various tenants throughout this litigation to procure both live testimony and affidavits.

months, there is no basis for the Court to conclude that absent other documentary evidence, rent was paid merely because there was a lease in place.

Moreover, the District also appears to seek restitution for rent paid in units where the District has provided no evidence of a housing code violation, including 1850 Kendall Units 102 and 201, Unit 202 of 1854 Kendall, as well as Unit 204 of 1854 Kendall where the last housing code violation was cited eight years ago. The District also seeks rent restitution for the vacant unit 101 of 1854 Kendall, *see* Tavana Opp.; Valibeigi Aff. ¶ 9, and the unit occupied by trespassers (Unit 103 of 1850 Kendall), *see id.* ¶ 8. Finally, the District has not established a clear temporal relationship between the existence of housing code violations in particular units and the time period that a tenant paid rent for those units. Rather, the District encourages the Court to take several speculative leaps and assume—based on the overall abhorrent conditions that have been presented here—that all the tenants were living in units that failed to comply with housing code violations at the time they were also paying rent without a proven factual basis to reach this conclusion. While one can certainly speculate, given the conditions the Court has seen, the Court may not do so when faced with a request for summary judgment. Rather, it is the District's burden to demonstrate that the requested equitable relief falls within a solid factual foundation, and the District has not met its burden. *See, e.g., 4934, Inc. v. District of Columbia Dep't of Empl. Servs.*, 605 A.2d 50, 55-56 (D.C. 1992) (restitution is an equitable remedy imposed when unjust enrichment has been proven).

b. Civil Penalties

The District also seeks a civil penalty in the amount of $1000 for each violation of the CPPA before July 2018, and up to $5000 for each violation of the CPPA since its amendment in July 2018. Mem. at 17. The District asserts that Defendants committed 930 separate CPPA

violations, occurring in the following manners: "(1) through the misrepresentations made to tenants in the leases the tenants signed; (2) through misrepresentations each time Defendant demanded rent; (3) through each housing infraction under DCMR § 16-3305(a); and (4) through express misrepresentations made by Defendants that repairs would be made to ameliorate conditions at the Property." Mem. at 17-18. The Court will address the District's arguments in support of each category, as well as the evidence proffered in support, individually.

In support of the first category—misrepresentations in leases—the District requests a penalty of $26,000, which the District asserts represents $1000 for each of the 21 tenancies that began prior to the July 2018 CPPA amendment, and $5000 for the one tenancy that began after the July 2018 CPPA amendment. Mem. at 18. While the District cites to Exhibits C and D of its Motion in support of its claim that leases existed, the exhibits do not contain actual leases, and instead are the partial rent rolls, and the chart that the Court previously noted was inadmissible. As this Court has previously found, the record is not clear as to when leases were entered into, with which tenants, for units that had housing code violations. The Court cannot engage in speculation, *see, e.g., Magdalene Campbell & Fort Lincoln Civic Ass'n v. Fort Lincoln New Town Corp.*, 55 A.3d 379, 387–88 (D.C. 2012) ("A plaintiff must establish both the fact of damages and the amount of damages with reasonable certainty. The proof need not be mathematically precise, however; what is required is some evidence which allows the trier of fact to make a reasoned judgment rather than an award based on speculation or guesswork.") (citations and internal quotations omitted), which the current record requires the Court to do. Thus, the Court finds that the District has not met its burden of demonstrating a prima facie entitlement to the relief it seeks, and declines to assess civil penalties for misrepresentations made in leases to tenants based on the limited factual records before the Court.

In support of the second category, monthly rent collection, the District contends that each time the Defendants collected monthly rent from tenants, they were making separate misrepresentations that the Property would be maintained in compliance with District of Columbia law. Mem. at 18-19. The District asks for $1000 for each month that Defendants demanded or collected rent prior to July 2018, and $5000 after July 2018, which the District contends amounts to 322 total violations, with 238 violations from January 2015 to July 2018 ($238,000 penalty), and 84 violations from August 2018 to March 2021 ($420,000 penalty) for a total of $658,000. *Id.* at 19.

This Court has previously cited the reasoning articulated by the Honorable Florence Y. Pan, who rejected a similar argument made by the District, finding "it conceptually difficult and unduly complicated to hold that, as a matter of law, every time you accept a rent check you're making representations." Mot. Ex. A (Hr'g Tr. *Ana Ascencio, et al. v. Jefferson-11th Street, LLC, et al.*, Civil Action 2016 CA 8084, at 54-55). The Court agrees, and notes that the District has offered no legal support for its contention that the collection of rent from tenants, or the demand for rent even when no rent is paid, results in a misrepresentation by a landlord. Here, the Court cannot find that a mere demand for rent is a misrepresentation under the CPPA, and the limited record before the Court demonstrates that tenants were inconsistent in making payments. *See* Mot. Ex. C.

In support of the third category, violations of the DCMR, the District contends that there were 315 DCRA infractions that were identified prior to the July 2018 amendments to the CPPA, for which the District seeks $1000 per violation (or $315,000), and 250 DCMR violations identified following the July 2018 CPPA amendments, for which the District seeks $5000 per violation (or $1,250,000), for a total of $1,565,000. Mem. at 19.

While the Court disagrees with the total number of violations cited by the District, the Court has found that there is no genuine dispute of material fact that serious housing code violations were identified by DCRA, FEMS, and Mr. Spearman. There is also no material factual dispute that these issues were made known to the Defendants, that no competent effort was made to remediate them, and that the violations were cited over a ten-year period, which the Court finds justifies the maximum available penalties under the CPPA. Indeed, the Defendants acknowledged their awareness of these violations during these proceedings in the latter part of 2019, and took no meaningful action to address them. In defense, Mr. Valibeigi has only contended that the Property is now sold. *See generally* Valibeigi Opp. This assertion rings particularly hollow. First, the Defendants remained responsible for remediating conditions at the Property while they maintained ownership of it. Second, Mr. Valibeigi intentionally derailed the sale of the Property in the latter half of 2020, and thus prevented the transfer to a responsible owner while Mr. Valibeigi himself continued to ignore deplorable conditions. Thus, based on the clear and convincing evidence before the Court, the Court finds that civil penalties are appropriate for the following violations:

- Violations of the District's mold law in Unit 101, Unit 104, Unit 204, Unit T-1, Unit T-4 of 1850 Kendall, and Unit B-1 of 1854 Kendall Property identified by Mr. Spearman in October 2019. *See* Mot. Exs. 19-24. The Court will assess a $5000 penalty for each mold violation, for a total of $30,000.

- Seventeen violations of the fire code that remained unabated after Inspector Pennington's December 31, 2018 inspection. Mot. Ex. 12. The Court will assess a $5000 penalty for each violation, for a total of $85,000.

- 259 violations cited by DCRA prior to the July 2018 CPPA amendments that increased the maximum penalty, for a total of $259,000. *See* D.C. Law 22-140, Consumer Protection Clarification and Enhancement Amendment Act of 2018.

- 170 violations cited by DCRA after the July 2018 CPPA that increased the maximum penalty to $5000, for a total of $850,000.[34] *See id.*

Thus, pursuant to the applicable provision of D.C. Code § 28-3909(b)(1), the Court will order a total civil penalty of $1,224,000 for the housing code violations cited by DCRA, FEMS, and Mr. Spearman.

Finally, in support of the fourth category, express misrepresentations, the District seeks a $1000 penalty for 21 express misrepresentations identified by tenants. Mem. at 19-20. The Court has reviewed the affidavits and finds that they do not contain the express misrepresentations that the District claims. Rather, the tenants have all reported that they often complain to Mr. Valibeigi, who either did not respond to the complaints, responded to the requests after an extended period of time, or sent his maintenance person to make shoddy repairs. *See* Ex. 5 ¶¶ 3, 7, 8; Ex. 6 ¶¶ 3, 6, 8; Ex. 7 ¶¶ 6-10; Ex. 8 ¶¶ 5-10; Ex. 9 ¶¶ 6-8; Ex. 10 ¶¶ 3, 6-8. Moreover, the issues cited by the tenants appear to overlap with the violations found by DCRA, FEMS, and Mr. Spearman, which could result in a double CPPA penalty for the same violation. Thus, based on the record before the Court, the Court declines to assess penalties for the alleged express misrepresentations made to tenants.

c. Fees and Costs

The District also seeks its attorney's fees and costs in pursuing this litigation against the Defendants. *See* Mem. at 23-25. District of Columbia Code § 28-3909(b) permits the Attorney General to recover, *inter alia*, "[t]he costs of the action and reasonable attorney's fees." D.C. Code § 28-3909(b)(4). As the District has prevailed on its CPPA claims, the Court finds that an award of reasonable attorney's fees and costs is appropriate.

[34] The Court declines to award penalties for the violations found by the District's entomologist and construction expert, as these violations are largely duplicative of those cited by DCRA.

Costs are not defined by the CPPA, and the District does not offer any guidance as to what costs are permitted. Thus, the Court looks to Superior Court Civil Rule 54(d), and cases applying Rule 54(d) and its federal counterpart, as the appropriate provision to determine what costs are recoverable to the Attorney General as the prevailing party.

Rule 54(d) states that, unless provided otherwise, "costs – other than attorney's fees – should be allowed to the prevailing party." "The award of costs to the prevailing party under Super. Ct. Civ. R. 54(d) is within the trial court's discretion." *Talley v. Varma*, 689 A.2d 547, 555 (D.C. 1997) (quotation and citation omitted). "The trial court's discretion lies in whether or not to award as costs items specifically authorized by 28 U.S.C. § 1920 (1994) or by other statutes (or court rule)." *Id*. (citing *Crawford Fitting Co. v. J.T. Gibbons, Inc*., 482 U.S.437, 442-45 (1987)). The "costs" recoverable under Rule 54(d) are defined by 28 U.S.C. § 1920, as limited by 28 U.S.C. § 1821, and by federal cases interpreting Federal Rule of Civil Procedure 54, which are persuasive authority for interpreting Super. Ct. Civ. R. 54. *See Upton v. Henderer*, 969 A.2d 252, 255 (D.C. 2009); *Talley*, 689 A.2d at 555, 557.

Section 1920 provides in part that a judge "may" tax as costs: "(1) Fees of the clerk and marshal; (2) Fees for printed or electronically recorded transcripts necessarily obtained for use in the case; (3) Fees and disbursements for printing and witnesses; (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case; [and] (5) Docket fees." "Costs which have been paid to the Clerk and entered on the docket are ordinarily allowed as a matter of course, but other costs, such as witness fees and costs of depositions must be taxed specifically by the court." *Talley*, 689 A.2d at 555. "Circumstances justifying denial of costs to the prevailing party or the assessment of partial costs

against him may exist where the amount of taxable costs actually expended were unnecessary or unreasonably large." *Mody v. Center for Women's Health, P.C.*, 998 A.2d 327, 336 (D.C. 2010).

Here, the District seeks to recover $6,650 in costs incurred to retain its expert witnesses: mold expert William Spearman, entomologist Richard Kramer, and construction expert Ken Rehfuss. Mem. at 24. Expenses incurred to retain expert witnesses are recoverable as costs only to the extent that expenses incurred in connection with non-expert witnesses are recoverable. *See Quy v. Air America, Inc.*, 667 F. 2d 1059, 1067-68 (D.C. Cir. 1981). The current federal limit for witness fees, whether expert or non-expert, is limited to a trial attendance fee of $40 per day plus reasonable travel costs. *See* 28 U.S.C. § 1821 (b)-(d); *Talley*, 689 A.2d at 556-57; *Upton*, 969 A.2d at 254-57; *Harris v. Sears Roebuck & Co.*, 695 A.2d 108, 111 (D.C. 1997); *Patricia Emmett v. Marriott International, Inc.*, et al., Case No. 2015 CA 003223, Order Requesting Plaintiff to File a Supplement (Jan. 22, 2019).

As noted, the District has not provided an explanation as to why it should be entitled to these costs, which would not be recoverable if generated in connection with a non-expert witness, nor does the District cite to any case law that would permit these costs. *Cf. Quy*, 667 F.2d at 1067 (finding "no basis…for an award of costs based upon a special fee (over and above the statutory allowance) for an expert witness"); *see also Robertson v. McCloskey*, 121 F.R.D. 131, 133 (D.D.C. 1988 (placing burden on party seeking costs). The District cites to the District of Columbia Court of Appeals' decision in *Talley*, cited above; however, there the Court of Appeals found that the trial judge did not err in limiting the amount to be reimbursed for an expert's appearance at trial to the statutory per diem amount for witnesses. *Talley*, 689 A.2d at 557. With the limited exceptions that are afforded under Section 1821, and absent any

justification entitling the District to the entirety of its expert fees, the Court declines to award the expert witness fees the District requests.

The District also seeks costs for the transcript of the November 24, 2020 court proceeding that the District obtained to support its summary judgment motion. Mem. at 24-25. Section 1920 permits the taxation of "[f]ees of the court reporter for all or any part of the stenographic transcript necessarily obtained for use in the case." *See also Johnson v. Holway*, 522 F. Supp. 2d 12, 20 (D.D.C. 2007). A transcript is necessarily obtained if it was "used to prepare for future depositions, motions, pretrial proceedings, or trial." *Sykes v. Napolitano*, 775 F. Supp. 2d 118, 120 (D.D.C. 2010). Here, the District seeks transcript costs in the amount of $675.75 for a hearing transcript that the District contends was necessary for its preparation of the instant Motion, and has submitted to the Court a purchase order to demonstrate that the District purchased the November 24, 2020 hearing transcript. Mot. Ex. H.

The Court notes that the transcript was requested on December 15, 2020 for the 15-day "intermediate" rate of $4.25 per page, rather than the "ordinary" 30-day rate of $3.65/page. *See* Mot. Ex. H. Here, the District has offered no explanation as to why a more expedited cost was necessary, particularly given that its Motion was not filed until April 8, 2021, which would have been nearly three months after a transcript at the ordinary rate would have been produced. Therefore, it appears that the additional costs were incurred solely for the convenience of counsel, which generally are not recoverable. *See, e.g., OAO Alfa Bank v. Ctr. for Pub. Integrity*, 2006 U.S. Dist. LEXIS 29000, at *13 (D.C.C. May 12, 2006) (listing the types of expenses that are generated for the convenience of counsel and citing decisions were such costs are not recoverable); *see also Mody*, 998 A.2d at 336 (permitting the court to reduce unnecessary costs). Thus, the Court will reduce the costs of the of the transcripts from $675.75 to $580.35.

With respect to attorney's fees, the District seeks fees only for its time preparing the instant Motion. *See* Mem. at 25; D.C. Code § 28-3909(b)(4). To determine appropriate reasonable attorney's fees, the Court must first determine the so-called lodestar – the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate. *Fed. Mktg. Co. v. Va. Impressions Prods. Co.*, 823 A.2d 513, 530 (D.C. 2003). Our Court of Appeals has deemed the *Laffey*[35] rates to be "presumptively reasonable," and has instructed that deviations from the matrix "should not be lightly undertaken and need to be substantially supported." *Tenants of 710 Jefferson St.*, *NW v. District of Columbia Rental Hous. Comm'n*, 123 A.3d 170, 184 (D.C. 2015); *see also Illinois Farmers Ins. Co. v. Hagenberg*, 167 A.3d 1218, 1236-37 (D.C. 2017). Moreover, the U.S. District Court for the District of Columbia has deemed it appropriate to apply *Laffey* rates to government attorneys who are salaried and do not charge fees based on an hourly rate. *See Davis v. District of Columbia Child and Family Services Agency*, 304 F.R.D. 51, 63 (D.D.C. 2014) (awarding *Laffey* rates to District of Columbia attorneys as Rule 37 sanctions).

Here, the District has provided the sworn Declarations of Jennifer Berger, Chief of the Social Justice Section of the Public Advocacy Division of the Office of the Attorney General, and Stephon Woods, now former Assistant Attorney General in the Public Advocacy Division of the Office of the Attorney General. *See* Mot. Ex. J & Ex. K. Both declarations set forth the specific number of hours each spent solely working in connection with the Motion for Summary Judgment. *See id.* Notably, the fees requested do not include the likely substantial amount of time the District's attorneys have spent investigating and litigating this matter. *See id.* Each declaration describes the declarant's work experience, and places that experience within the

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[35] *See Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983), *rev'd in part on other grounds,* 746 F.2d 4 (D.C. Cir. 1984). The current matrix may be found at https://www.justice.gov/usao-dc/file/796471/download.

Laffey Matrix accepted by this jurisdiction. *See id*. Accordingly, the Court will grant the District, as the prevailing party on the CPPA claims, attorney's fees in the amount of $25,142.25.

d. Lead-Hazard Prevention and Elimination Act

The District also seeks judgment on its claim that the Defendants have violated the Lead-Hazard Prevention and Elimination Act, D.C. Code § 8-231.01, et seq. ("LPEA"). Mem. at 14-15. The LPEA requires, *inter alia*, that "[a]ll dwelling units, common areas of multifamily properties, and child-occupied facilities constructed prior to 1978 [] be maintained free of lead-based paint hazards." D.C. Code § 8-231.02(a). The LPEA permits the Mayor, upon reason to believe that there has been a violation of the LPEA, to request that the Attorney General "commence appropriate civil action in the Superior Court of the District of Columbia to secure a temporary restraining order, a preliminary injunction, or other appropriate relief." D.C. Code 8-231.05(b)(2).[36]

The LPEA further provides that "[a]ny violation of this subchapter or implementing rule is punishable by a civil penalty not to exceed $25,000 for each day of each offense. Each day a violation continues shall be deemed a separate offense." D.C. Code § 8-231.15(b). The LPEA requires the Court, in determining the severity of a civil penalty, to "take into account the nature, circumstances, extent, gravity, actual or potential harm to the environment, and actual or potential harm to human health, of the violation or violations and, with respect to the violator, ability to pay, any history of prior such violations, the degree of culpability, and such other matters as justice may require." D.C. Code § 8-231.15(d).

Tavana asserts that the District has surmised that a violation of the LPEA exists merely because the Property was constructed prior to 1978. Opp. at 6-7. Here, however the District has

[36] The LPEA also permits the Mayor to issue a cease and desist order or other order necessary to protect the public, and to "[i]mpose fines and penalties in accordance with §§ 8-231.15 and 8-231.16." D.C. Code § 8-231.05(b)(1)-(2).

put forth evidence of a determination that lead-based paint was found within the common area of the Property. Reply at 9; Mot. Ex. 18. Tavana has offered no evidence to dispute the existence of lead paint found by the inspection, nor any evidence to demonstrate that the condition was remediated. Therefore, the Court finds that the District has demonstrated that no material factual dispute exists that lead based paint was found in a common area of the Property.

The Court does find that the District has failed to offer any support for its extraordinary proposition that it is entitled to penalties in the amount of $18,750,000.00. *See* Mem. at 23. The District seems to rely solely on the fact that Defendants have been aware of the hazard since April 5, 2019, and that the statute permits the Court to award up to $25,000.00 for each day the hazard exists. *See id.* The statute requires that the Court consider more than simply the length of time the hazard existed, but also "the nature, circumstances, extent, gravity, actual or potential harm to the environment, and actual or potential harm to human health, of the violation or violations and, with respect to the violator, ability to pay, any history of prior such violations, the degree of culpability, and such other matters as justice may require." D.C. Code § 8-231.15(d).

Here, the Court finds that the District has failed to demonstrate that the eight-figure fine they seek for a single violation of the LPEA is justified. The District has presented no evidence as to the whether the particular hazard created any actual or potential harm to the environment or human health. There is also no evidence in the record of any past lead paint violations by the Defendants. The Court also notes that the hazard was in a common area of the building, and not in a particular apartment. The District has also not proffered any evidence to demonstrate that the Defendants would have the ability to pay the multi-million-dollar fine that they seek; indeed, the record in this case demonstrates that Tavana's current funds are limited to what the Receiver currently holds and that Mr. Valibeigi is all but judgment proof. The Court does find that it is

undisputed that Defendants were made aware of the existence of the hazard since the violation was issued in April 2019, and took no action to remediate the hazard. As this is the only factor that weighs in favor of a fine, the Court will exercise its discretion and award a civil penalty under the LPEA of $25,000 for the initial violation only.

e. Injunctive Relief

The District seeks a permanent injunction that bars the Defendants from engaging in future similar illegal conduct. *See* Mem. at 21-22. District of Columbia Code § 28-3909(a) permits the Attorney General to seek an injunction where the Attorney General "has reason to believe that any person is using or intends to use any method, act, or practice in violation" of various provisions of the CPPA to prohibit the use or the act where it is in the public interest. D.C. Code § 28-3909(a).

"In general an injunction is an extraordinary remedy, enforceable by contempt, and injunctive relief is to be granted sparingly." *Cruz-Foster v. Foster*, 597 A.2d 927, 931 (D.C. 1991) (citation omitted). As the District correctly notes, injunctive relief is focused on future conduct. *See* Mem. at 19; *Mbakpuo v. Ekeanyanwu*, 738 A.2d 776, 782 (D.C. 1999). In *Mbakpuo*, the Court of Appeals noted that while "'a defendant's past conduct is important evidence – perhaps the most important – in predicting his probable future conduct,'" *Mbakpuo*, 738 A.2d at 782 (quoting *Cruz-Foster*, 597 A.2d at 930), the moving party must still set forth "a *prima facie* case of some cognizable danger of recurrent violation." *Id.* at 783 (citation and internal quotations omitted).

With request to Tavana, the Court finds that any request that Tavana be enjoined from future illegal conduct to be moot. The Court has ordered Tavana dissolved, and thus it is no longer able to engage in any future behavior beyond winding up its business.

With respect to the request for an injunction as to Mr. Valibiegi, the Court notes that Mr. Valibeigi is an individual defendant in all three of these consolidated cases, and each case alleges that Mr. Valibiegi and the other respective Defendants leased rental property with serious housing code violations. While the real property in each case has now been sold, Mr. Valibeigi has represented that he owns other rental property that he continues to rent to tenants. *See* Resp. to Order to Show Cause, *District of Columbia v. Tavana Corporation, et al.*, 2019 CA 3718 B (July 19, 2021).

The Court notes, however, that in order to demonstrate that a permanent injunction should be issued, the District is required to demonstrate "(1) it has suffered an irreparable injury; (2) remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) the public interest would not be disserved by a permanent injunction." *Center for Biological Diversity v. Ross*, 480 F. Supp. 3d 236, 250 (D.D.C. 2020) (citing *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139 (2010)).

The District does not address or even cite these factors, and instead simply asserts that in civil enforcement actions, "the government is entitled to permanent injunctive relief where 'there exists some cognizable danger of recurrent violation' of a civil statute." Mem. at 21 (quoting *United States v. W.T. Grant Co.*, 345 U.S. 629, 633 (1953); *see also Mbakpuo*, 738 A.2d at 782. While the Court agrees that the District must show that a danger of future violation exists, the Court does not believe that the other factors to support permanent injunctive relief, which is an extraordinary remedy, are to be ignored. *Cf. Center for Biological Diversity*, 480 F. Supp. 3d at 250 (noting that the first factor of the permanent injunction test, while phrased in the past tense, may include future harm). As the District has not demonstrated that the balance of the factors the

Court is to consider in issuing a permanent injunction weigh in favor of issuing the injunction, the Court cannot find that the District has demonstrated as a matter of law that a permanent injunction should be issued as to Mr. Valibeigi.[37]

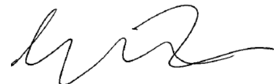
V. Conclusion

For the reasons set forth above, the Court grants in parts and denies in part the District's Motion for Summary Judgment, awards civil penalties under the CPAA and LPEA in favor of the District, and attorney's fees and costs. Accordingly, it is this 6th day of December 2021, hereby:

ORDERED that the District of Columbia's Motion for Summary Judgment is **GRANTED IN PART AND DENIED IN PART**; and it is further

ORDERED that judgment is entered in favor of the District of Columbia and against Defendants Mehrdad Valibeigi and Tavana Corporation, jointly and severally, in the total amount of $1,274,962.60.[38]

SO ORDERED.



Judge Shana Frost Matini
Superior Court of the District of Columbia

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[37] The Court notes that there is nothing prohibiting the District from bringing further suit against Mr. Valibeigi for any future violations of the CPPA. *See W.T. Grant Co.*, 346 U.S. at 636.

[38] This amount reflects $85,000 for violations cited by FEMS, $30,000 for six mold violations, $259,000 for the 259 violations cited by DCRA prior to July 2018, $850,000 for 170 housing code violations cited by DCRA after July 2018; $25,000 for violations of the LPEA, $580.35 for costs, and $25,142.25 for attorney's fees.