IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

DISTRICT OF COLUMBIA, Plaintiff, v. **VANTAGE MANAGEMENT, INC,** et al., Defendants.	Case No.: 2021 CA 002209 B Judge Pasichow Next Event: Initial Scheduling Conference Date: October 1, 2021 at 9:30 A.M.

DISTRICT OF COLUMBIA'S OPPOSED MOTION FOR PRELIMINARY INJUNCTION

1. The District of Columbia ("District"), through the Office of Attorney General, brought this civil enforcement action against MP PPH, LLC and Vantage Management, Inc. ("Defendants") for violations of the Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901–28-3913, and the Tenant Receivership Act ("TRA"), D.C. Code § 42-3651.01 *et. seq* because Defendants have (1) failed to address systemic violations of the District of Columbia's Housing Code, 14 DCMR § 101 *et seq.* ("Housing Code") and the District of Columbia's Property Maintenance Code, 12 DCMR § PM-101G *et seq* ("Property Maintenance Code"); (2) deceived District consumers by advertising accessibility features and amenities which are not in fact available to tenants; and (3) maintained explicit and implicit policies of refusing housing to individuals based on the use of housing vouchers at the apartment complex located at 2300-2330 Good Hope Road SE, Washington, D.C. 20020 (the "Property" or "Marbury Plaza").

2. Pursuant to Superior Court Civil Rule 65(a) and the CPPA, D.C. Code § 28-3909, the District moves this Court for entry of a preliminary injunction compelling Defendants to: (1) conduct full property assessments including mold, plumbing, HVAC, elevator, electrical,

elevator, and general property assessments; (2) provide the District with reports from the inspections; (3) abate the repair issues at the Property, including, but not limited to, mold, leaks, faulty plumbing, HVAC failures, inadequate security, elevator outages, fire and safety hazards, electrical hazards, and pest and rodent infestations; (4) follow proper professional protocol in all abatement procedures including, but not limited to, proper asbestos, lead paint, and mold remediation techniques; (5) relocate affected tenants temporarily, where necessary, and in cooperation with tenants; (6) halt all false advertising of leasing procedures and amenities; and (7) provide all advertised amenities to current tenants.

3. These emergency measures are needed to stop ongoing life, health, and safety threats to tenants resulting from Defendants' failure to repair unhabitable conditions in violation of the CPPA and to halt discrimination and deception of current and prospective tenants.

4. Where the District seeks to exercise its express authority to preliminarily enjoin violations of the law, the District need only prove the following: (1) the District is substantially likely to succeed on the merits; (2) the balance of hardships tips in the District's favor; and (3) the public interest favors granting the injunctive relief. *See District of Columbia v. Town Sports International, LLC*, Case No. 2020 CA 003691 B, at *8 (D.C. Sup. Ct. Oct. 8, 2020) (CPPA enforcement case); *see also F.T.C. v. Consumer Defense, LLC*, 926 F.3d 1208, 1212-14 (9th Cir. 2019) (irreparable harm was correctly presumed in action alleging deceptive representations and material misrepresentations in violation of consumer protection laws); *F.T.C. v. Mallett*, 818 F. Supp. 2d 142, 146 (D.D.C. 2011) (collecting cases). This abbreviated test is especially appropriate here, where the CPPA expressly authorizes the District to seek injunctive relief.

5. The District is substantially likely to succeed on the merits of its claims because the evidence clearly demonstrates Defendants' repeated, continuous, and ongoing violations of the CPPA.

6. The balance of equities clearly favors granting a preliminary injunction here. The District has a significant interest in protecting the health and well-being of its residents by ensuring that landlords provide safe and secure housing on a non-discriminatory basis to their tenants. In contrast, Defendants cannot claim any hardship in being required to comply with District law in its operation and rental of residential housing.

7. The public interest favors the entry of a preliminary injunction to prevent Defendants from further endangering the health, safety, and welfare of District residents by exposing tenants to serious housing conditions within the tenants' homes and preventing further discrimination and deception.

8. The District need not establish irreparable harm to justify preliminary relief, but prospective and current tenants are unquestionably harmed and continue to be by the unhabitable conditions at the property and Defendants' deceptive conduct.

9. In support of this Motion, the District submits the attached Memorandum of Points and Authorities and the exhibits attached thereto.

Dated: July 20, 2021

Respectfully submitted,

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RULE 12-I STATEMENT

On July 20, 2020, the District contacted attorney Richard W. Luchs, who has contacted the District on behalf of Defendant Vantage Management, Inc., and Mark Raddatz, who has represented to the District that he is counsel for Defendant MP PPH, LLC. Neither counsel has entered their appearance in this matter. Counsel Richard Luchs responded that Vantage Management does not consent to the motion. Defendant MP PPH did not respond.

/s/
Matthew W. Meyer
Assistant Attorney General

CERTIFICATE OF SERVICE

The undersigned certifies that on July 20, 2021, I caused a true copy of the District's Motion for Preliminary Injunction to be served on all Defendants and their counsel by electronic mail at the follow email addresses:

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Richard W. Luchs
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/s/
Matthew W. Meyer
Assistant Attorney General

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
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DISTRICT OF COLUMBIA, Plaintiff, v. **VANTAGE MANAGEMENT, INC,** et al., Defendants.	Case No.: 2021 CA 002209 B Judge Pasichow Next Event: Initial Scheduling Conference Date: October 1, 2021 at 9:30 A.M.

DISTRICT OF COLUMBIA'S MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF ITS OPPOSED MOTION FOR PRELIMINARY INJUNCTION

The District of Columbia ("District"), by the Office of the Attorney General, moves for entry of a preliminary injunction to prevent MP PPH, LLC and Vantage Management, Inc. ("Defendants") from further violating the Consumer Protection Procedures Act[1], ("CPPA"), *id.* § 28-3901 *et seq.*, in their operation and rental of 674 residential apartments located at 2300-2330 Good Hope Road SE, Washington, D.C. 20020 (the "Property" or "Marbury Plaza"). To protect District tenants from serious threats to their life, health, and well-being and to halt other on-going CPPA violations, this Court should enter a preliminary injunction compelling Defendants to: (1) conduct full property assessments including mold, plumbing, HVAC, elevator, electrical, elevator, and general property assessments; (2) provide the District with reports from the

[1] The CPPA makes it an unlawful trade practice to "violate any provision of title 16 of the District of Columbia Municipal Regulations." *See* D.C. Code § 28-3904(dd). Title 16 of the DCMR is violated when a housing provider flagrantly, fraudulently, or willfully violates any of the Housing Regulations in Title 14 DCMR that "constitutes an imminent danger to the health or safety of any tenant…including but not limited to, the interruption of electrical, heat, gas, water, or other essential services." 16 DCMR § 3305.1(a).

inspections; (3) abate the repair issues at the Property, including, but not limited to, mold, leaks, faulty plumbing, HVAC failures, inadequate security, elevator outages, fire safety hazards, electrical hazards, and pest and rodent infestations; (4) follow proper professional protocol in all abatement procedures including, but not limited to, proper asbestos, lead paint, and mold remediation techniques; (5) relocate affected tenants temporarily, where necessary, and in cooperation with tenants; (6) halt all false advertising of leasing procedures and amenities; and (7) provide all advertised amenities to tenants.

A preliminary injunction is warranted because the District is likely to prevail on the merits in this case and the balance of equities and public interest favor a preliminary injunction here. Additionally, District residents will be harmed irreparably by the leaks, mold, insufficient air conditioning and heat, elevator outages, fire safety hazards, electrical issues, infestations, discrimination and deception if not remedied pending trial of this case. For these reasons, this Court should grant the District's motion and enter the proposed preliminary injunction.

STATEMENT OF FACTS

Marbury Plaza houses 674 units across nine buildings: two eleven-story towers (Buildings "2300" and "2330") and seven garden-style buildings (Buildings "2302", "2304", "2306", "2312", "2316", "2320" and "2324"). The Property was constructed in 1968 as a luxurious apartment complex that provided safe and secure housing to Anacostia residents. Since Defendants assumed ownership and management of the Property in 2015, however, living conditions at the Property have deteriorated and pose a serious threat to tenants' health, welfare, and safety.

In June 2021, OAG retained CTI, a general property inspection company, and Arrowhead Consulting Inc. ("Arrowhead"), a mold inspection company, to assess the Property. The inspections identify evidence of mold, plumbing failures, frequent heating and cooling system

outages, poor and dirty ventilation systems, security failures, elevator outages, malfunctioning or missing fire safety equipment, substandard electrical systems, and rodent and pest infestations. Amenities like laundry facilities and a pool, while heavily advertised by Marbury Plaza, often are unavailable to tenants.

Mold was identified in all three of the buildings that were inspected in June 2021. (*See* Ex. 1-A, 2300 Mold Inspection Report, Ex. 1-B, 2302 Mold Inspection Report, Ex. 1-C, 2330 Mold Inspection Report). Within those buildings, all 21 areas that were tested revealed elevated mold levels of a type that can be dangerous if inhaled. (*See e.g.* Ex. 1-A, 2300 Mold Inspection Report at PI007, Ex. 1-B, 2302 Mold Inspection Report at PI147, Ex. 1-C, 2330 Mold Inspection Report at PI158).

Pervasive leaks at the property have and continue to feed the growth of dangerous mold. These leaks have resulted over years of faulty and incomplete repair and maintenance of the Property, including the buildings' plumbing systems, HVAC systems, and roofs. (*See* Ex. 1-A, 2300 Mold Inspection Report at PI006, PI013, PI020, PI027, PI034, PI045, PI053, PI066, PI073, PI080, PI093, PI100, PI107, PI114, Ex. 1-B, 2302 Mold Inspection Report at PI126, PI133, PI140, PI147, Ex. 1-C, 2330 Mold Inspection Report at PI158, PI165, PI172, PI179). One tenant has had her bathroom flood four times since she moved into Marbury Plaza in June 2018. (*See* Ex. 4-E, Declaration of Rylinda Rhodes ("Rhodes Decl.") at ¶¶ 12-14). There was so much water coming through her bathroom ceiling that it "sounded like a waterfall." (*See Id.* at ¶ 12). Another tenant fears getting electrocuted when she turns on the light to use her bathroom because the ceiling leaks into the overhead light. (*See* Ex. 4-A, Jones Aff. ¶ 13).

Air conditioning systems at the Property also cause leaks. One tenant's ceiling began leaking in 2017 and "has continued to leak every summer when the air conditioning is turned on."

(*See* Ex. 4-F, Declaration of Eleanore Brown ("Brown Decl.") at ¶ 15). The leak causes the ceiling to be "soggy and dripping", creates "stains down the side of the wall" and a carpet that is "constantly damp." (*See Id.*).

As the Property's doors and window frames are not sealed properly, tenants' walls leak when it rains or snows. (*See* Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0762; Ex. 4-D, Declaration of Dedra Diggs ("Diggs Decl.") at ¶ 10). Leaks from one unit spread into neighboring apartments, downstairs apartments, and common areas. (*See* Ex. 4-D, Diggs Decl. at ¶ 10; Ex. 4-E, Rhodes Decl. at ¶¶ 12-14).

The Property also has habitual hot water outages. (*See* Ex. 4-C, Declaration of Francine Gladden ("Gladden Decl.") at ¶ 24; Ex. 4-D, Diggs Decl. at ¶ 7; Ex. 4-A, Declaration of Bettye Jones ("Jones Decl.) at ¶ 12). Getting in the shower is a "gamble" for tenants who do not know when to expect hot water. (*See* Ex. 4-A, Jones Decl. at ¶ 12). The hot water shuts off as frequently as twice per month. (*See* Ex. 4-C, Gladden Decl. at ¶ 24). Tenants have had to stop showering at home and keep clothes at work. (*See* Ex. 4-A, Jones Decl. at ¶ 12). If Defendants give notice of the outages, it is after the fact or only a day or two in advance. (*See* Ex. 4-D, Diggs Decl. at ¶ 7). The air conditioning and heating systems at Marbury Plaza are defective and the vents are filthy. The air conditioning was broken for multiple weeks in June 2021, leaving tenants sweltering in their units during a heat wave. (*See Id.* at ¶ 15; Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0762-PI0765, Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0768, Ex. 1-A, 2300 Mold Inspection Report at PI002, Ex. 1-C, 2330 Mold Inspection Report at PI153). On two separate occasions, a tenant and her teenage daughter were forced to sleep in a hotel when the lack of air conditioning exacerbated their asthma. (*See* Ex. 4-E, Rhodes Decl. at ¶ 11). Without functioning air conditioning, temperature and humidity rose to dangerous levels that can promote mold growth.

(*See* Ex. 1-A, 2300 Mold Inspection Report at PI002, Ex. 1-C; 2330 Mold Inspection Report at PI153).

Even when the air conditioning is on, it sometimes fails to provide any relief from the heat. (*See* Ex. 4-E, Rhodes Decl. at ¶ 11 ("When I turn on the air conditioning in my apartment, the unit does not cool down . . . I bought my own thermometers to check the temperature in the apartment... When I turn on the air conditioning, the thermostat says that the temperature is seventy degrees, but my thermometers says it is ninety.")). One tenant's apartment gets so humid that her furniture is warping, her carpet is clammy, her dehumidifier grows mold, food quickly goes stale, and her elastic exercise bands no longer stretch. (*See* Ex. 4-A, Jones Decl. at ¶ 8).

The air that blows through the vents is polluted with dust and grime. (*See* Ex. 3-A, CTI June 4, 2021 Inspection Report at PI0761; Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0762, PI0764, PI0766, PI0767; Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0768, PI0769, PI0770; Ex. 3-D, CTI June 18, 2021 Inspection Report at PI0772; Ex. 4-E, Rhodes Decl. at ¶ 5; Ex. 4-A, Jones Decl. at ¶ 4). One tenant has a constant stream of soot blowing into her home:

> Black gritty particles come out of the vents and cover my apartment. My furniture is blanketed in this dust. I constantly have to vacuum my cloth furniture and wipe down my wood furniture. You can see the dirt settling on my white bedspread. In the kitchen, I have to scrub my counters daily to get the grit off of them . . . The particles I wipe away are more than just dust, it is a dark, heavy grit. My eyes are always full of grit. I have sinus problems and the air coming into my apartment through the vents does not help keep me healthy.

(Ex. 4-A, Jones Decl. at ¶ 4). The poor air quality puts tenants' health at risk. Tenants already suffer from asthma or COPD and fear that poor air quality and mold exposure exacerbates their conditions. (Ex. 4-A, Jones Decl. at ¶ 4).

Security at the building is seriously deficient, putting tenants' safety at risk. Doors to the Buildings that are supposed to be locked and limited to key fobs are easily accessible to anyone.

(*See* Ex. 4-F, Brown Decl. at ¶ 6; Ex. 4-D, Diggs Decl. at ¶ 6; Ex. 4-E, Rhodes Decl. at ¶ 4). Marbury residents have seen non-tenants sleeping in common areas. (*See* Ex. 4-E, Rhodes Decl. at ¶ 4; Ex. 4-F, Brown Decl. at ¶ 6). In June 2021, an OAG inspector was able to gain access to Building 2300 through open doors in the parking garage and move unimpeded to every floor in the Building. (*See* Ex. 5, Memorandum of Willie Hayes at PI0792).

Outside, the garage doors are often frozen open. (*See* Ex. 4-F, Brown Decl. at ¶ 9.) Tenants fear walking from their cars at night, especially after cars have been vandalized in the lot on multiple occasions. (*See* Ex. 4-F, Brown Decl. at ¶ 9; Ex. 4-D, Diggs Decl. at ¶ 5.) One tenant no longer feels she can own a car after her previous cars were vandalized or stolen off the Property on three separate occasions. (*See* Ex. 4-D, Diggs Decl. at ¶ 5.)

Furthermore, elevators which are necessary for tenants with disabilities to access their apartments and move about the complex, are regularly non-functional. (*See* Ex. 4-E, Rhodes Decl. at ¶¶ 7-8; Ex. QQQ, DCRA Inspection July 28, 2020 Unit 517 at PI0600; Ex. ZZZ, DCRA Inspection October 30, 2020 Unit 518 at PI0673). The outages have caused tenants with disabilities to be stranded for hours in the lobby and basement of Marbury Plaza or endure the indignity of being carried up flights of stairs. (*See* Ex. 4-E, Rhodes Decl. at ¶ 7). Other tenants struggle to climb flights of stairs to reach their homes. (*See* Ex. 4-F, Brown Decl. at ¶ 12 ("The first workday after I moved in, I returned home after a twelve hour shift at the hospital. All four elevators were broken so I had to climb the steps to my tenth floor apartment. It was boiling hot in the stairwell because the air conditioning was not working at the time.")).

The risk of fire-related harm is increased by the Property's substandard fire safety systems. The Property has broken and missing smoke detectors and carbon monoxide alarms. (*See* Ex. 3-A-D, CTI Inspection Reports, revealing that seven of the eighteen units inspected across three

buildings were missing smoke detectors.). Systems meant to protect tenants after a fire breaks out are failing. Every floor in Building 2330 is missing an evacuation plan. (*See* Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0767). Emergency exit signs are damaged, loose, turned off, or have arrows pointing in the wrong direction. (*See* Ex. 3-A, CTI June 4, 2021 Inspection Report at PI0761; Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0763, PI0764, PI0765, PI0766; Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0769, PI0770). In the laundry rooms, barriers meant to safeguard against the spread of fire are not sealed or constructed out of an incorrect material. (*See* Ex. 3-A, CTI June 4, 2021 Inspection Report at PI0760; Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0764; Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0769).

Tenants are also endangered by the Property's faulty electrical systems. Electrical issues at the Property include loose wiring, missing cover plates on electrical outlets, broken outlets and light fixtures, and missing GFCI outlets which reduce the risk of electric shock. (*See* Ex. 3-A, CTI June 4, 2021 Inspection Report at PI0760-PI0761; Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0768-PI0769, PI0771; Ex. 2-HHHH, DCRA Inspection March 1, 2021 2316 Unit 10 at PI0731; Ex. 2-JJJJ, DCRA Inspection March 2, 2021 2316 Unit 201 at PI0741; Ex. 2-KKKK, DCRA Inspection March 2, 2021 2316 Unit 202 at PI0744).

Infestations of mice, cockroaches, bed bugs, and fruit flies plague Marbury tenants. Mice seem to multiply, cockroaches are seen "constantly" and fruit flies find homes in vents. (*See* Ex. 4-E, Rhodes Decl. at ¶ 16). Many tenants have reported infestations in their units. (*See* Ex. 4-A, Jones Decl. at ¶ 9; Ex. 4-D, Diggs Decl. at ¶ 17; Ex. 4-E, Rhodes Decl. at ¶ 16). During their June 2021 inspections, CTI identified insect or rodent activity in multiple buildings. (*See* Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0766-PI0767). Defendants do not provide a routine extermination service and often refuse to schedule an exterminator when tenants specifically ask

for one. (*See* Ex. 4-D, Diggs Decl. at ¶ 17; Ex. 4-E, Rhodes Decl. at ¶ 16). As a result, tenants must purchase their own extermination products. (*See* Ex. 4-A, Jones Decl. at ¶ 9).

Finally, amenities that are advertised to tenants, such as laundry facilities and a pool, are not available. For instance, Defendant Vantage Management's website advertises that Marbury Plaza offers a "sparkling" and "stunning" pool and "24-Hour Laundry Center." (*See* Exs. 6-A, 6-B, 6-C, Marbury Website Captures). In fact, these amenities are not available to tenants. (*See* Ex. 4-E, Rhodes Decl. at ¶ 18.; Ex. 4-F, Brown Decl. at ¶ 11.; Ex. 4-A, Jones Decl. at ¶ 18; Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0770; Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0764). Laundry machines frequently break down for long periods of time. (*See* Ex. 4-A, Jones Decl. at ¶ 18, noting the laundry room has been out of service for three to five months). When CTI inspected the Property in June 2021, all the machines in the second floor laundry room of 2300 were unplugged and not working. (*See* Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0770). The door to the fourth floor laundry room of 2300 was locked. (*See* Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0764). In the 2330 tenth floor laundry room the dryer vent duct is not connected and the room lacks proper fire retardant panels. *Id.* The laundry rooms are missing GFCI outlets and do not properly drain or vent, creating safety hazards for tenants who attempt to use the laundry machines. (*See* Ex. 3-A, CTI June 4, 2021 Inspection Report at PI0760-PI0761; Ex. 3-B, CTI June 14, 2021 Inspection Report at PI0764-PI0766; Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0769; Ex. 2-III, DCRA Inspection June 15, 2020 2316 Common Area-Laundry at PI0513; Ex. 2-FFF, DCRA Inspection April 7, 2020 2316 Common Area at PI0497). The promised "sparkling pool" has been closed for at least three years. (See Ex. 4-E, Rhodes Decl. at ¶ 18; Ex. 4-D, Diggs Decl. at ¶ 22; Ex. 4-A, Jones Decl. at ¶ 17). Rather than the fake picture on its website,

tenants report that the pool looks "nasty" and has trash floating in it. (*See* Ex. 4-A, Jones Decl. at ¶ 17; Ex. 7, Picture of Pool at PI0828).

Defendants' remediation attempts are delayed, incomplete, and ineffective and have left tenants living in uninhabitable conditions for years. Despite being cited for leaks since 2017, leaks and resultant mold still pervade the Property. (*See* Ex. 1-A, 2300 Mold Inspection Report at PI020, PI027, PI065, PI072, PI079, PI086, PI092, PI099, PI106, PI113; Ex. 1-C, 2330 Mold Inspection Report at PI171, PI178, Ex. 3-C, CTI June 17, 2021 Inspection Report at PI0771 (noting that during the inspection, "[w]ater was pouring down from [the] top of [the] fire department connection" in the first floor corridor of Building 2330)). Defendants have tried to hide mold by spackling, painting over, and bleaching, methods that are not recommended for appropriate remediation. (Ex. 1-A, 2300 Mold Inspection Report at PI080, PI107). Defendants' repairs are ineffective and tenants report that leaks recur shortly after plumbing repairs. (*See* Ex. 4-D, Diggs Decl. at ¶ 11; Ex. 4-E, Rhodes Decl. at ¶¶ 12-14; Ex. 4-F, Brown Decl. at ¶ 15; Ex. 4-B, Declaration of Dezarey Thomas ("Thomas Decl.") at ¶ 4; Ex. 4-A, Jones Decl. at ¶ 13).

The air conditioning has broken at least once every summer since 2017 and it takes Defendants weeks to restore it. (*See e.g.* Ex. 2-QQQ, DCRA Inspection July 28, 2020 2300 Unit 517 at PI0605; Ex. 2-MMM, DCRA Inspection July 14, 2020 2300 Unit 123 at PI0535, PI0539-PI0542; Ex. 2-OOO, DCRA Inspection July 15, 2020 2300 Unit 622; Ex. 2-NNN, DCRA Inspection July 15, 2020 2300 Unit 1025 at PI0556; *See* Ex. 4-E, Rhodes Decl. at ¶ 11; Ex. 4-F, Brown Decl. at ¶ 4; Ex. 4-C, Gladden Decl. at ¶ 24, noting she had no access to air conditioning from June 28, 2020 to July 17, 2020). Defendants similarly fail to provide consistent heat in the winter. (*See* Ex. 4-C, Gladden Decl. at ¶ 24). When the HVAC system is functioning, it blows air

that is saturated with dirt because Defendants have failed to clean the HVAC systems. (*See* Ex. 4-A, Jones Decl. at ¶¶ 4-7; Ex. 4-E, Rhodes Decl. at ¶ 5).

The Property has been cited repeatedly since 2017 for dangerous conditions including security lapses, elevator and chairlift outages, fire safety deficiencies, electrical hazards, and infestations. (*See* Exs. 2-A – 2-LLLL, DCRA Inspections). Defendants do not substantially fix their elevators or chairlifts which break down as frequently as weekly in 2019 and 2020. (*See* Ex. 4-D, Diggs Decl. at ¶ 13). Since 2017, DCRA has cited Defendants on 23 different occasions for failing to abate previously identified unsecured doors, fire safety violations, electrical concerns, and pest infestations. (*See* Exs. 2-A – 2-LLLL, DCRA Inspections).

LEGAL STANDARD

When the District seeks preliminary injunctive relief under an express statutory grant of enforcement authority like the CPPA, the Court presumes irreparable harm and applies an abbreviated test that considers whether: (1) the District is substantially likely to succeed on the merits; (2) the balance of hardships tips in the District's favor; and (3) the public interest favors granting the injunctive relief. *See District of Columbia v. Town Sports Int'l, LLC*, Case No. 2020 CA 003691 B, at *8 (D.C. Sup. Ct. Oct. 8, 2020) (granting preliminary injunction in CPPA enforcement case); *see also F.T.C. v. Consumer Defense, LLC*, 926 F.3d 1208, 1212-14 (9th Cir. 2019) (upholding preliminary injunction for the government because irreparable harm was correctly presumed in action alleging deceptive representations and material misrepresentations in violation of consumer protection laws); *F.T.C. v. Mallett*, 818 F. Supp. 2d 142, 146 (D.D.C. 2011) (collecting cases).[2]

[2] As set out further below, the District would satisfy even the traditional four-part test for a preliminary injunction used in non-enforcement contexts: (1) whether there is a substantial likelihood the movant will prevail on the merits; (2) whether the movant is in danger of suffering

Additionally, in the context of a motion for preliminary relief, the Court may consider evidence that may not be admissible under the evidentiary rules applicable at trial. *See In re Estate of Reilly*, 933 A.2d 830, 839 n.5 (D.C. 2007) (courts considering motions for preliminary injunction "need not apply the procedural rigor that the trial court would to each piece of evidence as presented at trial"); *cf.* Super. Ct. Civ. R. 65(a)(2) (contemplating that not all "evidence received on" a motion for preliminary injunction may be "admissible at trial"). Accordingly, "hearsay materials and evidence other than live testimony are properly considered by the Court in preliminary injunction proceedings." *Commodity Futures Trading Comm'n v. Am. Metal Exchange Corp.*, 693 F. Supp. 168, 173 (D.N.J. 1988) (collecting cases). The "dispositive question" is not whether a particular document or piece of evidence would be admissible at trial, "but whether, weighing all the attendant factors, including the need for expedition, this type of evidence was appropriate given the character and objectives of the injunctive proceeding." *Asseo v. Pan Am. Grain Co., Inc.*, 805 F.2d 23, 26 (1st Cir. 1986).

ARGUMENT

The District easily meets the standard for a preliminary injunction in this case. The District is likely to succeed on the merits of its claims, and the equities and public interest favor the requested injunction. This immediate relief is also necessary to ensure the health and safety of Defendants' hundreds of tenants who are enduring substandard living conditions at Marbury Plaza and to cease the Defendants' deceptive conduct.

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irreparable harm during the pendency of the action absent injunctive relief; (3) whether the movant will suffer greater harm than the non-moving party if the relief is not granted; and (4) whether the public interest favors granting preliminary relief. *Feaster v. Vance*, 832 A.2d 1277, 1287-88 (D.C. 2003) (citing *District of Columbia v. Grp. Ins. Admin.*, 633 A.2d 2, 21 (D.C. 1993)).

I. The District is Substantially Likely to Succeed on the Merits of Its CPPA Claims.

The District is substantially likely to succeed on the merits of its CPPA claims. The CPPA makes it a deceptive and unlawful trade practice to provide rental housing to tenants that suffers from serious housing code violations. The CPPA also prohibits Defendants from advertising amenities at the Property which it does not provide. Finally, the CPPA prohibits Defendants from discriminating against tenants with physical disabilities. Defendants' ongoing failure to abate dangerous, unhealthy conditions at Marbury Plaza is well documented.

First, as set out in Count II of the District's Complaint, Defendants engaged in unlawful trade practices prohibited by the CPPA by failing to provide safe and habitable housing despite their representations that they would do so. Under the CPPA it a violation for any person "to misrepresent as to a material fact which has a tendency to mislead." D.C. Code § 28-3904(e). In addition, under § 28-3904(d), it is a violation of the CPPA to "represent that goods or services are of particular standard, quality, grade, style, or model if in fact they are of another." The warranty of habitability is codified into every residential lease: "There shall be deemed to be 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 D.C. Housing Code. 14 DCMR § 301.1. Defendants therefore represented in their leases that Marbury Plaza was habitable and would be maintained in compliance with District laws and regulations. Defendants clearly have and continue to fail to do so.

The Property has pervasive leaks and plumbing issues which have led to rampant mold growth in common areas and living units. *See District of Columbia v. Jefferson-11th Street, LLC et al.*, 2017 CA 002837 2 (finding property owner and property manager violated CPPA by failing to repair leaks and mold); *District of Columbia v. Thomas K. Stephenson*, 2018 CA 004448 B

(finding property owner violated CPPA when owner failed to maintain Property free of mold and water intrusions). The HVAC failures which have left tenants exposed to dangerous temperatures and filthy air quality are also a violation of the CPPA. *See District of Columbia v. Thomas K. Stephenson*, 2018 CA 004448 B (finding failure to provide utilities a violation of CPPA). The Property has frequent elevator outages, security failures, fire safety defects, electrical deficiencies, and pest control issues, all in violation of the CPPA. *See District of Columbia v. Jefferson-11th Street, LLC et al.*, 2017 CA 002837 2 (finding property owner and property manager violated CPPA by failing to abate vermin infestation); *District of Columbia v. Thomas K. Stephenson*, 2018 CA 004448 B (finding property owner violated CPPA by failing to provide for the safety and security of tenants).

Also set out in Count II of the Complaint, Defendants violated the CPPA by advertising certain amenities, such as laundry facilities and a pool, which are not regularly available to tenants. It is a violation for any person "to misrepresent as to a material fact which has a tendency to mislead." D.C. Code § 28-3904(e). Defendants cannot deny that they advertised these amenities, yet failed to provide them, therefore violating the CPPA.

Second, as set out in Count III of the Complaint, Defendants violated the CPPA by violating title 16 of the District of Columbia Municipal Regulations. The CPPA makes it an unlawful trade practice to violate "any provision of title 16 of the District of Columbia Municipal Regulations." D.C. Code § 28-3904(dd). The ongoing violations of the District's Housing Code that have been documented by District inspectors and tenants at the Property clearly establish that Defendants have and are continuing to violate the CPPA. *See District of Columbia v. Jefferson-11th Street, LLC et al.*, 2017 CA 002837 2 (finding property owner and property manager violated

CPPA by violating title 16 of the District of Columbia Municipal Regulations); *District of Columbia v. Thomas K. Stephenson*, 2018 CA 004448 B (same).

Third, as set out in Count IV of the Complaint, Defendants violated the CPPA through their violations of the Human Rights Act, ("HRA") D.C. Code § 2-1402.21(d) when they failed to provide functioning elevators at the Property. It is a violation of the HRA to fail to accord those with physical disabilities the same use and enjoyment of the premises as those with able bodies. *Id.* These violations of the HRA are unfair or deceptive trade practices prohibited by the CPPA. *See* D.C. Code § 28-3904; *see also District Cablevision Ltd. Partnership v. Bassin,* 828 A.2d 714, 723 (D.C. 2003) ("Trade practices that violate other laws, including the common law, also fall within purview of the CPPA.")

Defendants' failure to abate mold, leaks, a non-functioning heating, air-conditioning, and ventilation system, security failures, elevator outages, fire safety concerns, electrical issues, and rodent and pest infestations as well as their false advertisements and discriminatory conduct are unlawful trade practices prohibited by the CPPA. *See* D.C. Code § 28-3904(e); *id.* § 28-3904(dd). The District is therefore very likely to succeed on the merits of its claim that Defendants have violated, and continue to violate, District law.

II. The Balance of Equities Support the District's Requested Injunction.

The balance of equities also clearly favors granting the District's request for a preliminary injunction. The District has a significant interest in protecting the health and well-being of its residents. Defendants' failure to maintain the Property has resulted in tenants being forced to live in unhabitable conditions. The hundreds of tenants at the Property face ongoing exposure to mold, leaks, extreme heat and cold, risk of fire and break-ins, and elevator outages that strand tenants with disabilities in the unsafe basement. Defendants also have and continue to entice tenants to

Marbury Plaza with promises of amenities that they have not consistently offered for years and still fail to provide.

In contrast, Defendants cannot claim that bringing the Property up to code is a hardship as they are already required by law to do so. *See United States v. Daniel Chapter One*, 793 F. Supp. 2d 157, 163 (D.D.C. 2011) ("[T]here is no hardship to [defendants] in requiring them merely to follow the law . . .") (quoting *F.T.C. v. City W. Advantage, Inc.*, No. 2:08–CV–00609–BES–GWF, 2008 WL 2844696, at *6 (D. Nev. July 22, 2008). The requested repair measures and requirement to cease false advertising would bring Defendants in compliance with District law. A preliminary injunction would impose no burden beyond Defendant's existing legal responsibilities, but it would save hundreds of tenants from serious health and safety hazards, deception and discrimination.

III. The Public Interest Weighs Strongly in the District's Favor.

Where the government demonstrates a likelihood of success of the merits, the court may "presume…that the public interest will be served by interim relief." *Mallett*, 818 F. Supp. 2d at 149 (quoting *FTC v. Weyerhaeuser Co.*, 665 F.2d at 1082). Here, the public interest clearly favors housing accommodations that are safe, accessible, and healthy, and deliver the amenities and conditions that are promised, in this case for at hundreds of tenants. A preliminary injunction will prevent Defendants from further endangering the health, safety, and welfare of and deceiving District residents.

CONCLUSION

For the foregoing reasons, the District respectfully requests that this Court grant the District's Motion for a Preliminary Injunction.

Dated: July 20, 2021

Respectfully submitted,

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

CIVIL DIVISION

DISTRICT OF COLUMBIA, Plaintiff, v. **VANTAGE MANAGEMENT, INC.**, et al., Defendants.	Case No.: 2021 CA 002209 B

ORDER ON DISTRICT OF COLUMBIA'S MOTION FOR PRELIMINARY INJUCTION

Upon consideration of the District of Columbia's (the "District's") Motion for Preliminary Injunction against Defendant MP PPH, LLC and Vantage Management, Inc. ("Defendants") the memorandum of points and authorities in support thereof, the attached exhibits, any opposition, and the entire record contained herein, it is hereby:

ORDERED, that the District's Motion for Preliminary Injunction is granted; and

FURTHER ORDERED, that by _____, 2021 (30 days from this Order), general property, electrical, elevator, HVAC, plumbing and mold inspections shall be completed for all units, common areas, mechanical spaces, and exterior spaces at 2300 through 2330 Good Hope Road SE, Washington, D.C. 20020 (the "Property" or "Marbury Plaza"). Defendants will provide the District with the reports from the inspections by _____ (45 days from this Order) and remedy all issues identified within the inspections by _____ (60 days from this Order); and it is

FURTHER ORDERED, that on or before_____ (30 days from this Order), Defendants shall hire a Department of Energy and Environment ("DOEE") certified mold assessor to inspect all living units, unoccupied units, and common areas at the Property. By_____ (30 days from this the hiring of the mold assessor), Defendant shall hire a certified mold remediator to perform remediation by _____ (60 days from this Order) subject to the guidelines set forth in the Housing Regulations of the District of Columbia ("Housing Code") and the D.C. Code that are applicable to the Property for the remediation and abatement of indoor mold; and it is

FURTHER ORDERED, that on or before _____ (30 days from this Order), a licensed plumber shall inspect all plumbing at the Property and remediate any defects, including water infiltration issues and water heating issues, that are found as a result of the plumbing inspection.

FURTHER ORDERED, that on or before _____ (10 days from this Order), Defendants shall hire a licensed elevator technician to inspect and repair all elevators and stairway chairlift systems at the Property; and it is

FURTHER ORDERED, that on or before _____ (30 days from this Order), Defendants shall hire a licensed HVAC professional to inspect and repair all living units, common areas, and mechanical spaces for heating, air conditioning, and ventilation issues; and it is

FURTHER ORDERED, that on or before _____ (30 days from this Order), Defendants shall hire a contractor to inspect all units and common areas to remediate any asbestos hazards; and it is

FURTHER ORDERED, that unless otherwise specified, on or before _____ (30 days from this Order), and to the extent that they are not, Defendants shall:

1. have a licensed electrician inspect all living units and common areas for electrical hazards and fire and safety hazards and remediate all electrical, fire and safety hazards, including but not limited to, electric outages in outdoor spaces on the Property; and

2. have a licensed exterminator inspect and treat for rodent and other vermin infestation in the Property and create a system for tenants to be able to request and obtain ongoing weekly pest exterminations in all units and common areas at the Property. In addition to extermination treatments, the exterminator shall perform exclusion treatments to prevent the ingress and egress of rodents, insects and vermin from the Property; and

3. secure all points of entry to all buildings on the Property so only those with key access may enter the Property; and

4. ensure that all laundry facilities in the Property are operational; and

5. hire a licensed pool management company to ensure that the pool at the Property is safe for use and enjoyment by _____ (10 days from this Order); and it is

FURTHER ORDERED, that on or before _____ (60 days from this Order), or other date as arranged by Defendant and the District, Defendant will provide the District access to each unit in the Property for inspection by the District and their inspectors.

SO ORDERED this ____ day of _____, 2021.

_____

Judge Heidi M. Pasichow

Copies to all parties via CaseFileXpress