STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF HENNEPIN | FOURTH JUDICIAL DISTRICT
Case Type: Other Civil

Barry Sewall, Shamika Gregory, and Jerome Gregory, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Home Partners Holdings LLC, SFR Acquisitions I LLC, and OPVHHJV LLC, d/b/a Pathlight Property Management,

Defendants.

Court File No.: 27-cv-22-10389

DEFENDANTS' BRIEF IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT ON PLAINTIFFS' CLAIMS

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This case concerns Defendants' Lease Purchase Program, a program by which Home Partners purchases homes and leases the homes to residents while providing them the option to purchase the home at a predetermined price at any point during the Lease. Plaintiffs participated in this program: they got pre-approved, filled out full applications, and hand-selected their homes. They received sample Leases weeks before they had to sign their final Leases, were encouraged to consult an attorney, and received ample time and opportunity to review the Lease and ask questions. Except now, Plaintiffs claim that the Lease documents were fraudulent, misleading, and/or contrary to Minnesota law. But, the undisputed facts in the record show that (1) the Leases were completely legal; (2) Plaintiffs had the opportunity to know and understand the terms of the Leases before they signed them; and (3) there is no evidence that Plaintiffs were harmed by any of the so-called "illegal" Lease terms. This Court should grant summary judgment in favor of Defendants on all counts with respect to Jerome and Shamika Gregory and with respect to Counts I, II, III, IV, VII, VIII, IX, and X with respect to Dr. Barry Sewall.

I. STATEMENT OF THE ISSUES

1. It is undisputed that Minnesota Statute Section 504B.161, subd. 2 allows landlords and tenants to agree that specified repair and maintenance shall be performed by the tenant if the agreement is supported by adequate consideration and set forth in a conspicuous writing. It is undisputed that the Leases at issue contained such an agreement. It is also undisputed that Plaintiffs did not perform any maintenance or repair work related to any issue affecting their health and safety. Did the Leases at issue violate Minnesota Statute Section 504B.161, subd. 2?

2. It is undisputed that Plaintiffs were provided Lease terms weeks ahead of them signing their Leases, were encouraged to consult an attorney, and were provided the opportunity to review the Leases and ask questions about any terms they did not understand. Defendants contend that all Lease provisions comply with all applicable state and local laws. Did the Leases

at issue contain misleading and/or fraudulent terms such that they violate Minnesota's Consumer Fraud Act and Deceptive Trade Practices Act?

3. Minnesota Statute Section 504B.178, subd. 3 provides that a security deposit and interest thereon must be provided to a tenant within three weeks after the termination of the tenancy. It is undisputed that the Gregorys have not terminated their tenancy. Given that the Gregorys have not terminated their tenancy, do they have a claim related to the return of their security deposit and interest thereon pursuant to Minnesota Statute Section 504B.178, subd. 3?

4. Minnesota Statute Section 504B.177 caps the amount of late fees that landlords are able to charge at 8%. It is undisputed that the Lease states that Defendants will not charge a late fee in excess of what is allowed by Minnesota law, and it is undisputed that the Gregorys have never been charged a late fee in excess of 8%. Does the Gregorys' Lease violate Minnesota Statute Section 504B.177?

5. Under Minnesota law, every contract has an implied duty of good faith and fair dealing, which means that one party may not unjustifiably hinder the other party's performance of the contract. If the Leases at issue do not contain any misleading, fraudulent, or illegal terms and the record does not otherwise contain any evidence that Defendants attempted to prevent Plaintiffs from fulfilling their contractual duties, do Plaintiffs have a viable claim for breach of the duty of good faith and fair dealing?

6. If the Lease contains no misleading, fraudulent, or illegal terms, is the claim of rescission available to the Gregorys? Further, Minnesota law provides that a party may not rescind a contract that is no longer in existence. If Dr. Sewall has ended his contractual relationship with Defendants, is the claim of rescission still available to him?

7. Under Minnesota law, unjust enrichment is when one party knowingly received something of value to which the party was not entitled. If the record does not contain any evidence that Plaintiffs were made to perform any repair and maintenance work in violation of the covenant of habitability, were Defendants unjustly enriched by Plaintiffs' rent payments?

8. If Defendants' Leases are valid and there is no evidence that Defendants violated any terms of the Leases, do Plaintiffs have any claim for an injunction or declaratory relief?

II. STATEMENT OF THE DOCUMENTS THAT COMPRISE THE RECORD FOR SUMMARY JUDGMENT

The documents comprising the record are listed on and attached to: (1) the June 16, 2023 Declaration of Michael Cockson ("Cockson Decl."); (2) the June 15, 2023 Declaration of Emily Cefalu ("Cefalu Decl."); (3) the June 15, 2023 Declaration of Christopher Scallon ("Scallon Decl."); (4) the May 12, 2023 Declaration of Anne T. Regan ("Regan Decl."); and (5) the May 10, 2023 Declaration of Barry Sewall ("Sewall Decl.").

III. MATERIAL FACTS AS TO WHICH THERE IS NO GENUINE DISPUTE

A. Home Partners and the Lease Purchase Program

Launched as a new solution to a constrained mortgage market, the Lease Purchase Program is a program through which Home Partners purchases homes and leases the homes to residents while providing them the option—but not the obligation—to purchase the home at a predetermined price at any point during the Lease. (Cefalu Decl. ¶ 5.) Defendants' background and the details of the Lease Purchase Program are set forth Section I of Defendants' Opposition to Class Certification, filed concurrently.

B. Dr. Sewall Searches for a Home

Plaintiff Barry Sewall is a radiologist. (Sewall Decl., Ex. 3, Sewall Supp. Answers to Defs.' Interrogs. at 21.) In 2016, Dr. Sewall needed a new place to live, as he was "coming out of a

divorce and a big house" and needed a "landing spot" for himself and his pom chihuahua, Beanie. (Cockson Decl., Ex. 1, Sewall Dep. at 18:15-19 [hereinafter "Sewall Dep."]; Regan Decl., Ex. 4, Sewall Lease at Pet Addendum [hereinafter "Sewall Lease"].) Dr. Sewall engaged a realtor to help him find a home that checked all his boxes: his wish list included something that was close to his job, elderly parents, and disabled brother; extra space in the garage to store "woodshop equipment"; hardwood floors; and tall ceilings. (Sewall Dep. at 36:13-21, 44:19-45:10.) There were "precious few" houses that met his criteria. (*Id.* at 36:16-21.) After looking at "three or four homes," Dr. Sewall found the listing for 12817 Jane Lane, Minnetonka, Minnesota ("the Minnetonka Home"), toured it once for under an hour, and decided he wanted to live there. (*Id.* at 36:16-21, 45:18-21.)

The Minnetonka Home is a modified two-story home built in 1988. (Cockson Decl, Ex. 4, 12817 Jane Lane MLS Listing.) It has 2,645 square feet and sits on a nearly half-acre lot. (*Id.*) It has three bedrooms, one full bathroom, one three-quarter bathroom, and one half bathroom. (*Id.*) It has a three-car attached garage and a 10-year-old asphalt shingle roof. (*Id.*)

In May 2016, Dr. Sewall filled out a pre-qualification questionnaire and was pre-approved. (Scallon Decl. ¶ 6, Ex. 1, Sewall Pre-Qualification.) After his pre-approval, Dr. Sewall filled out

Home Partners' application and paid a $75 non-refundable application fee. (Scallon Decl. ¶ 7, Ex. 3, Exemplar Blank Application.) On June 6, 2016, Home Partners sent Dr. Sewall a letter informing him that his application was approved and that he qualified for a maximum monthly rent of $4,500. (Scallon Decl. ¶ 8, Ex. 4, Sewall Approval Letter.) The letter also outlined the next steps in the process, cautioned Dr. Sewall to "read carefully," and provided a sample Lease and Right to Purchase Agreement with the encouragement that he "[r]eview . . . [them] with a legal advisor." (Scallon Decl. ¶¶ 9-11, Ex. 4.)

Concurrent with the application process, Dr. Sewall informed Home Partners that he wanted Home Partners to buy the Minnetonka Home and rent it to him pursuant to the Lease Purchase Program. (Sewall Dep. at 37:20-24; Scallon Decl. ¶ 14–16, Ex. 8.) After due diligence to ensure that the Minnetonka Home met its criteria for the LPP, (Scallon Decl. ¶ 14, Ex. 7, Property Guide), Home Partners sent Dr. Sewall an email informing him of the approval and setting forth his locked-in rental rates and the estimated purchase price for all five years:

SCREENSHOT OF CONFIDENTIAL EXHIBIT REDACTED

(Scallon Decl. ¶ 14, Ex. 8, Sewall Anticipated Terms.) Dr. Sewall approved these rates and instructed Home Partners to move forward with the purchase. (Scallon Decl. ¶¶ 14–16, Ex. 8.) Home Partners succesfuly secured a purchase agrement on the Minnetonka Home, at which point, Dr. Sewall revied his final Lease and Right to Purchase Ageement. (Scallon Decl. ¶ 17; Sewall Lease). Home Partners had the inspected on June 28, 2016. (Regan Decl., Ex. 34, 12817 Jane Lane Inspection Report.) Home Partners then completed the purchase on the Minnetonka Home for $375,000. (Cockson Decl., Ex. 5, 12817 Jane Lane Purchase Agreement.)

Home Partners made numerous repairs to the Minnetonka Home prior to Dr. Sewall moving in. (Cockson Decl., Ex. 6, 12817 Jane Lane Make Ready Invoice; Sewall Dep. at 174:17-

175:16.) The cost of this "Make Ready" work totaled nearly $20,000 and included items both big and small, such as interior painting, handrail installation, new toilet seats, new closet shelving, and roof repair. (Cockson Decl., Ex. 6, 12817 Jane Lane Make Ready Invoice.) At Dr. Sewall's request, Home Partners also re-painted the entire main level, and re-positioned a staircase from the garage to a storage room. (Sewall Decl. ¶ 9, Ex. 2, Sewall Renovation Checklist; Sewall Dep. at 38:14–39:1.) Following the agreement to perform this work, Home Partners sent Dr. Sewall the final right to purchase amounts, which reflected the price Home Partners paid for the Minnetonka Home and the scope of work it agreed to perform prior to Dr. Sewall's occupancy. (Scallon Decl. ¶ 20, Ex. 11, Sewall "True-Up Letter.) As stated above, the rental rates were already locked in and did not change. (Scallon Decl. ¶ 14, Ex. 8, Sewall Anticipated Terms.)

Dr. Sewall had the opportunity to inspect the Minnetonka Home, but he chose not to; further, he did not otherwise do any research on the Minnetonka Home, such as looking through old utility bills, deeds, or property records. (Sewall Lease ¶ 9; Sewall Dep. at 45:22-23; 46:11-17.)

Dr. Sewall signed his Lease and Right to Purchase Agreements on June 28, 2016. (Sewall Lease at Document Review Acknowledgement.) Besides double-checking what his rent increases would be each year, Dr. Sewall testified that he did not read the Lease carefully; instead, he only "skimmed" it for approximately ten minutes. (Sewall Dep. at 34:22-35:13.) In particular, Dr. Sewall testified that he did not read the Repair and Maintenance subsection of the Lease that sets out the allocation of repair and maintenance responsibilities, as between the landlord and resident. (*Id.* at 56:24-25.) When he read parts of his Lease during his deposition and then was questioned about it, Dr. Sewall stated that he understood it; in particular, he testified he understood that if the repair and maintenance obligations allocated between landlord and tenant were inconsistent with

Minnesota law, then Minnesota law would apply, because the subsection of the Lease stated repeatedly that, in case of a conflict, "Applicable Law" would apply. (*Id.* at 114:24-115:8.)

C. The Gregorys Search for a Home

When Jerome and Shamika Gregory began searching for a home for themselves, their four children (aged 16, 15, 14, and 4), and their small dog, they were looking for "a good neighborhood for the kids for school . . . [and] a house that would fit [their] family size." (Cockson Decl, Ex. 2, S. Gregory Dep. at 26:11-16 [hereinafter "S. Gregory Dep."]; Ex. 3, J. Gregory Dep. at 13:8-15 [hereinafter "J. Gregory Dep."]; Regan Decl., Ex. 5, Gregory Lease ¶ 1, Pet Addendum [hereinafter "Gregory Lease"].) The Gregorys had been living in North Minneapolis during the George Floyd riots and wanted to move somewhere safer. (J. Gregory Dep. at 62:20-24.) They wanted "a place to call home, where my kids are safe, my wife is safe, where we don't have to worry about gunfire coming from every which way." (*Id.* at 16:20-25.) Also, they wanted nearby highway access, wanted to have their kids to go to Park Center school, and wanted to live close to their relatives. (*Id.* at 17:11-14.)

The Gregorys learned of Home Partners when looking online for homes to rent. (S. Gregory Dep. at 26:20-27:1.) They were interested in lease-with-a-right-to-purchase arrangements, as eventual home ownership was "important" to them. (*Id.* at 37:15-38:1.) The LPP would support their goal of homeownership because it would "giv[e them] time to build it up, build [their] money up, build [their] credit up, get where [they] need to be so [they] can finally purchase a home." (J. Gregory Dep. at 45:20-46:3.) Prior to moving into their home, they had never rented a standalone single-family residence. (*Id.* at 63:20-23.)

The Gregorys looked at "maybe five" homes with a realtor. (*Id.* at 18:13-15.) They came across 707 69th Ave. N., Brooklyn Center, Minnesota (the "Brooklyn Center Home"). (S. Gregory Dep. at 29:4-13.) They visited it twice. (*Id.* at 29:14-15.)

The Brooklyn Center Home is a split-level home built in 1988. (Cockson Decl., Ex. 4, 707 69th Ave MLS Listing.) It has 2,266 square feet and sits on almost a quarter acre. (*Id.*) It has five bedrooms, two full bathrooms, and two-car attached garage. (*Id.*)

In May 2021, the Gregorys filled out a pre-qualification questionnaire and were pre-approved. (Scallon Decl. ¶ 6, Ex. 2, Gregory Pre-Qualification.) After their pre-approval, the Gregorys filled out an application and paid a $75 non-refundable application fee. (Scallon Dec. ¶ 7, Ex. 3, Exemplar Blank Application.) On May 28, 2021, Home Partners sent them an email informing them that their application was approved and that they qualified for a maximum monthly rent of $3,190. (Scallon Decl. ¶ 8, Ex. 5, Gregory Approval Letter.) The letter also outlined the next steps in the process, cautioned them to "carefully review" the attached Resident Introduction Package, which included a sample Lease and Right to Purchase Agreements. (*Id*.) The Resident Introduction Package "encouraged [them] to review the . . . documents and consult professional legal counsel." (Scallon Decl. ¶ 9, Ex. 6, Resident Introduction Package.)

The Gregorys asked Home Partners to purchase the Brooklyn Center Home on approximately June 2021. (S. Gregory Dep. at 52:18-22.) After due diligence to ensure that the Brooklyn Center Home met its criteria for the LPP, (Scallon Decl. ¶ 13, Ex. 7, Property Guide),

Home Partners sent the Gregorys an email informing them of the approval and setting forth their locked-in rental rates and the estimated purchase price for all five years:

SCREENSHOTS OF CONFIDENTIAL DOCUMENTS REDACTED

(Scallon Decl. ¶ 14, Ex. 9.) The Gregorys approved these rates and insturcted Home Partners to move forward with the purchase. (Scallon Decl. ¶¶ 14–16, Ex. 8.) Home Partners had the Brooklyn Center Home inspected on June 22, 2021. (Regan Decl., Ex. 35, 707 69th Ave Inspection Report.) Home Partners then completed the purchase of the Brooklyn Center Home. (Scallon Decl. ¶ 17, Ex. 10.)

Home Partners spent over $8,000 making the Brooklyn Center Home ready. (Cockson Decl., Ex. 6, Gregory Make Ready Invoice.) This "Make Ready" work included items such as painting, caulking, replacing bulbs, replacing outlets, removing debris, and wiring and running a sump pump. (*Id.*) Following the agreement to perform this work, Home Partners sent the Gregorys the final right to purchase amounts, which reflected the price Home Partners paid for the Brooklyn Center Home and the scope of work it agreed to perform prior to their occupancy. (Scallon Decl. ¶ 20, Ex. 12, Gregory "True-Up" Letter.) The rental rates did not change. (Scallon Decl. ¶ 14, Ex. 9.) The Gregorys did not pay for their own inspection of the Brooklyn Center Home or otherwise hire anyone to judge its quality. (S. Gregory Dep. at 62:4-11.)

In advance of signing the Lease, Ms. Gregory testified that she read all the Lease documents, giving them "careful thought." (*Id.* at 35:4-19.) In fact, she testified that she spent two days reviewing the Lease before they signed it, and she testified that she understood all of its contents. (*Id.* at 34:5-10, 44:13-15.) They both understood the Lease required them to perform certain routine maintenance and repairs, and they voluntarily accepted it. (*Id*. at 33:18-34:4, 45:18-

21.) They did not ask any questions about the Lease before they signed it, although they could have. (J. Gregory Dep. at 56:19-25; S. Gregory Dep. at 44:2-25.) Like Dr. Sewall, they understood that if the Lease contained language that repeatedly provided that "Applicable Laws" would apply in the event of a conflict between the Lease provisions and Minnesota law. (J. Gregory Dep. at 151:8-15.)

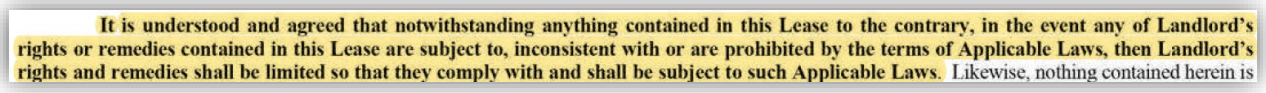
D. The Lease and Right to Purchase Agreement

1. Lease Term and Right to Purchase

The LPP Leases and Residential Right to Purchase Agreements ("RTP Agreement") have several key features. The Leases have a one-year term with four optional one-year renewal terms. Residents have the option to leave without penalty after every term. (Sewall Lease ¶ 2; Gregory Lease ¶ 3; Cockson Decl., Ex. 7, LPP Flyer at DEFS_00004341.) Residents may exercise their right to purchase the home at any time. (Cefalu Decl. ¶ 5; Cockson Decl., Ex. 7, LPP Flyer at DEFS_00004341, LPP Door Hanger at DEFS_00004698 (explaing that residents have the right, but not the obligaiton, to purchase at any time).)

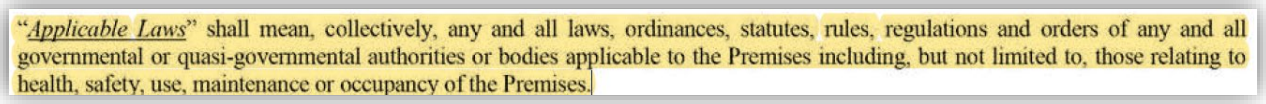
2. Defendants' Lease Terms Reflect Their Desire For Consistency While Adhering to All State Laws and Local Ordinances

Defendants operate in nearly 30 markets across the country and want all of their residents to have a similar experience with the LPP. (Cefalu Decl. ¶ 5; Scallon Decl., Ex. 7, Property Guide.) The challenge, however, is that each state, as well as many municipalities, have specific landlord-tenant or other laws or rules that affect Defendants' relationship with their residents. Defendants' Lease provisions attempt to balance these dynamics by noting, where appropriate, that the Lease terms may conflict with applicable laws and that applicable laws will control in the event of any conflict between the two. For example, both of the Plaintiffs' Leases provide that:



It is understood and agreed that notwithstanding anything contained in this Lease to the contrary, in the event any of Landlord's rights or remedies contained in this Lease are subject to, inconsistent with or are prohibited by the terms of Applicable Laws, then Landlord's rights and remedies shall be limited so that they comply with and shall be subject to such Applicable Laws. Likewise, nothing contained herein is

(Sewall Lease ¶ 3 (bold text in original, highlighting added); Gregory Lease ¶ 4 (same).) "Applicable Laws" are defined as follows:



"*Applicable Laws*" shall mean, collectively, any and all laws, ordinances, statutes, rules, regulations and orders of any and all governmental or quasi-governmental authorities or bodies applicable to the Premises including, but not limited to, those relating to health, safety, use, maintenance or occupancy of the Premises.

(Sewall Lease ¶ 1(B) (highlighting added); Gregory Lease ¶ 1(B) (same).) The Lease contains dozens of statements that caution that its provisions are subject to Applicable Laws[1] and a severability clause that states that any provision that violates Applicable Laws should be read out of the Lease. (Sewall Lease ¶ 33; Gregory Lease ¶ 34.) Plaintiffs all testified at their depositions that they understood that, in the event of a conflict between their respective Leases and applicable laws, applicable laws would control. (Sewall Dep. at 114:24-115:8; S. Gregory Dep. at 151:8-15.)

3. Maintenance Responsibilities and Procedure

Pathlight, which is a wholly owned subsidiary of Home Partners, is the property manager for all LPP homes. (Cefalu Decl. ¶ 8; *see also* Cockson Decl., Ex. 8, 30.02(f) Dep. at 11:8–10; Scallon Decl., Ex. 7 at DEFS_00280249.) Another key feature of the LPP is that residents expressly agree to perform some of the maintenance associated with their homes in exchange for lower rent:

[1] (*See, e.g.*, Sewall Lease ¶ 3 (stating that any fees collected under the Lease would be subject to Applicable Laws), ¶ 4 (stating that any use by the Landlord of the security deposit would be subject to Applicable Laws), ¶ 11 (stating that the Landlord's insurance obligations are subject to Applicable Laws), ¶ 12 (stating that the Landlord's approval of sublets and assignments are subject to Applicable Laws).) The Gregory Lease contains similar provisions. (*See generally*, Gregory Lease.)

waste therein. **The amount of Rent was negotiated with the express understanding that Tenant will be responsible for the maintenance needs of the Premises as provided in this Lease and in the absence of Tenant's agreement to maintain the Premises at its cost in accordance with the terms of this Lease, Landlord would have charged a higher rent amount.** Tenant agrees to pay for (a) all repairs, maintenance or replacement

(Sewall Lease ¶ 15 (bold text in original, highlighting added).)

set them off or deduct them against Rent due or otherwise withhold Rent (including Monthly Base Rent or Additional Rent). **The amount of Rent was agreed upon based on the express understanding that Tenant will be responsible for the maintenance needs of the Premises as provided in this Lease and in the absence of Tenant's agreement to maintain the Premises at its cost in accordance with the terms of this Lease, Landlord would have charged a higher rent amount.**

(Gregory Lease ¶ 16 (bold text in original, highlighting added).)

Given the universe of maintenance and repair issues that could occur with any given single-family home, the Lease provides as much detail as is practicable regarding which maintenance items will be the residents' responsibility and which will be Pathlight's responsibility. For example, small repairs or routine upkeep such as light bulbs, unblocking toilets, and landscaping are assigned to residents, and Pathlight is responsible for more serious repairs such as problems with the foundation, roof, etc. (Sewall Lease ¶ 15; Gregory Lease ¶ 16) The allocation of maintenance and repair provided in the Lease is consistent with the other materials on Defendants' websites and provided to prospective residents. (*See, e.g.*, Cockson Decl., Ex. 9, Resident Move-In Guide at DEFS_00004354 ("We [Pathlight] handle major repairs and significant issues of the home."); Scallon Decl., Ex. 7 at DEFS_000280250.)

4. Fees, Insurance, and Security Deposits

Because they were signed approximately five years apart, the Plaintiffs' respective Leases contain different fee provisions. Both the Sewall Lease and the Gregory Lease contain a provision allowing Defendants to collect a fee for late rent payments. (Sewall Lease ¶ 3; Gregory Lease ¶ 4.) [redacted]

[redacted] (Cockson Decl., Ex. 10, Gregory Ledgers.[2])

[redacted] (Cockson Decl., Ex. 10, Gregory Ledgers.)

Both the Sewall Lease and the Gregory Lease contain a provision regarding attorneys' fees. (Sewall Lease ¶ 29; Gregory Lease ¶ 30.) Pursuant to this provision, if either Home Partners or the resident institute an action regarding any Lease provision and prevails, the party not prevailing must reimburse the prevailing party's reasonable attorneys' fees up to a certain limit. (*Id.*)

The Gregory Lease assessed a Utility Billing Service Fee ("UBSF"), which is a fee that offsets part of the administrative cost to Pathlight for managing payment of certain utilities for the Brooklyn Center Home which were the Gregorys' responsibility under the Lease.

or under repair). Tenant shall pay Landlord, as Additional Rent: (a) the Utility Billing Service Fee along with the Monthly Base Rent for each month where Landlord provides Tenant a bill for reimbursement for any Excluded Utility & Service paid for by Landlord plus (b) the Utility One-Time Fee on or before the date set forth in Section 1.K.

(Gregory Lease ¶ 6 (highlighting added); Cefalu Decl. ¶ 53.) Pathlight uses a vendor to pay certain utilities at the home, and there is an expense associated with that service. (Cefalu Decl. ¶ 53.)

The Gregory Lease also included an HVAC filter fee. (Gregory Lease ¶¶ 1.J, 6, Air Filter Addendum.) Pathlight contracts with a company to deliver air filters to homes every two months to make it easy for residents to satisfy their obligation to routinely change those filters. (Cefalu Decl. ¶ 54.) The Gregorys signed a separate Air Filter Addendum that sets forth the details of this

[2] Due to recordkeeping issues, the Gregorys' Resident Ledger is in two different reports.

[3] [redacted]

program. (Regan Decl., Ex.5, Gregory Lease ¶¶ 1.J, 6, Air Filter Addendum; *see also* Scallon Decl., Ex. 6 at DEFS_00288933 (sample lease with Air Filter Addendum); Ex. 7 at DEFS_00280250 (explaining that residents must change air filters provided by vendor).) Dr. Sewall's Lease did not contain the UBSF or the HVAC filter fee provisions, nor did Defendants collect these fees from him. (Cefalu Decl., Ex. 4, Sewall Ledger.)

Defendants have always required proof of liability insurance to protect against major damages to the homes resulting from residents' negligence, which is the residents' obligation under the Lease. (Cefalu Decl. ¶¶ 46–47.) In 2016, when Dr. Sewall signed his Lease, he was required to show proof of liability insurance with certain limits and naming Home Partners as a third-party beneficiary, which he did each year of his Lease. (Sewall Lease ¶ 11; Cefalu Decl. ¶ 47.) By 2021, when the Gregorys signed their Lease, Home Partners had created a Master Resident Liability Program which offered residents a less costly alternative to meeting their insurance obligation. (Cefalu Decl. ¶¶ 48–49.) Through the program, Defendants offered residents a waiver of liability for any damage to the homes caused by their own negligence for $13 per month (less than such insurance costs in the open market). (Cefalu Decl. ¶ 49; *See also* Cockson Decl., Ex. 9 at DEFS_00004352 (explaining the MLRP).) The Gregorys signed a Lease addendum explaining this program. (Gregory Lease at Attachment C.) As before, Defendants continued to be responsible for major damage to homes that was <u>not</u> caused by residents' negligence. (Cefalu Decl. ¶ 46.)

Dr. Sewall paid a security deposit of $5,940.00 when he signed his Lease. (Sewall Lease at p. 1; Cefalu Decl., Ex. 4, Sewall Ledger.) He was credited by Defendants a total of $356.40 in security deposit interest over the course of 5 years, which is more than 1% simple non-compounding annual interest. (Cefalu Decl., Ex. 4, Sewall Ledger (highlight addded).) The Gregorys paid a security deposit of $4,320.00 when they signed their Lease. (Gregory Lease at p.

1; Cockson Decl., Ex. 10, Gregory Ledgers.) They still occupy the Brooklyn Center Home, have not received a security deposit disposition letter or had any part of their security deposit withheld, but have already received one credit for security deposit interest. (Cockson Decl., Ex. 10 at DEFS_00281436 (showing security deposit interest payment).)

E. Repair and Maintenance Requests

1. Overview of Process

Residents can submit repair and maintenance requests either through Pathlight's online portal, by calling Pathlight's 1-800 number, or by emailing Pathlight. (Cefalu Decl. ¶ 18.) Repair and maintenance requests are assigned a work order and are overseen by either Pathlight or its vendor SMS Assist ("SMS"). (*Id*. ¶ 19.) Pathlight uses SMS in part because it operates all over the country and has an extensive vendor network. (*Id*. ¶ 19; Cockson Decl., Ex. 9 at DEFS_00004354 ("[W]e work with SMS Assist to locate trustworthy contractors.").)

Once Pathlight receives a request, it evaluates whether the requested repair is the resident's responsibility per the terms of the Lease. (Cefalu Decl. ¶ 20.) Pathlight employees receive detailed training regarding repair and maintenance responsibilities, which is consistent with the Lease and other materials that describe the parties' responsibilities. (*Id*.) If the repair is Pathlight's responsibility, it assesses the urgency of the request and prioritizes requests that affect the health or safety of residents. (*Id*. ¶ 24.) If a request is non-urgent, Pathlight or SMS contacts a vendor, provides the vendor with details regarding the request, and asks the vendor to contact the resident to arrange to make the requested repair. (*Id*.) Pathlight facilitates this communication if the resident and the vendor have trouble connecting. (*Id*. ¶ 25.)

If the request relates to a small problem that a vendor can remedy during the visit, the vendor will complete the work and send an invoice to either Pathlight or SMS. (Cefalu Decl. ¶ 26.)

In certain circumstances, such as expensive and complicated repairs, Pathlight and SMS may obtain a bid from one or more vendors before authorizing a repair. (*Id.*)

2. Dr. Sewall's Maintenance and Repair Activities

Over his five-year tenancy, Dr. Sewall submitted 17 total work orders—an average of just over three per year. (*See* Cefalu Decl., Ex. 3, Sewall RMR). Of those 17, Pathlight responded to and paid for ten of them at a cost of over $3,500. (*Id*.) Of the remaining 7 requests, Dr. Sewall cancelled three of them. (Cefalu Decl., Ex. 3, Sewall RMR.) Of the remaining four, two were duplicates. (*Id.*) Accordingly, over the course of five years, Dr. Sewall made only two repair and maintenance requests that were denied by Pathlight: his fireplace and a small hole in his yard.

As to the fireplace, it is undisputed that the Minnetonka Home could be heated without assistance from the fireplace and that Defendants disclosed to Dr. Sewall, prior to his signing the Lease, that maintenance of any fireplace was a resident responsibility. When Pathlight denied Dr. Sewall's request to repair the fireplace, Dr. Sewall called a "contractor who walked [him] through the fix over the phone." (Sewall Dep. at 19:19–20:14.) The repair cost Dr. Sewall $0 and only took "maybe, two hours." (*Id.* at 20:24-21:1.) As for the small hole in Dr. Sewall's yard, Dr. Sewall testified at his deposition that he does not seek damages in this lawsuit for the hole in his yard. (Sewall Dep. at 57:18-58:1.)

A recurring problem with the Minnetonka Home was the shower drain in the primary bathroom. Pathlight sent a vendor out on several occasions to repair this issue at a total cost of $710.68. (Cefalu Decl., Ex. 2 (invoices showing total expenditures for shower drain).) Unfortunately, despite multiple attempts, Dr. Sewall was not satisfied with the performance of the drain. (Sewall Dep. at 23:25-24:4.) Although Dr. Sewall was dissatisfied, Pathlight never refused to send a vendor to repair it when he submitted a request, and he instead opted to manage the problem using Drano. (Sewall Decl., Ex. 3, Sewall Supp. Answers to Defs.' Interrogs. at 16.)

There are a handful of other maintenance issues that Dr. Sewall claims he experienced while living in the Minnetonka Home, including an ice dam, his dishwasher not functioning, and water accumulating on his garage floor. (Sewall Decl., Ex. 3, Sewall Supp. Answers to Defs.' Interrogs. at 12-16.) Dr. Sewall contacted Pathlight about the ice dam only after attempting the repair himself. (Cockson Decl., Ex. 11, Portal Communication (enlarged for easier reading).) Pathlight sent a vendor to address the issue. (Cefalu Decl., Ex. 2 at DEFS_00000771 (showing vendor painting entryway, cleaning carpets, and sanding and sealing windows).) The other requests are not reflected in Defendants' records, because Dr. Sewall never informed Pathlight of the issues. (Sewall Dep. at 144:2-19 (testifying that he "could not recall" if he told Pathlight about the dishwasher but admitting there would have been a record in the portal if he had), 60:19-61:20 (testifying that he attempted to fix the water on the garage floor with "self-leveling caulk").)

3. The Gregorys' Repair and Maintenance Activities

The Gregorys, by contrast, have submitted more than 70 requests in the roughly 20 months they have lived at the Brooklyn Center Home, including many days where they made multiple requests. (Cefalu Decl., Ex. 3, Gregory RMR.) Pathlight has spent more than $41,000 addressing these requests, which pertained to a variety of items, such as the refrigerator, cabinets, cleaning, flooring, garage doors, ceiling, toilets, roof, windows, pest control, drywall, HVAC, and painting. (*Id.*)

Although it resolved the majority of the Gregorys' repair requests, Pathlight declined certain requests that were resident responsibilities under the Lease. For example, Pathlight declined to resolve repair requests related to maid services, the Gregorys' washer and dryer, and pest control (in certain circumstances). (*Id.*) It is undisputed that maid services are not covered by the Lease. Washers and dryers are not among the appliances that Pathlight agrees to maintain per the terms of the Lease (although Pathlight did ultimately replace the Gregorys' dryer). (Cockson

Decl., Ex. 9 at DEFS_00004354 (listing refrigerators, stoves, ovens, and dishwashers); J. Gregory Dep. at 29:2-6.) Pest control is designated as a resident responsibility, (*id*., Ex 9 at DEFS_00004354,) though Pathlight will pay for pest control if, as here, the residents make an effort to remove the pests, but it is still a problem.[4] The Gregorys did not perform any maintenance on the Brooklyn Center Home themselves, except for yard work, changing light bulbs, and pest control. (S. Gregory Dep. at 64:13-65:15.)

F. Dr. Sewall's Move-Out

Dr. Sewall exercised the option to renew his Lease for each of the four renewal terms. When the last renewal term was set to expire, Dr. Sewall provided notice of his intent to vacate the home and converted his Lease to a month-to-month arrangement. (Sewall Dep. at 89:18-90:16.) On or around September 1, 2021,[5] Dr. Sewall moved out of the Minnetonka Home. Dr. Sewall elected not to purchase the Minnetonka Home; instead, he purchased a home in West Bloomington. (Sewall Dep. at 88:15-16.) After Dr. Sewall vacated the Minnetonka Home, Home Partners sold it for $487,000, which was $22,800 more than Sewall's last purchase option. (Cockson Decl., Ex. 12.) In other words, had Dr. Sewall exercised his right to purchase the Minnetonka Home, he could have done so for $22,800 less than its market value.

G. The Gregorys' Tenancy and Lease Renewals

The Gregorys continue to live in the Brooklyn Center Home despite the problems they allege through this lawsuit, because they "like the neighborhood and the schooling." (S. Gregory Dep. at 31:23-32:3.) The Gregorys renewed their Lease on August 26, 2022, despite having joined

[4] The Brooklyn Center Home is located "in a wooded area," so mice are "out there [in the yard] a lot." (J. Gregory Dep. at 99:11-14, 110:6-7.)

[5] The Parties dispute the date Dr. Sewall selected as his move out date. This dispute is not material to any causes of action for which Defendants request summary judgment.

this lawsuit on August 10, 2022. (First Am. Compl.). In fact, the Gregorys have not given up on the idea that they may still purchase the Brooklyn Center Home. (S. Gregory Dep. at 38:12-14.)

IV. PROCEDURAL BACKGROUND

Dr. Sewall filed his initial putative Class Action Complaint in the United States District Court for the Northern District of Illinois on March 3, 2022. (*See* Case: 1:22-cv-01138, Dkt. 1, Class Action Complaint). Following the filing of Defendants' motion to transfer or dismiss the Class Action Complaint without prejudice, on May 12, 2022, Dr. Sewall filed a voluntary dismissal of his initial Class Action Complaint without prejudice. (*See* Case: 1:22-cv-01138, Dkt. 21, Notice of Voluntary Dismissal of Action Without Prejudice). The next day, Dr. Sewall filed a putative class action Complaint in this Court. On August 10, 2022, Dr. Sewall filed his First Amended Complaint, adding claims on behalf of Plaintiffs Shamika and Jerome Gregory. On February 2, 2023, Plaintiffs filed a Second Amended Complaint. On February 23, 2023, Defendants answered Plaintiffs' Second Amended Complaint and filed a counterclaim against Dr. Sewall for leaving the house with substantial water damage and organic growth without notice to Pathlight.

Plaintiffs' claims are for (1) violation of the Prevention of Consumer Fraud Act, Minn. Stat. § 325F.69 (Count I); (2) violation of the Deceptive Trade Practices Act, Minn. Stat. § 325D.44 (Count II); (3) breach of covenants of landlord, Minn. Stat. § 504B.161 (Count III); (4) interest on and return of security deposits, Minn. Stat. § 504B.178 (Count IV); (5) late fees, Minn. Stat. § 504B.177 (Count V); (6) breach of good faith and fair dealing (Count VI); (7) rescission (Count VII); (8) unjust enrichment (Count VIII); (9) declaratory relief (Count IX); and (10) injunctive relief (Count X). Through this Motion, Defendants respectfully request that this Court grant

summary judgment in their favor on all Counts with respect to the Gregorys and on Counts I, II, III, VI, VII, VIII, IX, and X with respect to Dr. Sewall.[6]

SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact," and the moving party "is entitled to judgment as a matter of law." Minn. R. Civ. P. 56.03. "The moving party has the burden of showing an absence of factual issues, and the nonmoving party has the benefit of that view of the evidence most favorable to him." *Montemayor v. Sebright Prod., Inc.,* 898 N.W.2d 623, 628 (Minn. 2017) (cleaned up); *see also* Minn. R. Civ. P. 56.03. The moving party is also entitled to summary judgment when the record reflects a lack of proof on an essential element of the plaintiff's claim. *Lubbers v. Anderson*, 539 N.W.2d 398, 401 (Minn.1995). To defeat a summary judgment motion, an opposing party must demonstrate on the record the existence of specific facts illustrating that a genuine issue exists for trial. The standard requires that an opposing party provide more than mere speculation, general assertions, unverified and conclusory allegations, or promises to produce evidence at trial. *Funchess v. Cecil Newman Corp.*, 632 N.W.2d 666, 672 (Minn.2001).

[6] The parties dispute the facts related to the return of Dr. Sewall's security deposit and late fees that were assessed to him during the last weeks of his tenancy. Accordingly, those claims (Counts IV and V with respect to Dr. Sewall only) and Defendants' counterclaim are not the subject of this motion. Also, the parties dispute whether Dr. Sewall left the Minnetonka Home without reporting any major damage and mold, requiring Defendants to make major, costly repairs, for which it withheld Dr. Sewall's security deposit. Defendants do not seek summary judgment on those claims, and, thus, will not recount those facts here.

ARGUMENT

I. THERE IS NO EVIDENCE TO SUPPORT PLAINTIFFS' CLAIM FOR BREACH OF THE COVENANT OF HABITABILITY (COUNT III)

A. The Terms of the Lease Do Not Violate Minn. Stat. Section 504B.161

"Minnesota law establishes a number of covenants that are implied in the lease of every residential premises and that are known as the covenants of habitability." *Rush v. Westwood Vill. P'ship*, 887 N.W.2d 701, 706 (Minn. App. 2016) (citation omitted). Among other things, a landlord must covenant "to keep the premises in reasonable repair during the term of the lease . . . ." Minn. Stat. § 504B.161 subd. 1(a)(2). This covenant is non-waivable. *Rush*, 887 N.W.2d at 706 (citation omitted).

However, subdivision 2 of that same statute expressly allows landlords and tenants to agree that "specified repairs or maintenance" shall be performed by the tenant if the agreement "is supported by adequate consideration and set forth in a conspicuous writing." *See* Minn. Stat. § 504B.161, subd. 2. Minnesota courts agree that this language unambiguously "allows the lessor/licensor and lessee/licensee to enter into a contract to transfer the physical and financial responsibility for the repairs or maintenance to the lessee/licensee if that contract is supported by adequate consideration." *State, City of Minneapolis v. Ellis*, 441 N.W.2d 134, 138 (Minn. App. 1989). In other words, landlords and tenants are allowed to split repair and maintenance obligations so long as (1) the agreement is in writing; (2) the tenant receives adequate consideration for doing so; and (3) the landlord maintains responsibility for items that keep the home in "reasonable repair" during the tenancy. The repair and maintenance clauses of the Leases satisfy these three conditions.

First, it is undisputed that Plaintiffs and Defendants agreed in writing that Plaintiffs would perform certain repair and maintenance tasks; in fact, that is the entire purpose of paragraph 15 of the Sewall Lease and paragraph 16 of the Gregory Lease. (Sewall Lease ¶ 15; Gregory Lease ¶

16.) Defendants agreed to maintain and keep in good repair those items that affect the Residents' ability to live in their homes, "the foundations, roof, mechanical systems (including HVAC systems, hot water heater, electrical and plumbing systems and sump pump, if any), exterior walls and structural members of the residence located at the Premises, in good condition and repair, together with any items which are required by Applicable Laws to be maintained by Landlord." (*Id.*, Ex. 4, Sewall Lease ¶ 15 (emphasis added); Gregory Lease ¶ at 16.) Further, the Lease unambiguously stated that Plaintiffs' maintenance responsibilities specifically "exclude . . . those items which are required to be maintained by Landlord . . . ." (*Id.*)

Second, Plaintiffs and Defendants explicitly agreed that Plaintiffs were receiving consideration for taking on certain maintenance and repair obligations. Specifically, as set forth above, the Leases stated, in bold print, that the rent was negotiated or agreed upon based on the split of maintenance and repair obligations. (*Id.*) Plaintiffs try to muddy the waters on this issue by claiming that they did not "negotiate" their rent (which is not true, as set forth in Section II.E below), but whether or not they "negotiated" their rent does not bear on whether they were offered consideration for the agreed-upon split of maintenance and repair obligations.

Finally, nothing in the split of repair and maintenance obligations transferred any responsibility to Plaintiffs to keep their respective homes in a condition to satisfy the covenant of habitability. The Lease terms acknowledge, in several places, that there are certain maintenance items which Defendants could not by law assign to Plaintiffs: specifically, the Lease states that Defendants must perform maintenance items required by Applicable Laws and that Plaintiffs were specifically exempted from performing "those items which are required to be maintained by Landlord." (Sewall Lease ¶ 15; Gregory Lease ¶ at 16.)

Plaintiffs claim that there are terms in the Lease that attempt to impermissibly shift the burden of repair to Plaintiffs (e.g., language such as "AS-IS, WHERE-IS, WITH ALL FAULTS," Sewall Lease ¶ 9, Gregory Lease ¶ 10 and Repair, Maintenance, & Improvement Addendum ¶ 1; "**Tenant shall, at Tenant's expense, maintain the Premises**," Sewall Lease ¶ 15, and Gregory Lease ¶ 16. (*See* Regan Decl., Ex. 6.)) However, again, the maintenance and repair obligation assigned to Plaintiffs was qualified, expressly and in writing, as having to comply with Applicable Laws, which Plaintiffs testified that they understood. (*See* Sewall Lease ¶ 15; Gregory Lease ¶ at 16; Sewall Dep. at 114:24-115:8; S. Gregory Dep. at 151:8-15.)

B. Plaintiffs Have No Evidence that Defendants Shifted Any Burden of Repair or Maintenance to Them in Violation of Minn. Stat. Section 504B.161

Plaintiffs do not have any evidence that Defendants shifted any burden of repair or maintenance to them in violation of Minnesota Statute Section 504B.161.

First, the undisputed facts show that Pathlight responded to any maintenance requests made by Plaintiffs that affected the habitability of the Minnetonka and Brooklyn Center Homes. With respect to Dr. Sewall, as outlined above, the only two maintenance requests that Dr. Sewall reported to Pathlight that Pathlight did not remedy were his fireplace and a hole in the yard. (Cefalu Decl., Ex. 3, Sewall RMR.) Dr. Sewall has not alleged that either of these issues implicates the covenant of habitability. With respect to the Gregorys, they testified that they did not make any repairs themselves and, indeed, Pathlight has spent over $40,000 maintaining and repairing the Brooklyn Center Home in response to the dozens of requests submitted by the Gregorys. (Cefalu Decl., Ex. 3, Gregory RMR.)

Moreover, Plaintiffs simply did not themselves perform maintenance or repair that Pathlight was supposed to have performed, under either the lease or the Minnesota Covenants, nor did they spend their own money on maintenance and repair issues that were Pathlight's

responsibility. Dr. Sewall testified that he spent only a handful of hours per week on maintenance, most of which was on lawn care and other tasks that he understood were his responsibility. (Sewall Dep. at 145:1-14.) The Gregorys did not perform any maintenance on the Brooklyn Center Home themselves, except for yard work, changing light bulbs, and pest control. (S. Gregory Dep. at 64:13-65:15.)

Simply put, there is no evidence that Defendants violated the covenant of habitability by unlawfully shifting any burden of repair or maintenance to Plaintiffs.

II. THERE IS NO EVIDENCE TO SUPPORT PLAINTIFFS' CONSUMER FRAUD AND DECEPTIVE TRADE PRACTICES ACT CLAIMS (COUNTS I AND II)

Plaintiffs claim the Lease and RTP Agreements are misleading and/or fraudulent because (1) the leasing process was confusing and/or not thorough; (2) the homes that Defendants offer are not "quality"; (3) the agreements violate the covenant of habitability by illegally shifting the burden of repair and maintenance to residents; (4) the agreements contain fees that are improper and/or illegal; (5) the agreements state that the amount of rent was either negotiated or agreed upon, when it was not; and (6) the agreements contain other provisions that are contrary to Minnesota landlord-tenant law. As set forth below, none of this is true—the Lease and RTP Agreements are the product of careful disclosure and communication with residents, and none of the terms of the Lease or RTP Agreements misstate or violate Minnesota law.

A. Defendants' Leasing Process is Careful and Thorough

As set forth above, Defendants' leasing process is careful and thorough: the process involves numerous steps at which prospective residents are fully informed of their rights and the next steps in the process and can decline to proceed (even after Defendants have purchased a home on their behalf) with little consequence. Prospective residents also receive sample copies of the Lease and RTP Agreements weeks before they are expected to sign and are encouraged by

Defendants to read all documents carefully and consult with a legal professional before finalizing any arrangements. (Scallon Decl. ¶¶ 8–11, Ex. 6, Resident Introduction Packet.) Further, Defendants disclose the maintenance and repair responsibilities to tenants on several occasions, including on the website, and, for example, in the anticipated terms. (Scallon Decl., Ex. 9, Anticipated Terms.) As set forth in detail above, this process was followed to the letter with respect to both Dr. Sewall and the Gregorys. *See supra* Sections III.B, III.C.

As is evident, Defendants are completely transparent with residents throughout the whole leasing process with respect to the terms of the Lease and RTP Agreements, the amount of rent residents will be charged, the price at which they can purchase the homes (if they choose to) at various points during the tenancy, and the maintenance and repair responsibilities assigned to residents. Simply put, there is nothing fraudulent or misleading about this process.

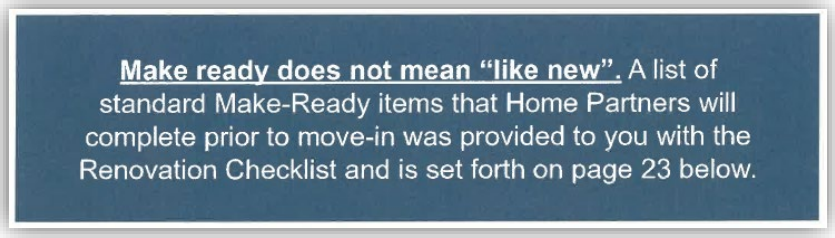
B. The Homes Are of Sufficient Quality

Next, Plaintiffs appear to claim that the homes that Defendants offer to prospective residents are not "quality." Given Defendants' process, this claim is absurd.

First, it is prospective residents who select their homes. (Scallon Decl. ¶¶ 12–13.) Before Home Partners purchases any home, it has it inspected and ensures that it meets Home Partners' criteria. (Cefalu Decl. ¶ 7.) Prospective residents are not prohibited from conducting their own inspections or performing whatever due diligence on the home they deem appropriate. Plaintiffs complain that Defendants did not provide them with copies of the home inspections, but Defendants were prohibited from doing so by the inspection companies. (Regan Decl., Ex. 36, 12817 Jane Lane Inspection Report (stating that sharing the inspection report is prohibited), Ex. 37, 707 69th Ave Inspection Report (same).)

Plaintiffs claim that the "as is" language used to describe the homes in the Leases somehow cancels out these facts, but, again, this is not true. "As is" simply means that Defendants are not

"changing the home to something other than it is or restoring it to, you know, a brand-new condition or something like that." (Cockson Decl., Ex. 8, 30.02(f) Dep. at 246:3-18.) This is consistent with the messaging provided to prospective residents before they sign their Leases:



(Scallon Decl., Ex. 9, Anticipated Terms.) To interpret the language otherwise would be inconsistent with the repair and maintenance provision of the Lease: as Minnesota Courts have stated, "the plain and ordinary meanings of words must be considered within the context of the entire contract and must be interpreted so as to give a reasonable meaning to all terms." *Olympik Vill. Apartments Ltd. P'ship v. Rochester Lodge No. 13*, 2000 WL 782012, at *2 (Minn. Ct. App. June 20, 2000) (citation omitted) (emphasis added); *see also Country Club Oil Co. v. Lee*, 58 N.W.2d 247, 249 (Minn. 1953)). Plaintiffs' interpretation of the "as-is" provision would excise major portions of the Lease, which is not consistent with how Minnesota courts construe contracts.

In other words, prospective residents select their own homes, Home Partners inspects them and makes sure they meet its criteria, prospective residents have the opportunity to conduct their own inspection if they so choose, and prospective residents and Home Partners both agree to the scope of "make ready" work for each home. Given these facts, it simply is not credible for Plaintiffs to claim that they were misled by the condition of their homes.

C. The Lease and RTP Agreements Do Not Violate the Covenant of Habitability

Next, Plaintiffs claim that the Lease and the RTP Agreements violate the CFA and DTPA because they misstate Minnesota law in that they illegally shift the burden of repair and

maintenance to residents in violation of Minnesota's covenant of habitability. As set forth above in Section I, Plaintiffs are simply wrong on this point. Minnesota law expressly authorizes landlords to assign certain maintenance work to tenants in exchange for lower rent, which is exactly how the LPP functions. *See supra* Section III.A. As also stated above, Plaintiffs have no evidence that they were made to perform any maintenance or repair work in violation of the covenant of habitability. *See supra* Sections III.B, III.C.

D. The Lease and RTP Agreements Do Not Contain Any Fees or Provisions That Are Fraudulent or Misleading

Next, Plaintiffs contend that certain fees and provisions contained in the Lease and RTP Agreements are fraudulent or misleading. Specifically, Plaintiffs claim that the Lease relating to attorneys' fees, the UBSF, HVAC filters, and liability insurance violate the CFA and DTPA because they are fraudulent and/or misleading. There simply is no evidence, however, that (1) these provisions are fraudulent and/or misleading; (2) Plaintiffs were deceived, or even confused by, the Lease terms; or (3) Plaintiffs were damaged by any deception or fraud.

First, there is no evidence that any of the Lease terms are fraudulent or deceptive, because they do not misstate, misrepresent, or contradict Minnesota law. Minnesota courts have already decided that, with respect to leases, "parties are free to contract to whatever terms they agree, provided that those terms are not prohibited by law." *Persigehl v. Ridgebrook Invs.*, 858 N.W.2d 824, 832 (2015) (citation omitted). Minnesota's statutory landlord-tenant scheme does not expressly prohibit the clauses about which Plaintiffs complain—there is nothing in the Minnesota Statutes that prohibits Defendants from charging attorney's fees, the UBSF, or the HVAC filter fee or requiring liability insurance. *Cf. RAM Mut. Ins. Co. v. Rhode*, 820 N.W, 2d 1, 7 (Minn. 2012) (discussing lease terms that obligate tenants to procure insurance to cover particular types of loss); *see also Young v. Landstar Invs. LLC,* 874 N.W.2d 346 (Wis. Ct. App.2015) (unpublished)

(upholding mandatory renter's insurance lease provision). Minnesota courts will not "'read into the statute a requirement that the Legislature has omitted.'" *Persigehl*, 858 N.W.2d at 832. (*quoting Karl v. Uptown Drink, LLC*, 835 N.W.2d 14, 19 (Minn. 2013). Minnesota Statute Section 504B.172 expressly acknowledges that residential leases may contain attorneys' fee provisions and the Minnesota Legislature simply requires that landlords and tenants be treated equally. Simply put, the Lease provisions that Plaintiffs claim are fraudulent do not contradict and are, in fact, completely consistent with Minnesota law.

Moreover, even if the provisions did not comply with Minnesota law (which they do), as stated above, the Lease makes clear—dozens of times—that the provisions in the Lease are subject to Minnesota law, and in the event of a conflict, Minnesota law controls. (Sewall Lease ¶ 3; Gregory Lease ¶ 4.) Finally, as stated above, Plaintiffs were given ample opportunity to review and ask questions about these provisions prior to signing their Leases and RTP Agreements. *Supra* Sections III.B, III.C. Not only did Plaintiffs not ask questions about these provisions, *id.*, the Gregorys even signed separate addenda related to the HVAC filter fee and liability insurance requirement, signaling that they understood and agreed to these provisions.

In fact, none of the Plaintiffs testified that they were deceived—or even confused—by the terms of the Lease or RTP Agreements. Dr. Sewall did not ask any questions about them before he signed them, and he elected to simply "skim" the Lease as opposed to reading it in detail. (Sewall Dep. at 34:22-35:13; 108:16-21.) In contrast, the Gregorys spent <u>two days</u> reviewing the Lease with "careful thought" before they signed it and testified that they understood it. (S. Gregory Dep. at at 35:4-19, 34:5-10, 44:13-15.) They also chose not to ask any questions about the Lease before they signed it. (J. Gregory Dep. at 56:19-25.) Further, all Plaintiffs testified that they

understood that, in a conflict between the Lease terms and applicable laws, applicable laws would control. (Sewall Dep. at 114:24-115:8; S. Gregory Dep. at 34:5-10, 44:13-15.)

E. The Provision Regarding Rent Amounts Is Not Fraudulent or Misleading

Next, Plaintiffs claim that the Lease is misleading because it contains a provision "falsely" stating the parties negotiated or agreed to rent amounts when Defendants do not in fact negotiate. (Second Am. Compl. ¶¶ 71, 92).

First, this argument only applies to the Sewall Lease. The Gregorys' lease says that the rent amount was "agreed upon" and there can be no dispute that the Gregorys "agreed upon" the terms of the Lease by signing it. (Sewall Lease ¶ 15 (indicating that the rent was "negotiated"); Gregory Lease ¶ 16 (indicating that the rent was "agreed upon").)

But in either case, there is no "fraud." The "negotiation" provision in the Lease is the parties' acknowledgement that rental amounts are set with the understanding that a resident will perform the repair and maintenance obligations as set forth in the Lease. This provision represents the culmination of Dr. Sewall and Defendants' dealings—from the time Dr. Sewall made an inquiry, through application for the LPP, approval, selection of a home, review and approval of anticipated terms—including the rental rates—and Home Partners' purchase of the Minnetonka Home—involves input and acquiescence on both sides. The parties' relationship, culminating in the signing of the Lease, represents a bargained-for exchange. *Rebecca Minkoff Apparel, LLC v. Rebecca Minkoff, LLC*, 2018 WL 3014942, at *2 (Minn. Ct. App. June 18, 2018) (stating that Minnesota courts have recognized that "a contract is more than just a document; it is an intermediate step in the process of negotiation and future performance." (quotation omitted)).

"Parties who sign plainly written documents must be held liable, otherwise such documents would be entirely worthless and chaos would prevail in our business relationships." *Currie State Bank v. Schmitz*, 628 N.W.2d 205, 210 (Minn. Ct. App. 2001 (quotation marks and

citation omitted); *see also Gartner v. Eikill*, 319 N.W.2d 397, 398 (Minn. 1982) ("In the absence of fraud or misrepresentation, a person who signs a contract may not avoid it on the ground that he did not read it or thought its terms to be different."); *Shaughnessy v. New York Life Ins. Co.*, 203 N.W. 600, 602 (Minn. 1925); *Cent. Metro. Bank v. Chippewa Cnty. State Bank*, 199 N.W. 901, 903 (Minn. 1924).

The Court should grant Defendants' summary judgment because Plaintiffs simply do not have a cognizable claim that the Lease as written was misleading and/or fraudulent such that it violated the CFA or DTPA.

F. There Is No Evidence That Plaintiffs Were Injured by Any Fraudulent or Misleading Lease Terms

Because the CFA is an attorney general statute, private individuals may only recover under it if they were injured from the violation. Minn. Stat. § 8.31; *Grp. Health Plan, Inc. v. Philip Morris Inc*., 621 N.W.2d 2, 13 (Minn. 2001). "The private attorney general statute does not define 'injury.'" *Engstrom v. Whitebirch, Inc.*, 931 N.W.2d 786 (Minn. 2019) (*citing* Minn. Stat. § 8.31, subd. 3a). Accordingly, Minnesota courts look to the dictionary definition, which "defines 'injury' as 'hurt, damage, or loss sustained.'" *Id.* (*citing Webster's Third New Int'l Dictionary* 1164 (1961)). Plaintiffs have no evidence that they suffered any injury as a result of allegedly fraudulent and/or deceptive aspects of the LPP and Lease. Plaintiffs' theory is that they paid too much rent because they were illegally forced to take on maintenance and repair obligations in violation of Minnesota law—but that is not what happened. It is undisputed that these particular Plaintiffs have paid almost nothing in maintenance and repair (especially in comparison to the amounts paid by Defendants), and the amounts they paid were related to repair and maintenance that was either: (1) never disclosed to Pathlight (Sewall's self-leveling caulk, ice damn, and dishwasher); or (2) was

clearly disclosed in the lease and/or elsewhere as a tenant responsibility (Gregorys' mousetraps, lightbulbs; Sewall's Drano, Sewall's small hole in his yard).

G. Plaintiffs' DTPA Claim Fails Because They Are Not at Risk for Future Harm

The only remedy available for violations of the DTPA is an injunction. Minn. Stat. § 325D.45; *Gardner v. First Am. Title Ins. Co.*, 296 F. Supp. 2d 1011, 1020 (D. Minn. 2003) (stating that "the sole statutory remedy for deceptive trade practices is injunctive relief" (quotation omitted)). "The future harm must be to the plaintiff; it is not sufficient if the harm is to other purchasers or customers." *Klinge v. Gem Klinge v. Gem Shopping Network, Inc.*, 2014 WL 7409580, at *2 (Dec. 31, 2014) (citation omitted). Injunctive relief is only available for a party likely to be damaged in the future, and Minnesota courts find that injunctive relief is unavailable to parties that face no future injury. *See e.g.*, *Finstad v. Ride Auto, LLC*, 2015 WL 7693534, at *4 (Minn. Ct. App. Nov. 30, 2015).

As stated above, Dr. Sewall vacated the Minnetonka Home on August 25, 2021. (Second Am. Compl. ¶ 81). After leaving the home at issue, Dr. Sewall purchased and moved into a different home that was not a part of the LPP, (Sewall Dep. at 88:15-16), meaning he will no longer have any dealings with Defendants other than as it relates to this current dispute. *See Damon v. Groteboer*, 937 F. Supp. 2d 1048, 1071 (D. Minn. 2013). Further, now that the Gregorys are undoubtedly aware of the Lease provisions about which they complain, they, too, are no longer at risk for future injury. *Bhatia v. 3M Co.*, 323 F. Supp. 3d 1082, 1097 (D. Minn. 2018) ("[N]ow that Plaintiffs are aware of the alleged defects . . . [and] alleged misrepresentations, they cannot show that they are likely to be deceived by such representations in the future.").

Because there is no risk of future harm to Plaintiffs based on the terms of the Lease as written, Plaintiffs have no cognizable claim for violation of the DTPA. Therefore, this Court should grant summary judgment in favor of Defendants on Plaintiffs' DTPA claim.

III. THE GREGORYS' SECURITY DEPOSIT CLAIM (COUNT IV) FAILS

The Gregorys brought a claim alleging that Defendants failed to properly credit security deposits and improperly withheld their security deposit in violation of Minnesota Statute Section 504B.178. (Second Am. Compl. ¶¶ 142-45). The Gregorys are current tenants of the Brooklyn Center Home. (S. Gregory Dep. at 31:23-32:3.) As current tenants, they have not received any security deposit disposition letter and have not had their security deposit withheld. The Gregorys therefore have no claim under Section 504B.178 with respect to unlawful withholding. Further, under the statute, the Gregorys are not yet owed a return of their security deposit or any interest thereon. Minn. Stat. § 504B.178 subd. 3 (stating that a security deposit and interest thereon must be provided to a tenant "within three weeks after the termination of the tenancy"). Therefore, the Gregorys, as a matter of law, do not have a claim with respect to their security deposit. This Court should grant summary judgment in favor of Defendants on this claim.

IV. THE GREGORYS' CLAIM FOR LATE FEES (COUNT V) FAILS

Plaintiffs contend the Lease violates Minnesota Statute Section 504B.177. This statute relates to late fees charged by landlords for overdue rent payments, and it states that "[i]n no case may the late fee exceed eight percent of the overdue rent payment." Minn. Stat. § 504B.177. The Lease provides, in part:

> Tenant agrees that if all or any portion of any Rent payment required to be paid by Tenant (including Monthly Base Rent, Pro-Rated Rent, if applicable, or Additional Rent) is not received by Landlord on or before five (5) days from the date when due including any such payment that becomes a Returned Payment (each such unpaid amount, an "*Overdue Payment Amount*"), then Tenant shall pay to Landlord, in addition to such Overdue Payment Amount, a "late fee" in the amount of, whichever is higher, (a) $100.00 or (b) eight percent (8%) of the applicable Overdue Payment Amount (not to exceed the maximum late fee permitted by Applicable Law) (each, a "*Late Payment Fee*"), per month, for each month that such Overdue Payment Amount (or portion thereof) remains delinquent, to cover administrative expenses for the late payment. In the event that any such payment is due to a

(Gregory Lease ¶ 4 (highlighting added).) Plaintiffs claim that the provision is illegal because it purports to allow Defendants to charge the higher of either $100.00 or eight percent of the overdue amount. (*Id.*) However, this characterization is incomplete and incorrect—the provision states that

Plaintiffs will not be charged any late fee under the Lease that "exceed[s] the maximum late fee permitted by Applicable Law." (Gregory Lease ¶ 4 (emphasis added).) Stated another way, the Lease makes clear that Plaintiffs will not have to pay any late fee that violates Minnesota Statute Section 504B.177. Therefore, Lease clause 3, on its face, does not violate Minnesota law.

Moreover, the record is devoid of any evidence that Defendants charged the Gregorys any late fee in violation of Minnesota Statute Section 504B.177. [redacted] (Cockson Decl., Ex. 10, Gregory Ledgers.) Accordingly, this Court should grant summary judgment in favor of Defendants on the Gregorys' claim for late fees.

V. PLAINTIFFS' CLAIM FOR BREACH OF GOOD FAITH AND FAIR DEALING (COUNT VI) FAILS

Plaintiffs' claim for breach of good faith and fair dealing, Count VI, also fails. "Under Minnesota law, every contract includes an implied covenant of good faith and fair dealing requiring that one party not unjustifiably hinder the other party's performance of the contract." *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995) (quotation and citations omitted). The only contract at issue between the parties is the Lease and RTP Agreements. As stated above, the Lease terms about which Plaintiffs complain are legal as written, and there is no evidence that the Lease terms were enforced illegally with respect to the Plaintiffs. Therefore, there is no evidence that Defendants "unjustifiably hindered" Plaintiffs' performance of the Lease, and this Court should grant summary judgment in favor of Defendants on Plaintiffs' claim for breach of good faith and fair dealing.

VI. PLAINTIFFS' RESCISSION CLAIM (COUNT VII) FAILS

Plaintiffs seek rescission of their Leases based on their allegations that they are illegal, misleading, and deceptive. (Second Am. Compl. ¶ 159). This claim fails as a matter of law.

First, as stated above, none of the Lease terms are illegal, misleading, or deceptive. Because the Lease has no fraudulent elements and because Defendants in no way defrauded the Gregorys to enter the Lease, rescission is not available to them. *Mlnazek v. Libera*, 86 N.W. 100, 101 (Minn. 1901) (explaining that a contract is voidable, and thus rescindable, at the election of a defrauded party when a contract contains fraud or if a party was fraudulently induced to enter a contract); *see also Hatch v. Kulick*, 1 N.W.2d 359, 360 (Minn. 1941) (same).

Dr. Sewall's rescission claim fails because "[o]ne cannot rescind a contract no longer in existence." *Gatz v. Frank M. Langenfeld & Sons Const., Inc.*, 356 N.W.2d 716, 718 (Minn. Ct. App. 1984); *Henry v. Schultz*, 408 N.W.2d 635, 637 (Minn. Ct. App. 1987). Dr. Sewall cannot recover under his claim of rescission because he no longer had a contract with Defendants when he filed this suit. *Nowicki v. Benson Props.*, 402 N.W.2d 205, 208 (Minn. Ct. App. 1987).

Because neither the Sewall Lease nor the Gregory Lease can be rescinded, this Court should grant summary judgment in favor of Defendants on the Plaintiffs' rescission claim.

VII. PLAINTIFFS' CLAIM FOR UNJUST ENRICHMENT (COUNT VIII) FAILS

Plaintiffs' unjust enrichment claim, Count VIII, also fails. Unjust enrichment is when one party knowingly received something of value to which he was not entitled. *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. App. 2001). Plaintiffs claim that Defendants were unjustly enriched by Defendants having "pa[id] rent and for the costs of maintenance and other fees that Defendants should have paid." (Second Am. Compl. ¶ 167). The record does not contain any evidence to justify the assertion that Plaintiffs merely having paid rent unjustly enriched Defendants. Plaintiffs paid rent, but they did so to live in homes of their choosing with full knowledge of what the rent and fees were going to be each year during the entirety of their up-to-five-year tenancy. (Cefalu Decl. ¶¶ 6–7, 10; Scallon Decl. ¶¶ 8–17, Exs. 4–10.) The record also does not contain any evidence to justify the assertion that Defendants were unjustly enriched by

Plaintiffs having "paid for the costs of maintenance." The Lease specifically states that Home Partners charged Plaintiffs less rent than it otherwise would have because of the split of maintenance activities. (Sewall Lease ¶ 15; Gregory Lease ¶ 16.) In other words, had Defendants agreed to take on all potential maintenance activities, the result would have been that Plaintiffs would have paid more in rent. The fact that Dr. Sewall could have elected to purchase the Minnetonka Home for more than $20,000 less than its market value at the end of his tenancy shows the value inherent in the LPP. (*Compare* Scallon Decl., Ex. 11, Sewall "True-Up" Letter, *with* Cockson Decl., Ex. 12.) Given the reduction in rent that accompanied Plaintiffs' maintenance activities (which Plaintiffs expressly agreed to), and that they each only spent a few hundred dollars on maintenance activities, Plaintiffs can hardly say that the arrangement "unjustly enriched" Defendants. This Court should grant summary judgment in favor of Defendants on Plaintiffs' claim for unjust enrichment.

VIII. PLAINTIFFS' CLAIMS FOR EQUITABLE RELIEF (COUNTS IX AND X) FAIL

Because the Lease is legal and because Defendants have not engaged in the fraud Plaintiffs alleged, Plaintiffs are not entitled to the equitable relief they seek—either through an injunction or through declaratory relief. *See U.S. Fire Ins. Co. v. Minn. State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981) ("[E]quitable relief cannot be granted where the rights of the parties are governed by a valid contract.") (*citing Cady v. Bush*, 166 N.W.2d 358 (Minn. 1969)); *DeLa Rosa v. DeLa Rosa*, 309 N.W.2d 755, 758 (Minn. 1981). To be entitled to equitable relief, Plaintiffs would have to prove such relief would be just under the circumstances. They cannot do so, so this Court should grant summary judgment in favor of Defendants on Plaintiffs' claims for equitable relief.

CONCLUSION

For the reasons stated above, this Court should grant summary judgment in favor of Defendants on all Counts with respect to the Gregorys and on Counts I, II, III, VI, VII, VIII, IX, and X with respect to Dr. Sewall.

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