

TENAE SMITH, HOWARD SMITH,
SIMONE RYER, DECHONNE MCBRIDE,
and LOUVINIA SNEED,

*On their own behalf and on behalf
of all others similarly situated,*

Plaintiffs,

v.

WESTMINSTER MANAGEMENT, LLC,
and JK2 WESTMINSTER, LLC,

Defendants.

* IN THE
* CIRCUIT COURT
* FOR
* BALTIMORE CITY
*
* Case No. 24-C-17004797
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**THIRD AMENDED CLASS ACTION COMPLAINT
AND DEMAND FOR JURY TRIAL**

Plaintiffs Tenae Smith, Howard Smith, Simone Ryer, Dechonne McBride, and Louvinia Sneed ("Plaintiffs" or "Named Plaintiffs"), individually and on behalf of all others similarly situated (the "Class" or "Class Members"), through their undersigned counsel, file this Third Amended Class Action Complaint and Demand for Jury Trial and allege as follows:

Background

1. Plaintiffs bring this action against Defendants Westminster Management, LLC ("Westminster") and JK2 Westminister LLC ("JK2 Westminister"), the landlords who have rented apartments and/or townhomes to Plaintiffs and other Class Members, for charging and collecting impermissible and illegal fees related to the alleged late payment or non-payment of rent.

2. Defendants add these fees to the rent they charge Plaintiffs and other Class Members and require them to pay these fees in order to continue to live in their apartments and/or townhomes.

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3. If Plaintiffs and Class Members do not pay the improper fees, Defendants threaten to evict them and/or file summary eviction proceedings to collect these fees.

4. If a tenant has not paid his or her monthly rent in full by the end of the fifth day of a month, Defendants charge not only a “late fee,” which purports to be 5% of the monthly rental amount, but also other fees.

5. Specifically, around the same time they charge late fees, Defendants charge their tenants two fees, one of which they list as a “court fee” or “summons fee,” and the second of which they list as an “agent fee” on the ledgers of the amounts owed by the tenants. The purported court or summons fee is charged even though such a fee has not been awarded by a court and is often never awarded by a court; it is sometimes charged before an action has even been filed in court. Defendants nonetheless charge and collect these fees from tenants and regularly refuse to accept tenants’ payments of the actual amount of rent due until such fees are also paid.

6. Additionally, as a matter of policy or practice, when Defendants seek a warrant of restitution against a tenant based on a rent judgment, Defendants charge or have charged the tenant an “agent fee” of \$12 even though Defendants’ exclusive agent in rent actions, e-Writ Filings, LLC (“eWrit”), has waived and thus does not charge Defendants any fee beyond actual court costs for filing a warrant of restitution. Nonetheless, in violation of Defendants’ standard, form lease, Defendants systematically charge or have charged these non-existent agent fees to their tenants and thereby increase their profits on late payments.

7. When Defendants seek a warrant of restitution, they also charge the tenant a “writ fee,” even though such a fee has not been awarded by a court and is often never awarded by a

court. In addition, in Baltimore City, prior to in or about March 2018, Defendants charged a “writ fee” of \$80 even though the actual cost of filing for that writ was only \$50.

8. The “court fees,” “summons fees,” and “writ fees” related to the late payment or nonpayment of rent described in the foregoing paragraphs are sometimes collectively referred to herein as “court fees” or “disputed fees.”

9. Defendants also charge the 5% “late fee” on the full amount of the month’s rent, even if the tenant has paid the rent in part.

10. After charging these improper fees, if Defendants accept subsequent tenant rent payments that do not include the illegal fees, then, pursuant to their standard practices and/or lease provisions, Defendants misallocate tenants’ subsequent rent payments in part to the illegal fees.

11. Pursuant to § 8-208(d) of the Real Property Article of the Maryland Code, “[a] landlord may not use a lease or form of lease containing any provision that ... (3)(i) Provides for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent.”

12. Section 8-208(g)(1) of the Real Property Article of the Maryland Code provides that “[a]ny lease provision which is prohibited by terms of this section shall be unenforceable by the landlord.” Further, § 8-208(g)(2) allows for the tenant to recover actual damages and reasonable attorney’s fees if the landlord “tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision.”

13. Defendants have continued to charge the improper late fees described herein despite the holding of the Maryland Court of Appeals in *Lockett v. Blue Ocean Bristol, LLC* that,

for the purposes of § 8-208 of the Real Property Article, “‘rent’ means the periodic sum owed by the tenant for use or occupancy of the premises.” 446 Md. 397, 425 (2016).

14. Given Defendants’ actions and violations, Maryland law entitles Plaintiffs and the Class to compensatory damages, a declaratory judgment, and injunctive relief, along with their attorneys’ fees and expenses.

15. Defendants’ failure to comply with Maryland law was and is done knowingly.

Parties

16. Plaintiff Tenae Smith is a tenant living in the Dutch Village Apartments in Baltimore City, which are currently managed by Westminster. On March 30, 2009, Ms. Smith originally signed a lease for her unit at Dutch Village with Sawyer Property Management of Maryland LLC, a predecessor in interest to JK2 Westminster. She most recently renewed her lease with Westminster for a term of 13 months, effective June 1, 2019, increasing her rent from \$795 to \$833 per month. Ms. Smith has been charged by and paid the illegal fees to Westminster and JK2 Westminster under threat of eviction.

17. Plaintiff Howard Smith (no relation to Tenae Smith) is a former tenant of Carroll Park Apartments in Baltimore County, which are currently managed by Westminster. Mr. Smith first leased his apartment at Carroll Park in or about 2007, and upon information and belief most recently renewed his lease, with Westminster, on or about May 1, 2018, increasing his rent from \$808 to \$823 per month. Mr. Smith vacated his unit on or about July 15, 2018. Mr. Smith has been charged by and paid the illegal fees to Westminster and JK2 Westminster under threat of eviction, and he has received eviction notices even though he has paid his rent timely.

18. Plaintiff Simone Ryer is a former tenant of Whispering Woods Townhomes in Baltimore County, which are currently managed by Westminster. Ms. Ryer leased her apartment

at Whispering Woods on or about December 16, 2016, for a rent of \$1,071 per month. Ms. Ryer was charged by and paid the illegal fees to Westminster and JK2 Westminster under threat of eviction.

19. Plaintiff Dechonne McBride is a tenant living in Whispering Woods Townhomes in Baltimore County, which are currently managed by Westminster. Ms. McBride first leased her apartment at Whispering Woods on or about December 18, 2014, and most recently renewed her lease, with Westminster, on or about December 18, 2018, increasing her rent from \$859 to \$898 per month. Ms. McBride has been charged by and paid the illegal fees to Westminster and JK2 Westminster under threat of eviction.

20. Plaintiff Louvinia Sneed is a former tenant of the Pleasantview Apartments in Baltimore City, which are currently managed by Westminster. On or about October 19, 2011, Ms. Sneed originally signed a lease for her unit at Pleasantview with Sawyer Property Management of Maryland LLC, a predecessor in interest to JK2 Westminster, but signed a new lease with JK2 Westminster on or about October 2012. She most recently renewed her lease, with Westminster, on or about April 1, 2018, increasing her rent from \$775 to \$829 per month. Ms. Sneed vacated her unit on or about February 13, 2019. Ms. Sneed has been charged by and paid the illegal fees to Westminster and JK2 Westminster under threat of eviction.

21. Defendant JK2 Westminster LLC is a limited liability company organized under the laws of Delaware. Mr. Smith, Ms. Ryer, Ms. Sneed, and Ms. McBride signed leases with JK2 Westminster. JK2 Westminster dissolved on or about December 30, 2016.

22. Defendant Westminster Management, LLC is a limited liability company organized under the laws of New Jersey. Westminster is or was the managing agent at approximately 17 multi-family rental properties in Maryland during the applicable limitations

period, including the properties where Ms. Smith and Ms. McBride reside and where Mr. Smith, Ms. Sneed, and Ms. Ryer previously resided. Those properties have a total of approximately 9,000 units.

Jurisdiction and Venue

23. Subject matter jurisdiction is proper under Md. Code Ann., Cts. & Jud. Proc.

§ 1-501.

24. This Court has jurisdiction of this matter pursuant to Md. Rule 2-231 in order to facilitate management of multiple similar claims. Maryland law does not permit class actions to be maintained in the District Court of Maryland.

25. Venue is proper in that Defendant Westminster transacts business within Baltimore City, and Plaintiffs Tenae Smith, Simone Ryer, and Louvinia Sneed reside in Baltimore City.

26. Declaratory and injunctive relief are available pursuant to Md. Code Ann., Cts. & Jud. Proc. § 3-401, *et seq.* and Md. Rule 2-231(b)(2).

Factual Allegations for Plaintiffs

27. At all relevant times, JK2 Westminster and/or Westminster acted as landlord and property manager of Carroll Park Apartments, Dutch Village Apartments, Pleasantview Apartments, and Whispering Woods Townhomes, as well as, at times, approximately 14 other apartment and townhome complexes in Maryland.

28. At all relevant times, JK2 Westminster and/or Westminster employed eWrit as their “sole and exclusive Agent with regard to the preparation, filing, and prosecution of Summary Ejectment Complaints and Warrants of Restitution” for all Maryland apartment complexes they manage pursuant to a June 1, 2014, “Court Filings Agreement.”

29. The Court Filings Agreement states that while eWrit will charge JK2 Westminster \$10 for filing each summary ejectment summons/complaint in addition to reimbursement of actual court filing costs, eWrit specifically “waive[s]” any fee (beyond actual court costs) for filing each petition for warrant of restitution.

30. Yet, as described further below, JK2 Westminster and/or Westminster regularly charge or have charged Plaintiffs and putative class members a \$12 “agent fee” each time a warrant is filed even though JK2 Westminster and/or Westminster incur no such fee or charge from eWrit or any other entity when a petition for warrant of restitution is filed.

31. On information and belief, upon JK2 Westminster’s dissolution in approximately December 2016, Westminster succeeded fully to JK2 Westminster in its responsibilities and liabilities.

32. On information and belief, Westminster and JK2 Westminster have employed standardized, uniform lease provisions and practices relevant to the allegations of this Complaint at all of their residential rental properties in Maryland as further described in the paragraphs that follow.

33. Specifically, on information and belief, the leases and/or leasing practices that Westminster and JK2 Westminster have used and enforced at all approximately 17 of the apartment and townhome complexes in Maryland that they have managed and for which they have acted as landlord, as well as the leases for Mr. Smith, Ms. Smith, Ms. Ryer, Ms. McBride, and Ms. Sneed, include provisions that purport to allow the landlord to:

A. Charge the tenant late fees over and above 5% of the rent amount due for the rental period for which the payment was delinquent, including:

1. An “agent fee”;

2. A “summons fee” or “writ fee” (even though no Court has yet awarded such fees); and
 3. 5% of the gross monthly rent (rather than 5% of the net rent remaining due for that month, after deducting any payments made);
- B. “Deem” charges other than rent to be rent, including “late charges, agent’s fees, attorney’s fees, court costs, obligations other than rent..., other past due rent other than monthly rent, past due monthly rent, current monthly rent;” and
- C. Apply tenants’ rent payments to debts owed to the landlord other than rent in the following order: “late charges, agent’s fees, attorney’s fees, court costs, obligations other than rent, other past due rent other than monthly rent, past due monthly rent, [and] current monthly rent,” thereby reducing the amount of a payment that is applied to rent.

34. Defendants’ leases also contain a provision (normally at paragraph 30) stating: “Should Landlord employ an Agent to institute proceedings for rent and/or repossession of the Premises for non-payment of any installment of rent, and should such rent be due and owing as of the filing of said proceedings, Tenant shall pay to Landlord the reasonable costs incurred by Landlord in utilizing the services of said Agent.”

35. As a regular practice, Defendants have threatened to evict tenants (including Mr. Smith, Ms. Smith, Ms. Ryer, Ms. McBride, and Ms. Sneed) and continue to threaten current tenants (including Ms. Smith and Ms. McBride) in communications with the tenants and by filing eviction actions against tenants for failure to pay rent when the tenants fail to pay the illegal fees.

36. As a regular practice, Defendants have charged tenants (including Mr. Smith, Ms. Smith, Ms. Ryer, Ms. McBride, and Ms. Sneed) and continue to charge current tenants (including Ms. Smith and Ms. McBride) for “summons fees” before any such amounts have been awarded by a court, and sometimes before any action has been filed in court.

37. As a regular practice, Defendants have charged and/or continue to subject tenants (including Mr. Smith, Ms. Smith, Ms. Ryer, Ms. McBride and Ms. Sneed) to a policy of charging for “writ fees” before any such amounts have been awarded by a court and often in amounts that exceed actual court costs, as described further below.

38. As a regular practice, Defendants have charged and/or subjected tenants (including Mr. Smith, Ms. Smith, Ms. Ryer, Ms. McBride, and Ms. Sneed) to a policy of charging an “agent fee” of \$12 related to the filing for a warrant of restitution in violation of the standard lease provisions, which only provide for such a fee when the cost is incurred by the Defendants. Yet, the Defendants incur no such fee from eWrit or any other entity in filing for a warrant of restitution.

39. As a regular practice, Defendants and their agent (eWrit) have added and continue to add late fees to tenants’ ledgers (i.e., the account of how much they say tenants owe) and to claims for nonpayment of rent in District Court that include amounts in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent.

40. As a regular practice, if a tenant (including Mr. Smith, Ms. Smith, Ms. Ryer, Ms. McBride, and Ms. Sneed) paid or pays his or her rent after 4:30 p.m. on the fifth day of a month, Defendants have added and continue to add a late fee equal to 5% of either the amount of the tenant’s monthly rent or the amount of the balance owed on the tenant’s account, plus an “agent

fee” of \$10 (sometimes more), plus “summons fees” of \$20 to \$30 (even if no case has been filed in court, and even if no court has entered any judgment for costs).

41. As a regular practice, Defendants have misallocated and continue to misallocate rent payments from tenants (including Mr. Smith, Ms. Sneed, and Ms. Ryer, before they moved out, and Ms. Smith and Ms. McBride) to non-rent charges.

42. For example, despite Mr. Smith having paid his August 2016 rent in full, JK2 Westminster misallocated a portion of that rent payment to non-rent charges, including a water bill, “deemed” his rent to be late, charged him a “Legal – Summons Fee” in the amount of \$20 (though no court had awarded such a fee at the time it was charged) and a “Legal – Agent Fee” in the amount of \$10 for that month, and filed an eviction action against him seeking non-rent fees and charges as “rent.”

43. In March 2017, Westminster charged Mr. Smith additional late fees, above and beyond 5% of his monthly rent, including a “Legal – Summons Fee” of \$20 (though no court had awarded such a fee) and a “Legal – Agent Fee” of \$10 for that month.

44. In April and May 2017 among other months, Westminster: (a) misallocated timely rent payments that Mr. Smith made; (b) charged him additional late fees, above and beyond 5% of his monthly rent, including “Legal – Agent Fees” of \$10 per month and “Legal – Summons Fees” of \$20 per month (though no court had awarded such fees as costs at the time they were charged); and (c) in April 2017 charged him a “Legal – Writ Fee” of \$40 as well as a related, simultaneous “Legal – Agent Fee” of \$12 despite having incurred no agent costs in filing for a warrant of restitution.

45. Mr. Smith paid all of the fees described above that Westminster illegally charged him in order to stay in his home and avoid eviction.

46. Even when Mr. Smith paid his rent in full, Westminster still sent him illegal and predatory notices seeking payment of additional, often illegal, fees under threat of eviction.

47. For example, on March 15, 2017, Mr. Smith paid the full amount of his monthly rent and water bill.

48. On or about March 15, 2017, Westminster left a card for Mr. Smith on his door that stated: “PLEASE PAY THE AMOUNT BELOW TO AVOID ADDITIONAL CHARGES AND COURT FILING RECORDS. Total Owed: \$134.20 . . . Promise to Pay Date: 3/20/17.” The card contains Westminster’s name and logo. This figure represented only fees and other non-rent charges.

49. With respect to Tenae Smith, on or about August 31, 2015, JK2 Westminster charged Ms. Smith \$80 for a “Writ Filing Fee” (even though the actual cost of filing a warrant of restitution at that time was \$50 and no court had awarded such a fee), and \$12 for an “Agent Filing Fee”(even though JK2Westminster incurred no such agent costs in filing for the warrant of restitution).

50. In September 2015, December 2016, and March, April, May, July, August and September 2017, among other months, Westminster charged Ms. Smith additional late fees, above and beyond 5% of her monthly rent, including a “Legal – Summons Fees” of \$30 per month (though no court had awarded such fees at the time they were charged) and an “Agent Filing Fee” of \$10 per month, purportedly in connection with eviction proceedings sought by Westminster.

51. Of those months, in August and September 2017, Westminster charged Ms. Smith \$80 for a “Writ Filing Fee” (even though the actual cost of filing a warrant of restitution at that

time was \$50 and no court had awarded such a fee), and \$12 for an “Agent Filing Fee” (even though Westminster incurred no such agent fee in filing for a warrant of restitution).

52. In order to stay in her home and avoid eviction, Ms. Smith paid all of the fees described above that she was illegally charged.

53. To further its illegal and predatory fee scheme, Westminster sometimes rejected Ms. Smith’s rent payments if the payments did not include the full amount of all fees, and they threatened her with additional fees if all fees were not paid as demanded.

54. For example, on or about July 16, 2017, Ms. Smith tendered payment of \$795 to Westminster, the amount of rent due and owing for July.

55. On or about July 17, 2017, with an eviction action pending, Westminster sent Ms. Smith a letter rejecting her payment of the full rent due and owing for July 2017, and instead demanding payment of \$944.70, apparently including the late fee and illegal fees, which amount Ms. Smith ultimately paid.

56. Per previous letters from Westminster, including one from January 24, 2017, Ms. Smith understood that if she did not pay the amount demanded, Westminster would charge her additional late fees, agent fees, and premature court fees because of an alleged “balance” on her account.

57. Ms. Ryer signed a lease with JK2 Westminster and Westminster on December 16, 2016. She moved from Whispering Woods Townhomes at the end of her lease in December 2017.

58. In April, May, September, October, and November 2017, JK2 Westminster/Westminster charged Ms. Ryer additional late fees, above and beyond 5% of her

monthly rent, including “Legal -- Summons Fees” of \$20 per month (though no court had awarded such fees at the time they were charged) and an “Agent Filing Fee” of \$10 per month.

59. In October 2017, Westminster also charged Ms. Ryer a \$12 “Agent Filing Fee” related to the filing of a warrant of restitution even though Westminster incurred no such agent fee in filing for a warrant of restitution.

60. To further its predatory fee scheme, JK2 Westminster/Westminster regularly treated all amounts allegedly due and owing, including the illegal and premature fees, as “rent” even though many of those charges were not rent, and misallocated Ms. Ryer’s rent payments to these illegal fees and other non-rent charges.

61. Ms. Ryer paid more than the balance on her account on April 8, 2017, including paying the agent fee and summons filing fee charged before any failure to pay rent action was filed against her and before these fees were incurred.

62. The Failure to Pay Rent complaint, filed after April 8, 2017, stated that Ms. Ryer owed \$153.87 in unpaid rent for the month of April, when she had paid all of the charges on her account at that time and had a credit of \$347.44.

63. Ms. Ryer was similarly charged an agent fee and summons filing fee on May 6, 2017, even though she had already paid the balance of her account in full on May 6, 2017, and had a credit of \$322.93 on her account.

64. The Failure to Pay Rent complaint, filed by “Westminster/Whispering Woods” on May 8, 2017, stated that Ms. Ryer owed \$177.07 in unpaid rent and a late fee of \$53.55, which was false given that she had paid all of the charges on her account at that time and had a credit of \$322.93 on her account.

65. Upon information and belief, JK2 Westminster/Westminster also sent Ms. Ryer letters threatening her with eviction and additional fees if the entire amount of the “balance” on her ledger – including illegal fees and premature court fees – was not paid by a specified date.

66. In order to stay in her home and avoid eviction, Ms. Ryer paid the illegal fees described above.

67. With respect to Dechonne McBride, in at least ten separate months, JK2 Westminster/Westminster charged Ms. McBride additional late fees, above and beyond 5% of her monthly rent, including a “Legal – Summons Fees” of \$20 per month (though no court had awarded such fees at the time they were charged) and an “Agent Filing Fee” of \$10 per month.

68. In at least three of those months, October 2015, January 2017, and October 2017, JK2 Westminster/Westminster filed complaints for failure to pay rent against Ms. McBride and charged Ms. McBride the additional fees described above even though Ms. McBride did not owe any rent at the time the complaints were filed.

69. In violation of the applicable lease, Ms. McBride was and/or is subject to the policy of JK2 Westminster/Westminster of charging an agent fee of \$12 that those entities do not incur if they seek a warrant of restitution related to a failure to pay rent judgment.

70. To further this predatory fee scheme, JK2 Westminster/Westminster regularly treated all amounts allegedly due and owing, including the illegal and premature fees, as “rent” even though many charges were not rent, and misallocated Ms. McBride’s rent payments to these illegal fees and other non-rent charges.

71. Further, JK2 Westminster/Westminster repeatedly sent Ms. McBride letters threatening her with eviction and additional fees if the entire amount of the “balance” on her ledger – including illegal fees and premature court fees – was not paid by a specified date.

72. In order to stay in her home and avoid eviction, Ms. McBride paid all of the fees she was illegally charged.

73. With respect to Louvinia Sneed, in at least 31 months since May 2015 (the earliest ledger available to Ms. Sneed), JK2 Westminster/Westminster charged Ms. Sneed additional late fees, above and beyond 5% of her monthly rent, including a “Legal – Summons Fees” of \$21 or \$30 per month (though no court had awarded such fees at the time they were charged) and an “Agent Filing Fee” of \$10 per month.

74. On at least nine occasions since May 2015, JK2 Westminster/Westminster charged Ms. Sneed \$80 for a “Writ Filing Fee” (even though the actual cost of filing a warrant of restitution at that time was \$50 and no court had awarded such a fee), and \$12 for an “Agent Filing Fee” related to the filing of a warrant of restitution (even though JK2 Westminster/Westminster incurred no such agent fee in filing for a warrant of restitution).

75. On information and belief, in at least two of the months described above, November 2015 and March 2017, and likely others, JK2 Westminster/Westminster filed complaints for failure to pay rent against Ms. Sneed and charged Ms. Sneed the additional fees described above even though Ms. Sneed did not owe any rent at the time the complaints were filed.

76. To further this predatory fee scheme, JK2 Westminster/Westminster regularly treated all amounts allegedly due and owing, including the illegal and premature fees, as “rent” even though many charges were not rent, and misallocated Ms. Sneed’s rent payments to these illegal fees and other non-rent charges.

77. Further, JK2 Westminster/Westminster sent Ms. Sneed letters threatening her with eviction if the entire amount of the “balance” on her ledger – including illegal fees and premature court fees – was not paid by a specified date.

78. Per previous letters from Westminster, including one from October 25, 2017, Ms. Sneed understood that if she did not pay the amount demanded, Westminster would charge her additional late fees, agent fees, and premature court fees because of an alleged “balance” on her account.

79. In order to stay in her home and avoid eviction, Ms. Sneed paid all of the fees described above that were illegally charged.

Class Action Allegations

80. Named Plaintiffs Tenae Smith, Howard Smith, Simone Ryer, Dechonne McBride, and Louvinia Sneed bring this action individually and on behalf of all persons similarly situated.

81. The Class consists of: All persons who are or were tenants in a residential rental property in Maryland managed by Westminster and/or JK2 Westminster, and who, since September 27, 2014, have (a) been charged by Westminster and/or JK2 Westminster one or more of the following fees related to the alleged late payment or non-payment of rent: agent fee, summons fee, writ fee, warrant fee, legal fee, court fee, and/or filing fee (collectively, the “disputed fees”), and (b) paid any such fees to Westminster and/or JK2 Westminster.

82. Excluded from the Class are:

- a. those individuals who now are or ever have been employees of Defendants
and the spouses, parents, siblings, and children of all such individuals;

- b. any individual who was granted a discharge pursuant to the United States Bankruptcy Code or state receivership laws after the date of all such disputed fees charged to that individual;
- c. any individual who has received housing assistance certificates or vouchers issued under the United States Housing Act of 1937 (known as Housing Choice Vouchers or “Section 8” vouchers) at all times since September 27, 2014, when that individual was charged any such disputed fees; and
- d. any individual who has released the Defendants from all claims or potential claims pursuant to a settlement or other release.

83. The Class, as defined above, is identifiable. Named Plaintiffs are members of the Class.

84. On information and belief, as a part of their routine business practices in Maryland, Westminster and JK2 Westminster have systematically and regularly charged and collected from Plaintiffs and other Class Members fees in excess of 5% of the amount of rent due for a rental period for which a rent payment was delinquent.

85. On information and belief, as a part of their routine business practices in Maryland, Westminster and JK2 Westminster have wrongfully applied rental payments to other charges, including the excessive, illegal, and/or premature fees described above.

86. Westminster and JK2 Westminster have knowingly assessed, demanded, and collected or attempted to collect from Plaintiffs and Class Members fees in excess of the permissible 5% late fee and other fees for which tenants were not liable as a matter of law.

87. Westminster and JK2 Westminster have knowingly assessed, demanded, and collected or attempted to collect from Named Plaintiffs and other Class Members “agent fees” in

addition to and thereby exceeding the 5% late fee allowed by law, including non-existent “agent fees” related to filings for warrants of restitution that Defendants never incurred from its agent, eWrit, that also violate Defendants’ standard, form lease.

88. Westminster and JK2 Westminster have knowingly assessed, demanded, and collected or attempted to collect from Named Plaintiffs and other Class Members court fees prior to being awarded court fees by a court. Often these court fees were never awarded by a court.

89. The disputed fees (i.e., the agent fees and/or court fees) related to the late or non-payment of rent described above are readily identifiable on the ledgers kept by Westminster/JK2 Westminster and labeled at times as agent fee, summons fee, writ fee, warrant fee, legal fee, court fee, and/or filing fee.

90. Westminster and JK2 Westminster have wrongfully applied rental payments to other fees and non-rent charges.

91. On information and belief, Westminster and JK2 Westminster have made unlawful demands to Named Plaintiffs and the Class, have falsely represented to Named Plaintiffs and the Class that fees in excess of the permissible 5% late fee were owed, and have collected money from Named Plaintiffs and Class Members to which Defendants were not entitled.

92. On information and belief, at all relevant times, Westminster and JK2 Westminster have had actual knowledge that Named Plaintiffs and the Class were being charged improper and illegal fees in excess of the permissible 5% late fee and that Named Plaintiffs and the Class were not liable for such fees, but have nevertheless persisted in their unlawful billing and collection activities, including threat and/or initiation of eviction proceedings.

93. Unless and until this Court grants the declaratory and injunctive relief that Plaintiffs seek through this action, Westminster will continue to engage in business practices that violate Maryland law.

94. Upon information and belief, the Class consists, at a minimum, of thousands of Maryland tenants and is thus so numerous that joinder of all members is impracticable.

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

- a. Whether Defendants assessed, attempted to collect, and/or collected from Class Members late fees in excess of 5% of the amount of rent due for any period for which a payment was delinquent, under the guise of the disputed fees (i.e., agent fees and premature court fees);
- b. Whether Defendants assessed, attempted to collect, and/or collected from Class Members “agent fees” related to filings for warrants of restitution that Defendants did not incur from any agent, in violation of the Defendants’ standard, form lease;
- c. Whether Defendants assessed, attempted to collect, and/or collected from Class Members late fees in excess of 5% of the amount of delinquent rent due for any rental period for which payment was delinquent, when Defendants had no legal right to demand or collect those fees (i.e. charging 5% of the full monthly rent when a tenant has partially paid his or her rent or received a rent concession);
- d. Whether Defendants wrongfully applied Class Members’ timely rental payments to other fees and non-rent charges;

- e. Whether Defendants wrongfully threatened Class Members with eviction and/or filed failure to pay rent actions against Class Members for fees that the Class Members did not owe or for fees that Defendants were not entitled to collect by means of a failure to pay rent action;
- f. Whether declaratory and injunctive relief is proper to prevent Defendants from continuing to assess, attempt to collect, and/or collect illegal amounts from Class Members; and
- g. Whether the Class is entitled to a refund of all illegal or improper fees paid to Defendants, as well as interest accrued and attorneys' fees.

96. Named Plaintiffs' claims are typical of the claims of the respective members of the Class within the meaning of Maryland Rule 2-231(a)(3) and are based on and arise out of similar facts constituting Defendants' wrongful conduct.

97. The prosecution of separate actions by individual members of the Class would create a risk of establishing incompatible standards of conduct for Defendants within the meaning of Maryland Rule 2-231(b)(1)(A).

98. The actions of Westminster and JK2 Westminster are applicable to the Class as a whole.

99. Named Plaintiffs seek equitable remedies with respect to the Class as a whole within the meaning of Maryland Rule 2-231(b)(2).

100. Common questions of law and fact enumerated above predominate over questions affecting only individual members of the Class, and a class action is the superior method for fair and efficient adjudication of this controversy within the meaning of Rule 2-231(b)(3). The likelihood that individual members of the Class will prosecute separate actions is remote due to

the time and expense necessary to conduct such litigation and the fact that Defendants affirmatively misrepresent to consumers their rights and obligations under threat of eviction.

101. Plaintiffs' counsel are experienced in class actions and foresee little difficulty in the management of this case as a class action.

102. Named Plaintiffs are adequate representatives of the Class, have no interests antagonistic to the Class, and will fairly represent the interests of the Class in accordance with their affirmative obligations and fiduciary duties.

Count One
(Violations of Maryland Real Property Article § 8-208)
Against all Defendants

103. Plaintiffs re-allege and incorporate by reference the allegations set forth above, and further allege:

104. Pursuant to Md. Code Ann., Real Prop. § 8-208(d), “[a] landlord may not use a lease or form of lease containing any provision that. . . (2) Has the tenant agree to waive or to forego any right or remedy provided by applicable law [or] (3)(i) Provides for a penalty for the late payment of rent in excess of 5% of the amount of rent due for the rental period for which the payment was delinquent.”

105. Section 8-208(g)(1) provides that “[a]ny lease provision which is prohibited by terms of this section shall be unenforceable by the landlord.” Further, § 8-208(g)(2) allows for the tenant to recover actual damages and reasonable attorneys’ fees if the landlord “tenders a lease containing such a provision or attempts to enforce or makes known to the tenant an intent to enforce any such provision.”

106. Defendants have violated and continue to violate § 8-208(d) in three ways: First, in violation of § 8-208(d)(3) and as described above, Defendants have charged, attempted to

collect, and/or collected what are effectively penalties – the “agent fees” and premature “court fees” (including “summons fees” and “writ fees”) related to the late payment or non-payment of rent – in excess of 5% of the amount of rent due for the period for which the rent was delinquent. The “agent fees” and “court fees” (aka “summons fees”) are often charged at the same time as the late fee and without having been incurred by the Defendants.

107. Second, in violation of § 8-208(d)(3) and as described above, Defendants charge a 5% late fee on the full amount of tenants’ monthly rent, even when the tenant has partially paid or received a credit towards that month’s rent.¹

108. Third, in violation of § 8-208(d)(2), pursuant to the form residential leases used by Defendants, including the leases signed by Mr. Smith, Ms. Smith, Ms. Ryer, Ms. McBride, and Ms. Sneed, Defendants define all charges allegedly due and owing to Defendants, including the illegal and excessive fees described above, and numerous other charges, as “rent,” and claim the right to misallocate tenants’ payments intended as rent first to these non-rent and/or illegal charges.

109. For example, the leases signed by Named Plaintiffs “deem” charges other than rent to be rent, including “late charges, agent’s fees, attorney’s fees, court costs, obligations other than rent..., other past due rent other than monthly rent, past due monthly rent, current monthly rent.”

110. In practice, Defendants improperly treat all charges allegedly due and owing to Defendants under the leases, including the illegal and excessive fees described above and

¹ Plaintiffs acknowledge that the Court has dismissed this paragraph of their claim, as well as certain others (including all of their first breach of contract claim (Count Five of the Amended Complaint, now Count Four of this Third Amended Complaint) and portions of Counts Two and Six of the Amended Complaint (now Counts Two and Five of the Third Amended Complaint)), but retain those claims in this Third Amended Complaint to preserve their right to appeal.

numerous other charges, as “rent,” and misallocate tenants’ payments intended for rent first to these non-rent charges.

111. Defendants, by and through their agent, eWrit Filings, LLC, then file complaints against tenants for summary eviction for alleged failure to pay rent under § 8-401.

112. By purportedly allowing Defendants to define all charges as rent, misallocate tenants’ rent payments to non-rent and illegal charges first, and then bring eviction actions under § 8-401 for failure to pay rent, these provisions in Defendants’ form leases have operated in practice to waive tenants’ rights under Maryland and local law to be summarily evicted only for failure to pay rent under § 8-401 – not for failure to pay other non-rent charges and illegal fees, in violation of §§ 8-208(d) and (g).

113. Plaintiffs have signed leases with Defendants as described above that include the misallocation clauses described in this section, and/or Defendants have misallocated rent payments from Plaintiffs to non-rent and/or illegal charges under those clauses and then sought to summarily evict Plaintiffs for failure to pay these non-rent charges.

114. Plaintiffs have been forced to pay these non-rent charges and illegal fees in order to avoid eviction or non-renewal.

115. Defendants violated § 8-208 and must pay to Plaintiffs and Class Members actual damages and reasonable attorneys’ fees.

116. As a proximate result of Defendants’ violations of § 8-208, Plaintiffs and Class Members have suffered injury and damages, including, but not limited to, the amounts of the illegal, excessive fees (the agent fees and court fees described above) that Plaintiffs and Class Members were forced to pay.

Count Two
(Violation of the Maryland Consumer Debt Collection Act,
Md. Code Ann., Com. Law § 14-202)
Against all Defendants

117. Plaintiffs re-allege and incorporate by reference the allegations set forth above, and further allege:

118. Defendants' actions in collecting, attempting to collect, and/or threatening to collect fees in excess of 5% of the amount of rent due for a period for which the payment was delinquent violate the Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law § 14-202(8), which prohibits a debt collector from making any "[c]laim, attempt, or threat[]" to enforce a right with knowledge that the right does not exist."

119. Defendants' collection of illegal fees and fees that they do not have a legally enforceable right to collect or to collect as "rent" in a summary ejectment proceeding (including, but not limited to, agent fees and court fees that defendants did not incur and/or that have not been awarded by a court), also violates § 14-202(8).

120. The excessive and illegal fees concerned "real or personal property, services, money, or credit for personal, family, or household purposes," § 14-201(c), namely the underlying debt was for personal, residential housing.

121. Defendants are "collectors" under § 14-201(b), as they attempted to collect and/or collected an alleged debt arising out of a consumer transaction, namely a personal, residential lease transaction.

122. Plaintiffs have been damaged in the amount of illegal or improper, disputed fees (i.e., the agent fees, summons fees, and writ fees) described above. Members of the Class have suffered similar damages. Defendants are liable for such damages as well as reasonable attorneys' fees and costs.

Count Three
(Maryland Consumer Protection Act, Md. Code Ann., Com. Law § 13-303)
Against all Defendants

123. Plaintiffs re-allege and incorporate by reference the allegations set forth above, and further allege:

124. Maryland's Consumer Protection Act ("CPA"), Md. Code Ann., Com. Law § 13-101, *et seq.*, prohibits any "person" from engaging in any unfair or deceptive trade practice regarding, among other things, the collection of consumer debts. *Id.* § 13-303(5).

125. Each Defendant is a "person" under the CPA, § 13-101(h), and is thus prohibited from engaging in unfair and deceptive trade practices.

126. The CPA specifically prohibits Defendants from making any false or misleading oral or written statement or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. *Id.* § 13-301(1).

127. The CPA further prohibits Defendants from failing to state a material fact if the failure deceives or tends to deceive. *Id.* § 13-301(3).

128. In violation of the CPA, § 13-303(5) and § 13-301(1), Defendants and their agents told Named Plaintiffs and Class Members that they were obligated to pay illegal fees that were not legally enforceable or legally enforceable as "rent."

129. Defendants engaged in unfair and deceptive practices by attempting to collect and/or collecting on monies that, in fact, were not legally due and were not legally enforceable or legally enforceable as "rent," and this conduct constitutes unfair and deceptive trade practices in violation of the CPA, including § 13-303(5), and §§ 13-301(1) and (3).

130. A violation of the Maryland Consumer Debt Collection Act, Md. Code Ann., Com. Law § 14-201, *et seq.*, is a *per se* violation of the CPA.

131. As a result of Defendants' unfair and deceptive trade practices in violation of the CPA, Plaintiffs and Class Members were induced to make payments to Defendants in excess of what is legal, causing them injury or loss.

132. Defendants acted knowingly while calculating, enforcing, collecting, and/or attempting to enforce and collect fees in excess of those that are allowed by law and contract.

133. Plaintiffs and the members of the Class seek to recover damages and their attorneys' fees from Defendants.

Count Four²
(Breach of Contract)
Against all Defendants

134. Plaintiffs re-allege and incorporate by reference the allegations set forth above, and further allege:

135. Defendants utilize standard form lease documents.

136. The definition of "rent" in Defendants' form leases violates Md. Code Ann., Real Prop. § 8-208, as it includes charges beyond "the periodic sum owed by the tenant for use or occupancy of the premises." *Lockett v. Blue Ocean Bristol, LLC*, 446 Md. 397, 425 (2016).

137. The lease states that a tenant will only pay a late charge of 5% of the monthly rental amount in the event that the tenant fails to pay an installment of rent.

138. Defendants breached the lease contracts with Plaintiffs and, upon information and belief, breached the lease contracts with Class Members, by charging late fees in excess of 5% of the amount of rent due for a period for which the payment was delinquent, by tacking on court-

² Plaintiffs acknowledge that the Court has dismissed this count (when it was Count Five of the Amended Complaint), but retain it in this Third Amended Complaint to preserve their right to appeal.

related fees that had not been awarded as costs by the court, by charging agent fees, and by misapplying rent payments to these illegal fees and other non-rent charges.

139. Defendants also breached the lease contracts with Plaintiffs and other Class Members by charging agent fees to institute Failure to Pay Rent (eviction) proceedings when rent was not due and owing as of the filing of said proceedings.

140. Plaintiffs and Class Members seek to recover damages in the amount of fees and costs Defendants charged them in excess of 5% of the amount of rent due for a rental period for which any payment was delinquent, in contravention of the lease provisions and Maryland law.

Count Five
(Breach of Contract)
Against all Defendants

141. Plaintiffs re-allege and incorporate by reference the allegations set forth above, and further allege:

142. Defendants utilize standard form leases with Plaintiffs and Class Members that include the following provision (usually numbered paragraph 30): “Should Landlord employ an Agent to institute proceedings for rent and/or repossession of the Premises for non-payment of any installment of rent, and should such rent be due and owing as of the filing of said proceedings, Tenant shall pay to Landlord the reasonable costs incurred by Landlord in utilizing the services of said Agent.”

143. Nothing in this standard lease entitles Defendants to charge additional fees to its tenants that it has not incurred.

144. In violation of this standard lease, Defendants, as a matter of policy and practice, have charged and/or subjected to a policy of charging Plaintiffs and Class Members a \$12 “agent

fee” each time a warrant for restitution is filed, even though Defendants incur no such fee or charge from their exclusive rent court agent, eWrit, or any other entity.

145. By charging these \$12 “agent fees” and other non-incurred fees to Plaintiffs and Class Members, Defendants have regularly and repeatedly violated their standardized lease provisions with Plaintiffs and Class Members that authorize such charges only when Defendants actually incur such costs from an agent.

146. Plaintiffs and Class Members seek to recover damages in the amount of any and all fees and costs, including but not limited to the \$12 “agent fees,” related to filing for warrants of restitution (or otherwise related to alleged late payment or non-payment of rent) that Defendants charged them despite not having incurred those fees or costs, in breach of their lease agreements. Plaintiffs and Class members further seek injunctive and declaratory relief to prohibit Defendants from charging such fees and costs.

Count Six
(Declaratory and Injunctive Relief)
Against all Defendants

147. Plaintiffs re-allege and incorporate by reference the allegations set forth above, and further allege:

148. Plaintiffs seek a declaration individually and on behalf of the Class that Defendants are not entitled to charge any late fees to their tenants in excess of 5% of the amount of rent due for any period for which the payment is allegedly delinquent, including any “agent fees” or unawarded “court fees.” Only if a court in Maryland awards Defendants court costs are such costs permissible under the law.

149. Plaintiffs seek a declaration individually and on behalf of the Class that Defendants are not entitled to charge an “agent fee” or other fee related to filing a warrant of restitution that Defendants have not actually incurred from the court or a third-party agent.

150. Plaintiffs seek a declaration individually and on behalf of the Class that, for purposes of calculating any late fee or other penalty, the “rent” on which that late fee or penalty is calculated may include only the base monthly rent, less the amount of any rent for that month that the tenant has tendered prior to the end of the fifth day of the applicable month.

151. Plaintiffs seek a declaration individually and on behalf of the Class that Defendants’ lease provisions defining “rent” to include all charges due and owing to the Landlord and systematically misallocating all tenants’ rent payments first to various fees before actual rent are illegal and unenforceable.

152. Defendants should be enjoined from attempting to collect and/or collecting fees in excess of 5% of the amount of rent due for any period for which the payment is delinquent and from misapplying monthly rent payments to non-rent fees, including “agent fees” and unawarded “court fees.”

153. Alternatively, Plaintiffs seek a declaration that Defendants are not entitled to the assistance of any Maryland court in enforcing improper or illegal late fees or interest they seek to collect upon those improper and illegal late fees.

WHEREFORE, Plaintiffs pray that the following relief be granted to Plaintiffs and Class Members on their claims set forth above:

- A. The Court certify a class of persons as set forth herein or as may be amended, appoint Named Plaintiffs as Class Representatives, and appoint their counsel as Class Counsel;

- B. The Court enter a declaratory judgment establishing that, for purposes of calculating any late fee, the “rent” on which that penalty is calculated may include only the base monthly rent, less the amount of any rent for that month that the tenant has tendered prior to the end of the fifth day of the applicable month;
- C. The Court enter a declaratory judgment establishing that Defendants may not collect from Plaintiffs or any Class Member any late fees, unawarded court fees, or agent fees in excess of 5% of the amount of rent due for any rental period for which the payment was delinquent;
- D. The Court enter a declaratory judgment establishing that Defendants may charge only the fixed, periodic sum due from Plaintiffs and Class Members as “rent,” may not define “rent” to include any other charges or fees, and may not allocate Plaintiffs’ and Class Members’ payments first to non-rent obligations or fees;
- E. The Court enter an order granting Plaintiffs and Class Members a preliminary and permanent injunction prohibiting Defendants from attempting to collect and/or collecting fees from Plaintiffs and Class Members in excess of 5% of the amount of rent due for any period for which the payment is delinquent;
- F. The Court enter an order granting Plaintiffs and Class Members a preliminary and permanent injunction prohibiting Defendants from charging tenants an “agent fee” or other fee related to filing a warrant of restitution, or

otherwise related to alleged late payment or non-payment of rent, that

Defendants have not actually incurred from the court or a third-party agent.

- G. The Court enter judgment in favor of Plaintiffs and Class Members and against Defendants, jointly and severally, in the amount of all sums paid by Plaintiffs and Class Members toward improper fees, costs, and other charges;
- H. The Court award pre-judgment and post-judgment interest against Defendants, jointly and severally, on all sums awarded to Plaintiffs and Class Members;
- I. The Court award to Plaintiffs and Class Members reasonable attorneys' fees and the costs of these proceedings against Defendants, jointly and severally; and,
- J. The Court order such other and further relief as the nature of this case may require.
- K. In compliance with Maryland Rule 2-305, Plaintiffs state that they seek damages in excess of \$75,000 on behalf of themselves and all others similarly situated.

NOTICE OF CLAIM FOR ATTORNEYS' FEES

Pursuant to Maryland Rule 2-703, Plaintiffs hereby give notice that they seek attorneys' fees in this case.

Respectfully submitted,



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and the Class*

DEMAND FOR JURY TRIAL

Plaintiffs, individually and on behalf of the Class Members, demand trial by jury on all issues of fact.



Andrew D. Freeman

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2019, a copy of Plaintiffs' Third Amended Complaint was hand delivered to:

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