IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAURA HETTINGER,

Plaintiff,

v.

BOZZUTO MANAGEMENT COMPANY,

Defendant.

Case No. 1:23-cv-03687-JEB

ANSWER TO FIRST AMENDED COMPLAINT

Defendant Bozzuto Management Company ("Defendant" or "Bozzuto"), by undersigned counsel, respectfully submits its Answer to Plaintiff's First Amended Complaint, and states as follows:

Any allegation not explicitly admitted is denied. The headings contained in the First Amended Complaint are not allegations to which a response is required. To the extent a response to any headings is required, Defendant denies the allegations in the headings.

INTRODUCTION

1. Denied.

2. Bozzuto admits that residents at the property Novel South Capitol pay utility costs and rent, as do the overwhelming majority of tenants nationwide. Bozzuto further admits that its leases accurately disclose residents' obligations to pay for utilities. The remainder of the allegations in this Paragraph are denied.

3. Bozzuto is without adequate information to answer any allegations or statements relating to Plaintiff's intent with respect to filing this action.

4. Denied.

5. Denied.

6. Bozzuto is without adequate information to answer any allegation regarding other "landlords," "utility companies," or "tenants." The allegations pertaining to Bozzuto are denied.

7. Bozzuto admits that Plaintiff Laura Hettinger completed an application for an apartment in 2021, that Plaintiff paid a variable utility charge based on her actual usage, and that Plaintiff purports to bring a class action lawsuit asserting claims under the CPPA. Bozzuto denies all other allegations and specifically denies any and all liability to Plaintiff.

JURISDICTION AND VENUE

8. Paragraph 8 states legal conclusions to which no response is required. To the extent a response is required, Bozzuto admits that jurisdiction in this Court is proper.

9. Paragraph 9 states legal conclusions to which no response is required. To the extent a response is required, Bozzuto admits that jurisdiction in this Court is proper.

10. Paragraph 10 states legal conclusions to which no response is required. To the extent a response is required, Bozzuto admits that venue in this Court is proper.

THE PARTIES

11. Admitted.

12. Bozzuto admits to being a Maryland corporation that operates in D.C. and admits to the unit counts contained in Paragraph 12, but denies all other allegations.

13. Bozzuto admits that it generally serves to operate and manage apartment buildings, and that in general it communicates with tenants, collects rent, and performs other basic management functions. With regard to the specific duties that Bozzuto performs at any given property, Bozzuto is unable to specify to the level of detail without reference to the respective property management agreement for that property, which speaks for itself. Plaintiff's

allegation in the last sentence of Paragraph 13 about the regulatory definition of a "housing provider" states a legal conclusion, to which no response is required.

14. Bozzuto admits that Ms. Hettinger was a resident at Novel South Capitol and entered into a lease with the owner of the building, and that Bozzuto entered into a property management agreement with the owner of the building. The characterizations of the relationship between Bozzuto and owner or Bozzuto and tenant are a legal assertion to which no response is required; to the extent a response is required, Bozzuto denies the specific characterization of that relationship.

FACTUAL ALLEGATIONS

15. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 15, as they pertain to other property managers and owners. To the extent a response is required, Bozzuto is unable to confirm the accuracy of the specific allegations in this Paragraph as worded and therefore denies those allegations.

16. Bozzuto admits that it competes with other property managers, and admits that a lawsuit was filed by the D.C. Attorney General, which speaks for itself. Bozzuto denies the allegations of this Paragraph to the extent it presents any allegations from other pending litigation as facts, and denies the remaining allegations of this Paragraph.

17. Bozzuto admits that property managers compete with each other, and that property managers may endeavor to provide impressive amenities and services. Bozzuto denies the remaining allegations of this Paragraph.

18. Denied.

19. Bozzuto is without information regarding other tenants and residential multifamily properties and cannot attest to the accuracy of broad statements regarding them. To

the extent a response is required, Bozzuto denies that the allegations of this Paragraph are completely accurate statements.

20. Bozzuto admits that various categories of utilities may be charged by an individual landlord. Bozzuto is without sufficient information to attest to the accuracy of Plaintiff's broad allegations concerning what was "traditional[ly]" or "historically" done. To the extent a response is required, Bozzuto denies that the allegations of this Paragraph are completely accurate statements.

21. Denied.

22. Denied.

23. Bozzuto admits only that rental applications are made available to prospective tenants online via a third-party provider, RentCafé. Bozzuto denies all other allegations.

24. Paragraph 24 states legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. To the extent Paragraph 24 purports to quote from the D.C. Code, the corresponding Code sections speak for themselves.

25. Paragraph 25 quotes from a specific document, which speaks for itself. Bozzuto denies any characterization of the document that is inconsistent with that document. Bozzuto admits that its leases disclose to tenants that they are responsible for utility payments, and that a separate Utility Addendum further discloses this responsibility in substantial detail. Bozzuto denies the remainder of the allegations.

26. Paragraph 26 contains legal conclusions to which no response is required. To the extent a response is deemed required, Bozzuto admits only that it has initiated lawsuits for

possession for tenants who fail to comply with their obligations to pay for their utility charges. Bozzuto denies all other allegations.

27. Paragraph 27 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 27.

28. Denied.

29. Denied.

30. Denied.

31. Paragraph 31 consists of legal conclusions, to which no response is required. The remaining allegations in Paragraph 31 refer to an excerpt from a document, which speaks for itself. Bozzuto denies any characterization of the document. To the extent a response is required, Bozzuto admits only that it uses the Apartment Lease Contract form lease produced by the National Apartment Association ("NAA") and that the NAA lease includes a Utility Addendum for Water, Sewer, Gas, Trash and Electric Service. Those documents speak for themselves. Bozzuto denies the remainder of the allegations

32. Paragraph 32 refers to an excerpt from a document, which speaks for itself. Bozzuto denies any characterization of the document. Bozzuto denies the remainder of the allegations.

33. Bozzuto admits that it may require tenants to maintain a utilities account, and that tenants may be charged service fees pursuant to the terms of their lease. Bozzuto admits that Plaintiff paid a monthly service fee for her utility account, pursuant to the terms of her lease.

Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 33 purporting to describe general practices of Conservice.

34. Bozzuto admits that it uses lease addenda and that it may charge certain fees if provided for in the lease agreement with a resident. Bozzuto denies the remaining allegations of this Paragraph.

35. Denied.

36. Denied, expect that Bozzuto admits tenants at Novel South Capitol must pay utility costs pursuant to the terms of their lease agreements.

37. Paragraph 37 consists of legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of all other allegations in Paragraph 37, and therefore denies those allegations.

38. Paragraph 38 consists of legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of all other allegations in Paragraph 38, and therefore denies those allegations.

39. Paragraph 39 consists of legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of all other allegations in Paragraph 39, and therefore denies those allegations.

40. Paragraph 40 refers to an excerpt from a document, which speaks for itself. Bozzuto denies any characterization of the document. Bozzuto admits that the Utility Addendum discloses that residents are responsible for the cost of utilities. Bozzuto denies the remainder of the allegations.

41. Denied.

42. Bozzuto admits only that the utility charges are variable. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 42 pertaining to tenants' beliefs, and therefore denies those allegations. Bozzuto denies all remaining allegations.

43. Denied.

44. Denied.

45. Paragraph 45 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto specifically denies that the alleged "ban" on "submetering" applies to property management companies. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of all other allegations in Paragraph 45, and therefore denies those allegations.

46. Paragraph 46 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto specifically denies that the alleged "ban" on "submetering" applies to property management companies. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of all other allegations in Paragraph 46, and therefore denies those allegations.

47. Bozzuto admits that residents of Novel South Capitol are billed for electricity based on their consumption as measured by meters appurtenant to their units, and refers Plaintiff to the lease agreements and utility addenda for a disclosure of utility billing methodology and costs. Bozzuto denies Plaintiff's characterizations of what Plaintiff categorizes as "Straight Submetering" and "Blended Submetering" and further denies that any "prohibition" on submetering applies to Bozzuto.

48. Denied.

49. Bozzuto denies the allegations in Paragraph 49 alleging it engaged in any illegal actions. To the extent Paragraph 49 relies on Plaintiff's characterization of D.C. regulations, those regulations speak for themselves. For the remaining allegations, including those regarding nonspecific "tenants," Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 49, and therefore denies those allegations.

50. Denied.

51. Bozzuto is without information sufficient to form a belief as to the truth of the allegations regarding nonspecific "tenants." The remaining allegations of this Paragraph are denied.

52. To the extent this Paragraph characterizes utility bills or other communications to tenants, those documents speak for themselves, and Bozzuto denies any allegation that is inconsistent with those documents or purports to characterize all such documents. The remaining allegations of this Paragraph are denied.

53. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of the allegations regarding Conservice's actions in the first sentence of Paragraph 53. Bozzuto denies the remainder of the allegations in Paragraph 53.

54. Paragraph 54 refers to an excerpt from a document, which speaks for itself. Bozzuto denies any characterization of the document. Bozzuto denies the remainder of the allegations.

55. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of the allegations in Paragraph 55, which purports to describe facts regarding all "tenants" without reference to any specific persons.

56. Paragraph 56 refers to an excerpt from a document, which speaks for itself. Bozzuto denies any characterization of the document. Bozzuto denies that its advertising materials fail to disclose whether residents are responsible for the cost of utilities. Bozzuto denies the remainder of the allegations.

57. Admitted.

58. Bozzuto denies this allegation as worded; however, Bozzuto admits that it does not engage in master-metered submetering.

59. Paragraph 59 refers to the contents of a website, which speaks for itself. Bozzuto denies any characterization of the website and further denies sufficient knowledge to form a belief as to the truth of the allegations about Plaintiff's experience while accessing the website.

60. Bozzuto admits that Plaintiff Hettinger visited Novel South Capitol prior to applying to lease an apartment in the community, and that during this visit a Bozzuto employee disclosed to Plaintiff that she would be responsible for the cost of utilities. Bozzuto denies Plaintiff's allegations that the disclosure was inadequate.

61. Bozzuto admits that Plaintiff paid an application fee and submitted an application online through RentCafé. Bozzuto admits the monthly rent was disclosed in the application and

denies that Ms. Hettinger was not on notice of her responsibility to pay for monthly utility charges. The remaining allegations of this Paragraph are denied.

62. Admitted.

63. Bozzuto admits that it sent emails to Ms. Hettinger and that she signed a lease with the owner of Novel South Capitol. Those documents speak for themselves. Bozzuto denies any insinuation that Plaintiff was entitled to "edit or modify the terms of the lease."

64. Paragraph 64 refers to an excerpt from a document, which speaks for itself. Bozzuto admits that Plaintiff's lease included a Utility Addendum, which disclosed information about utility billing and fees. Bozzuto denies any characterization of the document.

65. Paragraph 65 refers to an excerpt from a document, which speaks for itself. Bozzuto admits that Plaintiff's lease included a Utility Addendum, which disclosed information about utility billing. Bozzuto denies any characterization of the document. Bozzuto denies all other allegations in Paragraph 65.

66. Bozzuto denies that any actions it took were illegal. With regard to the summary of specific written utility bills, those documents speak for themselves, and Bozzuto denies any characterization of those documents.

67. Paragraph 67 refers to an excerpt from a document, which speaks for itself. Bozzuto admits that Plaintiff's lease included a Utility Addendum, which disclosed information about utility billing. Bozzuto denies any characterization of the document.

68. Paragraph 68 refers to an excerpt from a document, which speaks for itself. Bozzuto admits that Plaintiff's lease included a Utility Addendum, which disclosed information about utility billing. Bozzuto denies any characterization of the document. Bozzuto lacks sufficient knowledge and information to form a belief as to the truth of the allegations in

Paragraph 68 related to Plaintiff's state of mind. Bozzuto denies that it engaged in any "violation of District law."

69. Admitted.

70. Bozzuto denies Plaintiff's characterization of "submetering" and denies that its practices violate any applicable law. To the extent that Plaintiff refers to certain documents in Paragraph 70, those documents speak for themselves, and Bozzuto denies any characterization of the documents. Bozzuto admits the remaining allegations of this Paragraph.

71. Paragraph 71 refers to a specific utility bill, which speaks for itself. The remaining allegations in this Paragraph are denied.

72. This allegation contains legal conclusions to which no response is required. To the extent a response is required, Bozzuto denies that a class action is appropriate.

73. Bozzuto admits that Ms. Hettinger is seeking to bring a class-action case, but denies that a class action is appropriate. To the extent any further response is required, the remaining allegations in this Paragraph are denied.

74. Bozzuto admits that Ms. Hettinger is seeking to bring a class-action case, but denies that a class action is appropriate. To the extent any further response is required, the remaining allegations in this Paragraph are denied.

75. Denied.

76. Bozzuto admits that Ms. Hettinger is seeking to bring a class-action case, but denies that a class action is appropriate. To the extent any further response is required, the remaining allegations in this Paragraph are denied.

77. This allegation contains legal conclusions to which no response is required. To the extent a response is required, Bozzuto denies that a class action is appropriate and denies any liability whatsoever to Plaintiff or members of the putative class.

78. This allegation contains legal conclusions to which no response is required. To the extent a response is required, Bozzuto denies that a class action is appropriate and denies any liability whatsoever to Plaintiff or members of the putative class.

79. This allegation contains legal conclusions to which no response is required. To the extent a response is required, Bozzuto denies that a class action is appropriate and denies any liability whatsoever to Plaintiff or members of the putative class.

80. This allegation contains legal conclusions to which no response is required. To the extent a response is required, Bozzuto denies that a class action is appropriate and denies any liability whatsoever to Plaintiff or members of the putative class.

81. This allegation contains legal conclusions to which no response is required. To the extent a response is required, Bozzuto denies that a class action is appropriate and denies any liability whatsoever to Plaintiff or members of the putative class.

82. This allegation contains legal conclusions to which no response is required. To the extent a response is required, Bozzuto denies that a class action is appropriate and denies any liability whatsoever to Plaintiff or members of the putative class.

COUNT I

83. Paragraph 83 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 83.

84. Paragraph 84 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 84.

85. Paragraph 85 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 85.

86. Paragraph 86 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 86.

87. Paragraph 87 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 87.

88. Paragraph 88 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 88.

89. Paragraph 89 contains legal conclusions to which no response is required. To the extent a response is deemed required, any purported statements of the law are denied to the

extent such statements are contrary to the law. Bozzuto denies all other allegations in Paragraph 89.

90. Denied.

91. Denied.

92. Denied.

93. Denied.

94. Denied.

95. Denied.

96. Denied.

97. Denied.

98. Denied.

PRAYER FOR RELIEF

The final, unnumbered paragraph of the First Amended Complaint sets forth Plaintiff's prayer for relief, to which no response is required. To the extent a response is deemed required, Bozzuto denies the allegations contained in the prayer for relief and further avers that Plaintiff is not entitled to the requested relief or any relief whatsoever. Bozzuto further denies any and all allegations in the First Amended Complaint not expressly admitted herein to which a response is deemed required. Bozzuto respectfully requests that the Court: (a) dismiss the First Amended Complaint with prejudice; (b) enter judgment in Bozzuto's favor; (c) award Bozzuto its reasonable attorneys' fees and costs of defending this action; and (d) award Bozzuto such other and further relief as the Court deems just and appropriate.

DEFENSES

Bozzuto asserts the following affirmative and other defenses without assuming any burdens of production or proof that, pursuant to law, belong to Plaintiff. Bozzuto reserves the right to amend its affirmative and other defenses and to assert any affirmative or other defenses as may become available or apparent during the course of this litigation, in accordance with applicable law and rules of this Court.

First Defense

Plaintiff's First Amended Complaint, in whole or in part, fails to state a claim against Bozzuto upon which relief can be granted.

Second Defense

Some or all of Plaintiff's claims are or may be barred by the statute of limitations.

Third Defense

Plaintiff has not sustained any injury as a result of any action of Bozzuto.

Fourth Defense

Some or all of Plaintiff's claims are or may be barred by the doctrines of estoppel, waiver, unclean hands, and/or laches and by any other defenses found to be factually merited during the course of discovery in, or trial of, this action.

Fifth Defense

Bozzuto is not liable for the acts of third parties that may have caused harm to Plaintiff.

Sixth Defense

Some or all of Plaintiff's claims are or may be barred by Plaintiff's own acts and omissions, including without limitation, Plaintiff's assumption of the risk.

Seventh Defense

Plaintiff's allegations pertaining to water and sewer billing and purported "submetering" are not properly directed to Bozzuto, as Bozzuto bears no responsibility for assessing water and sewer charges or installing meter equipment, and Bozzuto obtains no financial benefit in connection with water and sewer bills or meter equipment.

Eighth Defense

The material issues in this case are not sufficiently common to warrant class certification, and common issues do not predominate over individual issues.

Ninth Defense

Plaintiff's claims are not typical of those of the class she purports to represent.

Tenth Defense

Plaintiff's claims are not typical of those of the class she purports to represent.

Eleventh Defense

Plaintiff is not an adequate class representative.

Twelfth Defense

A class action is not a superior means of resolving Plaintiff's claims.

Thirteenth Defense

Bozzuto reserves the right to raise other defenses, including affirmative defenses, as discovery in this matter proceeds.

Respectfully submitted,

GALLAGHER EVELIUS & JONES LLP

/s/ Joe Dugan

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