

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DAVID BOSLEY, *On Behalf of Himself and All
Others Similarly Situated*
37 L Street SE, Unit 1105
Washington, D.C. 20003

Plaintiff

v.

GREP ATLANTIC, LLC D/B/A GREYSTAR
465 Meeting Street, Suite 500
Charleston, SC 29403

SERVE:

CT CORPORATION SYSTEM
1015 15th St NW, Suite 1000
Washington, D.C. 20005

**GREYSTAR MANAGEMENT SERVICES,
L.P.,**
465 Meeting Street, Suite 500,
Charleston, SC 29403

SERVE:
CT CORPORATION SYSTEM
2 Office Park Court Suite 103
Columbia, SC 29223

Defendants

Case No: 2023-CAB-007340

Judge:

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff David Bosley (“Plaintiff”), on behalf of himself and all those similarly situated, by his attorneys, bring this class action against Defendants GREP Atlantic, LLC d/b/a Greystar and Greystar Management Services, L.P. (collectively “Greystar”) for violations of the District of Columbia Consumer Protection Procedures Act (“CPPA”).

I. INTRODUCTION

1. Greystar, a large residential property management company, has exploited residential tenants in many of its buildings in the District of Columbia (the “District”) by using a drip-pricing scheme to inflate tenants’ monthly rent through arbitrary and variable utility assessments. For years, Greystar has systematically charged these tenants outright illegal utility surcharges to increase its profits above and beyond industry standard rents and the disclosed monthly rate for rent set in its form leases. Tenants who do not pay Greystar’s illegal charges face steep late fees and even eviction. Thus, they are captive customers for Greystar’s abusive practices.

2. To carry out its scheme, Greystar partitions the rent for many units of its buildings in the District into two portions: (1) a fixed monthly rate (“Fixed Rent”), the amount of which is clearly disclosed in advertising, applications, and leases, and (2) a variable, hidden rate for utilities and other related fees (“Utility Rent”). While the fine print in the leases requires the Utility Rent to be paid to the building as a condition of living in the building, the specific amount of Utility Rent that one will have to pay is not identified in the lease, nor any of the advertising, applications, or disclosures provided (nor is the fact that Greystar will charge Utility Rent mentioned anywhere in the advertising or application). This practice is illegal: District law mandates that the entire amount of money owed as a condition of occupancy be disclosed “[a]t the time a prospective tenant files an application to lease any rental unit.”¹ Long after applying, tenants learn that Greystar secretly tabulates a new amount for Utility Rent every month, adds on extra billing fees, and then demands tenants pay that month’s amount immediately—often in as little as ten days. Thus, by making the monthly payment of a variable utility charge a condition of occupancy in these buildings (“Utility Rent Properties”), tenants have little choice but to cede to Greystar’s billing demands, as those who do not pay the Utility Rent on demand risk negative credit and background reporting, steep late fees, and eviction.

¹ D.C. Code Ann. § 42-3502.22(b)(1).

3. This type of rental scheme is illegal, and for good reason. With tenants as captive customers, unscrupulous property managers will simply use the undisclosed, portioned rent to extract even more money, which is precisely what happens to tenants in Greystar's Utility Rent Properties.

4. Once its tenants enroll in the lease and have moved into the Utility Rent Properties, Greystar further exploits its power over tenants by overcharging them in two critical ways. **First**, without informing tenants prior to signing a lease and moving into their homes, Greystar requires their tenants to pay per-unit rates for water and/or sewer service that exceed the lawful rates chargeable in multifamily residential properties. Greystar charges a higher inflated rate to increase its profits. If tenants were able to pay utility companies directly, they would pay less than what Greystar demands.

5. **Second**, Greystar uses an illegal submetering or energy allocation methodology to illegally tabulate each tenant's gas and/or electric Utility Rent, compounding tenants' problems and Greystar's profits. When tenants pay the utility companies directly for their unit's gas and/or electric charges, those charges are measured through the unit-level meters installed by the public utility companies ("Public Meters"). But because tenants in Utility Rent Properties must *also* pay Greystar a variable Utility Rent for gas and/or electric, Greystar relies on secretive private submetering² and energy allocation technology³ (collectively "Private Submeters"). Private Submeters pose a significant risk of harm to consumers because they are not regulated in the same manner nor meet the same standards as Public Meters. Despite District regulations prohibiting these submetering methods in residential multifamily apartment buildings, tenants locked into leases have little choice but to cede to Greystar's illegal billing methods.

² See D.C. Code § 34-1551(10) (defining "Submetering equipment" as "equipment used to measure actual electricity or natural gas usage in any nonresidential rental unit when the equipment is not owned or controlled by the electric or natural gas utility serving the building in which the nonresidential rental unit is located")

³ See D.C. Code § 34-1551(4) (defining "Energy allocation equipment" as "any device, other than submetering equipment, used to determine approximate electric or natural gas usage for any nonresidential rental unit within a building.")

6. While landlords and utility companies have long been comprehensively regulated in the District of Columbia to protect tenants, Greystar skirts these regulations. Instead, Greystar has implemented its own self-serving scheme to maximize profit at tenants' expense. For example, in traditional rental arrangements, where monthly fixed rent includes utilities, tenants have the security of knowing their housing costs will not fluctuate from month to month—unlike in Greystar's scheme. In other arrangements, where the monthly rental rate excludes certain utilities, the tenant pays the utility company directly. Thus, the tenants have the security of knowing they are protected through the District's democratically-established and tenant-informed utility regulations—unlike in Greystar's scheme. The District caps utility rates and fees and provides other consumer protections, so there is little risk that tenants will lose their homes if economic hardship or a billing dispute causes them to fall behind on their utility bills. Meanwhile, Greystar's scheme of partitioning “rent” into Fixed Rent and Utility Rent prevents tenants from enjoying either of those protections and makes them vulnerable to exploitative fees and costs and eviction.

7. These unlawful practices have resulted in millions of dollars in ill-gotten gains and thousands of injured tenants. Plaintiff David Bosley is one such tenant. In 2022, he completed an application for an apartment that disclosed only the Fixed Rent without any mention of the Utility Rent. He has since then paid a variable Utility Rent to Greystar, the numerical amount of which was not disclosed in his lease, and that is in excess of the District's maximum legal rates and measured via illegal submetering. On behalf of similarly situated tenants in affected Greystar properties, Plaintiff Bosley brings this class action lawsuit asserting violations of the District of Columbia's Consumer Protection Procedures Act (“CPPA”).

II. JURISDICTION

8. The Court has subject matter jurisdiction over this case pursuant to D.C. Code § 11-921.

9. The Court has personal jurisdiction over Greystar pursuant to D.C. Code § 13-423 because it conducted, and continues to conduct, business in the District of Columbia or caused, and continues to cause, tortious injury in the District of Columbia.

10. Venue is appropriate because the events that gave rise to this Complaint occurred in the District of Columbia.

III. PARTIES

11. Plaintiff David Bosley was a tenant in the Illume building located at 853 New Jersey Avenue SE, Washington, D.C. 20003. At all relevant times, the Illume was managed by Defendant Greystar.

12. Defendant GREP Atlantic, LLC d/b/a Greystar is a Delaware limited liability company registered as a foreign company with the District of Columbia. Defendant Greystar Management Services, L.P. is a limited partnership organized under the laws of Delaware, which operates in the District of Columbia even though it is not registered with the District of Columbia. Upon information and investigation, at all times relevant to this complaint, Defendant GREP Atlantic, LLC d/b/a Greystar and Defendant Greystar Management Services, L.P. acted collectively and in concert and shall jointly be referred to as “Greystar.”

13. Greystar describes itself as a “fully integrated real estate company offering expertise in investment management, development, and management of rental housing properties globally.” Greystar owns, operates, and develops rental housing, including traditional multifamily housing throughout the country and in the District of Columbia. Greystar’s property management services claim to “provide end-to-end property management services for residential housing, apartment homes, furnished corporate housing, and mixed-use properties incorporating retail space.” Greystar’s property management services include property operations, business management, financial services, and anything else necessary to manage a residential property. Greystar manages over a dozen residential apartment buildings with more than 5,000 individual units in the District of Columbia.

14. As is typical of property management companies controlling large residential housing complexes (“Property Managers”), Greystar performs almost all duties related to the operation and management of apartment buildings as a commercial enterprise. It sets the terms of the rental agreements, including the rent and fees. It is responsible for and empowered to carry out

advertising, leasing, maintenance, staffing, utility procurement and payments, rent assessment and collection, tenant communications, and vendor contracting, and retention and oversight. At all times relevant to this complaint, Greystar, in fact, carried out these responsibilities. Greystar also refers tenants for eviction and appears as the landlord's company representative in legal proceedings. Accordingly, Greystar is a "housing provider" within the meaning of the District's housing regulations.⁴

15. Plaintiff Bosley was a tenant in one of the multifamily apartment buildings that Greystar manages in the District. Plaintiff Bosley and Class members enter into lease agreements with the owners/investors of the residential apartment buildings in which they reside. The lease agreements contain the contractual rights and responsibilities of the parties. The owners/investors enter into service agreements with Greystar, under which it provides property management services for the buildings. Pursuant to these contracts, Greystar (a) acts as the agent of the owners/investors and (b) exercises the rights and responsibilities of the owners/investors under their lease agreements with Plaintiff and the Class members. In this manner, Greystar either acts as the alter-ego of the owners/investors, takes assignment of the lease agreement, and/or is in functional privity and near privity of contract with Plaintiff and the Class members.

IV. FACTS

A. Greystar Omits Information About Utility Rent From its Applications and Lease Agreements to Increase Tenancy and Profit in a Competitive Market.

16. Over the last decade, the District of Columbia has seen an explosion in the construction of multifamily residential high-rise apartment buildings controlled by large Property Managers, like Greystar. Areas including the Southwest Waterfront, Wharf, H Street Corridor, Union Market, and NOMA have added 43,000 rental units to the District between 2020 and 2022.⁵

⁴ D.C. Code § 42-3501.03(15).

⁵ Jeff, Clabaugh, *Why DC-Area Developers are Building so Many Apartments*, WTOP News (Oct. 20, 2023, 3:21 PM), <https://wtop.com/business-finance/2023/09/why-dc-area-developers-are-building-so-many-apartments/>.

These medium-to-large residential apartment complexes typically have at least 150 residential units and are often owned by single-asset limited liability companies or investors.

17. The explosion in new apartment buildings has led to fierce competition among buildings and the Property Managers that control them. Despite that, rents in the District have continued to rise. One possible explanation for the rent increases in the District was laid out in a lawsuit filed on November 1, 2023, in which the Attorney General of the District alleged that Greystar, as well as other Property Managers, such as William C. Smith & Co., Bozzuto, and JBG Smith Properties, engaged in a price-fixing scheme to set rents. In particular, the lawsuit alleges that various Property Managers agreed to use RealPage, a property management software, to determine rents in their buildings, resulting in them charging up to 20 percent more than they would otherwise be able to command.

18. Whatever the reason for the surging rents in the District, Property Managers are engaging in a variety of tactics to entice tenants to visit and apply for housing in their buildings without actually lowering tenants' overall monthly costs. In some cases, Property Managers are competing through more impressive amenities and services. But Greystar Utility Rent scheme is much more nefarious as it combines drip and partition pricing tactics with outright illegal charges and overcharges.⁶

19. To carry out its scheme, Greystar devised a confusing system that departs from how tenants historically pay for rent and utilities in the District.

20. By way of background, tenants in residential multifamily properties in the District traditionally were billed for utilities in a relatively straightforward way, either by receiving a bill directly from the utility company or by agreeing to a fixed rent that included utilities. For example,

⁶ “Drip pricing” is a predatory pricing practice in which companies advertise a low rate but sneak in additional fees throughout the life of a transaction. “Partitioned pricing” is another predatory practice in which companies advertise a total price for a good or service separate and apart from a portion of the cost. An example of drip and partitioned pricing is in the travel industry, in which consumers are led to believe they will pay the advertised price for a hotel room through an online reservation but then are compelled to pay an additional mandatory “resort fee” on top of the advertised rate.

a tenant might pay Washington Gas for any natural gas used in connection with their gas stove, and Pepco for lighting and other electric power used in their unit. For utilities billed to the building, such as water, the building pays using the tenants' fixed rent to cover these costs.

21. Under this traditional system, contrary to Greystar's practices, fixed rent might cover electricity and gas, but always included the following types of utilities (collectively, "Traditional Building Utilities"):

- **Water.** Because the District requires that the title holder be billed for water and the utility company does not install unit-level Public Meters in multifamily housing, water was historically covered by a tenant's fixed rent.
- **Heating, ventilation, and air conditioning systems ("HVAC").** Because of the way HVAC systems are designed for, installed in, and used by multifamily housing, unit-level Public Meters usually do not measure a unit's individual use of energy for the HVAC. These costs would be measured by the building's Public Meter and billed to the building.
- **Water Heating.** For the same reasons as above, the costs associated with heating water are often measured by the building's Public Meter and billed to the building.
- **Utilities for Common Spaces.** Here again, the building's Public Meter measures utility usage in any place where tenants do not reside, such as lobbies, hallways, leasing offices, custodial workspaces, gyms, and other common spaces.

22. In its Utility Rent Properties, Greystar bucks this traditional practice. Tenants may still pay *utility companies* for gas and/or electric measured by their unit's Public Meters. But the Utility Rent is designed to require tenants to additionally pay to *Greystar* a variable upcharge for Traditional Building Utilities or other costs as a condition of residing in their units and accessing facilities.

23. Problematically, despite conditioning tenancy on payment of these variable upcharges, Greystar does not disclose the amount of Utility Rent in its advertising, application, or lease agreements. In fact, its advertising and applications contain no reference to Utility Rent whatsoever. Such nondisclosure is not only unfair and misleading, but a clear violation of District law.

1. Greystar Upcharges Tenants Through Utility Rent it Does Not Disclose in its Apartment Advertising and Applications.

24. Greystar is able to enforce its Utility Rent charge through the confusing and unlawful way it structures its advertising and application process. Applications are typically made available to tenants online via a third-party provider, RentCafé. In those applications, Greystar discloses only the amount of the Fixed Rent, not the amount of Utility Rent or even its intent to charge Utility Rent, in violation of District law.

25. In the context of multifamily housing, the District of Columbia defines rent as “the *entire amount* of money, money’s worth, benefit, bonus, or gratuity demanded, received, or charged by a housing provider as a condition of occupancy or use of a rental unit, its related services, and its related facilities.”⁷ “‘Related services’ means services provided by a housing provider . . . to a tenant in connection with the use and occupancy of a rental unit, including . . . the provision of light, heat, hot and cold water, air conditioning”⁸ “‘Related facility’ means any facility . . . made available to a tenant by a housing provider . . . including any use of . . . the common use of any common room, yard, or other common area.”⁹ In other words, where a lease provides that a landlord may evict a tenant for failure to pay a given fee or charge or otherwise interfere with one’s enjoyment of the unit and related facilities, that fee or charge is a “condition of occupancy,” and is considered part of the “entire amount” of “rent” owed.

26. Greystar’s standard lease agreement, Ex. A (“Standard Lease” or “Lease”) ¹⁰, makes clear that Utility Rent is “rent” under the preceding District law. Specifically, Paragraph 6 of the Standard Lease, entitled “Rent and Charges,” identifies only the Fixed Rent owed each month, but elsewhere the Standard Lease makes the payment of Utility Rent “a condition of

⁷ D.C. Code § 42-3501.03(28) (emphasis added).

⁸ D.C. Code § 42-3501.03(27).

⁹ D.C. Code § 42-3501.03(26).

¹⁰ Ex. A consists of all documents which together form Plaintiff Bosley’s lease contract. For ease of reference, this Complaint will cite to the eight-page document entitled Apartment Lease Contract as the “Lease,” while it will cite to the two-page document entitled Utility Addendum for Water, Sewer, Gas, Trash, and Electric Service as the “Utility Addendum.”

occupancy or use of a rental unit” within the meaning of the District’s tenant laws.¹¹ Specifically, the Standard Lease states:

- “Failure to pay any utilities shall be deemed a breach of this Lease Contract.” Lease ¶ 8.
- “The late payment of a bill or failure to pay any utility bill is a material and substantial breach of the Lease and we will exercise all remedies available under the Lease, up to and including eviction for nonpayment.” Ex. A at 12-13 (“Utility Addendum”) ¶ 3.
- “You’ll be in default of this Lease Contract if you . . . violate[] any terms of this Lease Contract, including but not limited to the following violations (a) you do not pay any rent or other amounts that you owe when due....” Lease ¶ 29.
- “Timely payment of rent hereunder is a covenant of, and an integral part of this Lease Contract. Late payment of rent is a default hereunder, irrespective of whether the rent is ultimately paid, with or without a late charge.” *Id.*
- “Eviction. If you fail to pay rent, or any other charge hereunder otherwise defined as rent, we or our agents/attorney(s) may forthwith file a non-payment suit for possession of the Apartment.” *Id.*

27. Thus, because Greystar (1) retains the right to evict those who do not pay their Utility Rent (including the Conservice Fees set forth in the Utility Addendum), and (2) tenants who fall behind on their Utility Rent, must pay Greystar a late fee for non-payment of rent (Lease ¶ 6; Utility Addendum ¶ 3), the Utility Rent is a condition of occupancy, and thus, rent under District law.

28. Further, District law requires that “at the time a prospective tenant files an application to lease any rental unit,” the housing provider must disclose the “applicable rent for the rental unit.”¹² Thus, at the time of the application, the leasing agent must disclose the entire amount of any charges that must be paid to reside in the unit and utilize the facilities, which includes the Utility Rent, and for good reason. As discussed in Paragraph 6 and Paragraph 26,

¹¹ D.C. Code § 42-3501.03(28).

¹² D.C. Code § 42-3502.22(b)(1)(A). *See also* District of Columbia Tenant Bill of Rights, ¶ 3.

these consequences are substantially more drastic for consumers in these arrangements than those directly billed by utility companies.

29. Contrary to law and custom, however, Greystar does not disclose the entire amount owed as a condition of occupancy to prospective tenants at the time of application (or in the lease, *see infra* ¶¶ 22-30). Greystar does not even disclose the *fact* that it will charge tenants Utility Rent. Rather, Greystar discloses only the Fixed Rent in its advertisements, application, and application approval notices. Because prospective tenants often compare buildings online, Greystar can drive more interest by advertising a rent that is far below the actual rent.

30. Making matters worse, despite luring prospective tenants to submit applications based on false information, Greystar charges them steep fees early in the process, either as an application fee or non-refundable deposit, and these fees can often be in the hundreds of dollars.

31. Greystar's scheme (and the nature of the rental market) also increases the probability that applicants will ultimately lease with Greystar, despite having no upfront knowledge that Utility Rent will be charged. Greystar often takes weeks to prepare the lease, and during this time, reasonable consumers are unlikely to apply for tenancy at other properties because of the high costs of applying for housing at many buildings. Further, due to Greystar's long delay in responding, even those tenants who can afford to pay for multiple applications for housing often do not have the time to walk away and restart the process at another building.

2. Greystar Also Upcharges Tenants By Failing to Disclose the Amount of Utility Rent in its Lease Agreements.

32. After the expensive and slow application process, when tenants are invested in the property and have diminished housing options, Greystar provides them with the lease. It uses form leases that are classic contracts of adhesion and can be dozens of pages long. Greystar presents them with the lease on a take-or-leave-it basis, and tenants cannot engage in the drafting or editing of the language or terms. Greystar uses a standard Apartment Lease Contract form lease produced by the National Apartment Association ("NAA"), which is usually accompanied by additional addendums based on standard NAA forms. *See, e.g.,* Standard Lease. As is relevant here, for Utility

Rent Properties, Greystar utilizes NAA's standard Utility Addendum for Water, Sewer, Gas, Trash, and Electric Service. *See, e.g.,* Utility Addendum. The Utility Addendum is a preprinted form that allows Property Managers like Greystar to check boxes and fill in blank spaces to indicate whether the tenant is responsible for payment of the specific utility, whether the tenant will be billed by the building or directly from the utility company, the amount or manner in which the tenant will be charged, and whether a private third party utility management provider ("UMP") will be involved in the billing.

33. In the Utility Rent Properties, Greystar has inserted into the Utility Addendum additional utility service types that will be required of the tenant as part of their Utility Rent. These service types include Traditional Building Utilities, such as electricity for HVAC and gas for "Water Heating," and in some buildings, include utilities for common building spaces.

34. Greystar also requires the tenant to assume additional costs associated with the utility billing. Through the Utility Addendum, Greystar requires tenants to open accounts with a UMP, Conservice LLC ("Conservice"), which handles the billing for the Utility Rent. Conservice is not a local public utility company, but a privately held Utah-based company backed by venture capital. The Utility Rent includes money that must be paid to Conservice, such as new account set-up fees of up to \$20.00, and Conservice's monthly billing fees of up to \$6.00 per month (collectively, "Conservice Fees").

35. While tenants may finally learn when signing the lease that payment of Utility Rent is a condition of occupancy, the entire amount of the rent, including the Utility Rent, is not disclosed to tenants in the leases themselves. Nor does Greystar include adequate and accurate information in the lease that would allow a tenant to make a reasonable estimate of the anticipated Utility Rent. This practice is done so that Greystar can acquire tenants by advertising the industry standard "rent" for the buildings it controls but then increase revenues by using lease addenda to force tenants to pay variable Utility Rent, as well as for items like amenities fees, pest control fees, and parking fees.

36. Even though District law requires Greystar “at the time a prospective tenant files an application to lease any rental unit” to disclose the “applicable rent for the rental unit,”¹³ which includes Utility Rent, *supra*, Greystar excludes the applicable rent from not only its apartment applications, but also from its standard lease agreements.

B. Once Locked Into the Standard Leases, Greystar Further Upcharges Tenants By Using Two Illegal Practices to Tabulate Utility Rent.

37. Greystar’s Utility Rent scheme escalates once tenants have moved into its buildings. Once the lease agreement is formed and tenants move into the building, they receive monthly demands for Utility Rent. Compounding the overall unfairness of Greystar’s Utility Rent scheme are two separate, illegal methods by which that rent gets calculated.

1. When Assessing Utility Rent, Greystar Illegally Uses Rates that Exceed the District’s Maximum Rates for Utility Services.

38. The D.C. Water and Sewer Authority (“WASA”) is the entity created by law to provide water and sewer services to District customers. WASA has three classifications of customers to set water and sewerage rates: Residential, Multi-Family, and Non-Residential.¹⁴ The “Multi-Family” charge classification is defined to include “a multi-family structure or development (such as an apartment, condominium, or cooperative housing association) used for domestic purposes, with four or more single-family, apartment, condominium, or cooperative housing association residential dwelling units served by the same service line that is master metered[.]”¹⁵

39. The water and sewage rates charged to these classifications are set each year by regulation after a period of notice and comment by the public.¹⁶ The rate year runs from October 1 to September 30 of the following year.

¹³ D.C. Code § 42-3502.22(b)(1)(A). *See also* District of Columbia Tenant Bill of Rights, ¶ 3.

¹⁴ D.C. Mun. Regs. tit. 21, § 4104.1(a)-(c).

¹⁵ *Id.*

¹⁶ D.C. Code § 34-2202.16(b)(1); D.C. Mun. Regs. tit. 21, § 4101.

40. The applicable statutory maximum water and sewer rates per year are as follows:¹⁷

	FY 2021 (Effective 10/1/2020)		FY 2022 (Effective 10/1/2021)		FY 2023 (Effective 10/1/2022)		Approved FY 2024 (Effective 10/1/2023)	
Rate Class	Per Gallon	1,000 Gallons	Per Gallon	1,000 Gallons	Per Gallon	1,000 Gallons	Per Gallon	1,000 Gallons
Multi-Family Water Rate	\$0.00529	\$5.29	\$0.0055	\$5.55	\$0.00655	\$6.55	\$0.0068	\$6.68
Multi-Family Sewer Rate	\$0.01306	\$13.06	\$0.01422	\$14.22	\$0.01505	\$15.05	\$0.1564	\$15.64

41. When tenants enroll in their leases in any Utility Rent Property, Greystar does not inform them of the illegal nature of the Utility Rent that they will be assessed. Instead, Greystar’s Utility Addendums typically state that a tenant is responsible for the payment of water and sewer when “bills are billed by the service provider to [Greystar] and then allocated to [the tenant]... using the utility’s rates.” See Utility Addendum ¶¶ 1.a)-b).

42. In addition, in other advertising and materials provided to tenants, both before and after entering the lease, Greystar does not include any conspicuous disclaimers to put tenants on notice of its intention to charge rates in excess of the maximum statutory rates. In particular, Greystar does not notify or inform tenants that it is charging rates in excess of the maximum statutory rates when advertising for the apartments on its websites, listing services, or in brochures and promotional materials that persuade prospective tenants to lease with Greystar. For tenants already residing in buildings, Greystar omits information about its inflated rates in the monthly

¹⁷ See D.C. Mun. Regs. Tit. 21, § 4101.1(a) (water rates including prior versions 2021 and 2022); D.C. Mun. Regs. Tit. 21, § 4100.3 (sewer rates including prior versions 2021 and 2022); *Approved FY 2023 and FY 2024 Rates*, DC Water (Nov. 20, 2023, 8:54 AM), <https://www.dwater.com/approved-fy-2023-and-fy-2024-rates>.

bills, as well as in building communications via tenant portals, printed correspondence, and email blasts.

43. Moreover, Greystar’s Utility Rent is variable and represented to tenants as a charge that uses Greystar’s actual costs as a basis. Thus, tenants reasonably expect that Greystar is passing on to them its actual costs of utilities and not charging rates in excess of what Greystar pays to the utility companies.

44. Nevertheless, Greystar frequently demands that tenants in multifamily apartment buildings in the District, including Illume, pay Utility Rent amounts that are calculated with rates greater than the statutory maximum per gallon rate for both water and sewer service for a given year.

2. Greystar Uses an Illegal Submetering Methodology to Assess Portions of the Utility Rent.

45. By using privately controlled submetering and energy allocation technology to determine Utility Rent bills for tenants, Greystar further violates the laws of this District.

46. The Public Service Commission (“PSC”) regulates gas and electric utility companies and services in the District of Columbia. The PSC bans the submetering, remetering, reselling, or other use of energy allocation equipment in residential rental units in the District of Columbia. This prohibition is included in Pepco’s tariff and is agreed to by all customers, including Greystar as the property manager of the buildings at issue in this lawsuit.¹⁸

47. The ban on submetering has been in place for nearly a century. Between 1987-89, the PSC undertook an extensive investigation to determine whether the ban on residential submetering should be lifted,¹⁹ but the PSC concluded that it was not in the public interest to lift

¹⁸ “Electric service furnished to the Customer shall be for the Customer’s own use and may not be remetered or submetered by the Customer, except for, within Multi-dwelling units, electric service furnished by the Customer solely for purpose of electric vehicle charging” *General Terms and Conditions for Furnishing Electric Service in the District of Columbia*, Pepco, at 7-8 (Nov. 17, 2023, 10:42 AM), https://www.pepco.com/SiteCollectionDocuments/MyAccount/MyBillUsage/Pepco_DC-Terms-and-Conditions.pdf.

¹⁹ See Order No. 8836, 8 D.C.P.S.C. 337 (1987); Order No. 9213, 10 D.C. P.S.C. 248 (1989).

the ban. Central to the PSC’s reasoning was the protection of tenants, as no District entity has statutory authority to regulate “the relationship between submetering resellers and final consumers.”²⁰ While the PSC has made other modifications to the ban, such as 2021 amendment to permit submetering for the sole purpose of electric vehicle charging,²¹ and a 2008 amendment to permit submetering in nonresidential rental units,²² the ban on submetering in residential rental units remains in effect.

48. Notwithstanding this prohibition, to calculate tenants’ Utility Rents in many of its Utility Rent Properties, Greystar uses Private Submeters to allocate costs under one of two methods:

- a) **“Straight Submetering.”** Utility Rent purportedly reflects whatever the Private Submeters have measured for that unit’s usage and is charged at a set price for unit of utility consumption (e.g., dollars per kilowatt hour of electricity or per gallon of water); or
- b) **“Blended Submetering.”** After Private Submeters purportedly measure that unit’s actual usage, the unit’s Utility Rent is calculated by dividing the Private Submeter’s unit-reading by the building’s total utility usage for the billing period, multiplied by the entire building’s utility bill. The result is that the tenant pays what is purportedly a share of the building’s total utilities.

49. Through such use of Private Submeters, Greystar engages in the illegal submetering of tenants’ gas and electric utilities, including in the Illume. It uses Private Submeters to supposedly track the quantity of gas or electric services being used by a particular unit (though upon information and belief, its submetering technology and method for calculating charges based on the technology are highly unreliable). Further, when tenants enroll in their leases in any Utility

²⁰ See Order No. 9213, 10 D.C.P.S.C. 248, 250 (1989) (“The Commission . . . finds that it would not be in the public interest to lift the ban against submetering until the Commission has jurisdiction to regulate the relationship between submetering resellers and final consumers.”).

²¹ See *In the Matter of the Investigation into Modernizing the Energy Delivery Sys. for Increased Sustainability, in the Matter of the Application of the Potomac Elec. Power Co. for Approval of Its Transportation Electrification Program*, Order No. 21162, 2022 WL 2106153 (June 3, 2022).

²² As part of the Clean and Affordable Energy Act of 2008, the District authorized such regulations. D.C. Code § 34-1551, *et seq.* The resulting regulations include a variety of protections for commercial tenants in a submetering arrangement, including setting timelines for billing and a prohibition on reimbursing the landlord for common room utilities. See C. Mun. Regs. Tit. 15, § 4401.11-4401.16.

Rent Property, Greystar does not inform them of the illegal nature of the Utility Rent that they will be assessed.

C. Greystar’s Utility Rent Scheme Is Unfair.

50. These practices, *supra* §§ III.A-B, are not only illegal, but they are also unfair and in violation of public policy. The requirement that the entire amount be disclosed to prospective tenants is not a mere technicality, but one that serves the public’s interest in access to stable housing. Unlike Greystar’s Utility Rent tenants, tenants who pay a single flat monthly rent enjoy the security of knowing their housing costs will not fluctuate from month to month. Also, unlike Greystar’s Utility Rent tenants, when a tenant’s monthly rental rate excludes certain utilities and the tenant pays the utility company directly for those fees, tenants will not be forced out of their homes due to unpredictable housing costs. When tenants pay utility companies directly, they are protected through the District’s democratically-established and tenant-informed utility regulations. For example, utility companies have timelines by which they have to provide notice of the charges before they are due²³ and cannot set overly steep late fees.²⁴ They are required to send consumers standardized, transparent bills that include mandated disclosures.²⁵ If mistakes are made, there are procedures for disputing charges and verifying meterage.²⁶ For those sent an erroneous bill or who otherwise cannot pay, those tenants face little risk that they will lose their homes, unlike tenants

²³ D.C. Mun. Regs. tit. 15, § 304.1; see D.C. Mun. Regs. tit. 15, § 304.10 (bills are set on a monthly basis); D.C. Mun. Regs. tit. 15, § 4407.9 (setting timeline for delivering gas and electric bills to consumers).

²⁴ D.C. Mun. Regs. tit. 15, § 305.3.

²⁵ D.C. Mun. Regs. tit. 15, § 304.7 (requiring the bills to contain specific information, including the dates and readings of the submetering or energy allocation equipment, the name of the contact person in the case of any questions or disputes concerning the bill, and the average cost in cents per energy unit).

²⁶ D.C. Mun. Regs. Tit. 21, § 403 (customer can challenge bill and initiate investigation); see D.C. Mun. Regs. Tit. 21, § 409.2 (providing customer the right to appeal investigation findings in administrative hearing for water and sewer utilities); D.C. Mun. Regs. tit. 21, § 410 (procedure for water & sewer administrative hearing); D.C. Mun. Regs. tit. 15, § 325.1 (administrative hearings for gas and electric); D.C. Code Ann. § 34-804(d) (providing customers free representation by the District’s Office of People’s Counsel).

subject to Greystar's scheme. Further, utility companies must offer payment plans and take other steps to ensure customers' continual access to safe housing, particularly for lower-income and elderly customers.²⁷

51. By contrast, Greystar's Utility Rent scheme deprives tenants of the security and benefits of these two traditional methods. Instead, Greystar's Utility Rent scheme is substantially injurious to consumers, oppressive, harmful, and provides no commensurate benefit to consumers.

52. While the Utility Rent is payable monthly, tenants do not know what amount will be assessed each month until a bill is provided to them. While tenants receiving direct billing from utility companies often have approximately a month to pay a bill, it is not unusual for Greystar to only give tenants fewer than ten days to pay their Utility Rent after tenants receive the bill. For example, a tenant will receive a bill for their July Utility Rent in late August, but their payment will be due on September 1.

53. In addition, omitted from the Utility Rent bills is information that can allow a tenant to assess the accuracy of the charges. For example, despite purportedly assessing a tenant's bills based on that tenant's share of utilities, the bills for Utility Rent typically do not include details such as the amount of the building's total usage or the unit's percentage of the building's total usage. Greystar also does not make this information readily accessible to tenants, and certainly not on a timeframe that allows tenants to examine the bill before Utility Rent is due and late fees are assessed. Moreover, because tenants do not hold accounts with utility companies, they cannot bypass Greystar and request information directly from the companies.

54. In fact, when tenants request that Conservice inspect their private submeters, Conservice refers them to the Greystar without conducting any reasonable investigation or follow-

²⁷ D.C. Mun. Regs. tit. 21, § 4102 (outlining customer assistance programs); D.C. Code § 34-2202.16 (b-1)(1) (financial assistance programs for water & sewer bills); Receive Assistance With Your Utility Bills (LIHEAP), Department of Energy & Environment (Oct. 18, 2023, 11:31 AM), <https://doee.dc.gov/liheap> (financial assistance for utility bills); D.C. Code Ann. § 34-304 (providing complete defense of excessive charges to collection actions).

up. In turn, Greystar often refers the tenant back to Conservice, leaving the tenant helpless in an ongoing merry-go-round of finger-pointing and misdirection.

55. If tenants do not pay their Utility Rent on time, Greystar's leases provide it the right to assess them late fees for non-payment of rent, regardless of outstanding billing disputes. Greystar typically sets this fee at around 5% of the Fixed Rent amount. Thus, a tenant who pays \$2,000 a month in Fixed Rent will pay a \$100 late fee if the Utility Rent is not paid on time, even if the Utility Rent is for an amount much less than that. Thus, even if the Utility Rent is disputed, the demand sent unreasonably late, or the tenant experienced an unexpected financial hardship, a tenant may be forced to pay a steep financial penalty. Moreover, Greystar reserves the right to evict tenants for non-payment of Utility Rent and report them to credit and housing reporting agencies. Thus, because tenants risk additional exorbitant fees, damage to their credit, public records of allegations of non-payment of rent, and the loss of their homes, they have no meaningful choice but to pay whatever Utility Rent Greystar demands. The combination of the lack of transparency, short time to pay the bill, and harsh penalties for failure to pay on time severely prejudices tenants' ability to protect their interests.

56. Moreover, even once outside of the original lease term, tenants will rarely be able to absorb the cost of relocating to another home simply to avoid being subject to Greystar's Utility Rent scheme. Moving homes is itself an expensive endeavor, as tenants may need to take time from work and incur moving costs, and new apartments typically require new security deposits, move-in fees, and other expenses. The tenant may not be able to locate other appropriate housing options that do not also involve a Utility Rent scheme. And for those tenants who may have paid Greystar late or continue to owe Utility Rent, their credit and background reports may be damaged, ultimately harming their ability to secure alternative housing.

57. Finally, even the Standard Leases contemplate that Greystar should not be permitted to enforce illegal terms. Specifically, the Utility Addendum states that it is "designed for use in multiple jurisdictions, and no billing method, charge, or fee mentioned herein will be used in any jurisdiction where such use would be unlawful." Utility Addendum ¶ 10. Because each of

the two billing methods, as well as the undisclosed amount of the Utility Rent, not to mention the omission of the fact of the Utility Rent from its advertising and applications, are unlawful, Greystar violated the law and acted unfairly in enforcing these terms.

D. Plaintiff Bosley Was a Victim of Greystar's Utility Rent Scheme.

58. The Illume, managed by Greystar, is a multibuilding multifamily residential apartment complex located in Southeast D.C. In total, the Illume has 746 residential rental units.

59. At Illume, Greystar engages in Blended Submetering of electricity and gas, and Straight Submetering of water and sewer services.

60. In December 2021, Plaintiff Bosley visited the Illume's website while comparing apartment prices online. The website allowed him to view pictures of, and learn other details about the Illume. The website even showed the specific floor plans of available units along with the amount of the monthly rent of those units. The amount of the monthly rent displayed was exclusively Fixed Rent, and there was no mention on the website of the separate Utility Rent that would be required.

61. After viewing the Illume's website, Plaintiff Bosley visited the Illume building in person for a tour of the building and a model unit. During his visit, the Greystar representative did not inform Plaintiff Bosley of the additional Utility Rent or provide details of its billing scheme.

62. On January 7, 2022, Plaintiff Bosley paid a nonrefundable application fee of \$575.00 and submitted a rental application online through RentCafé. In the application, the amount of the monthly rent that was disclosed was his Fixed Rent of \$2,485. There was still no disclosure of the Utility Rent.

63. On January 10, 2022, Greystar sent Plaintiff Bosley an email approving his application and providing him with other pertinent information, including move-in charges, monthly charges, and a move-in checklist. Under the move-in checklist, Greystar provided Plaintiff Bosley with the contact information of Pepco and Washington Gas. There was no mention of Conservice. Under monthly charges, the email stated that the rent amount was \$2,485 and that the trash charge was \$10.00 per month. There was still no disclosure of the Utility Rent.

64. Shortly thereafter, Greystar sent Plaintiff Bosley an electronic copy of its Standard Lease and accompanying addenda, including the Utility Addendum, for his electronic signature. Plaintiff Bosley did not have the ability to edit or modify the terms of the lease. Plaintiff Bosley signed the fifteen-month lease to occupy the residential apartment unit as his primary residence.

65. The Utility Addendum also required that Plaintiff Bosley pay a \$15.00 new account fee to start an account with Conservice, a \$4.75 monthly fee to receive his bills, and a \$15.00 fee to receive his final bill from Conservice. Utility Addendum ¶ 3.

66. The Utility Addendum stated that Plaintiff Bosley was responsible for the payment of water and sewer when “bills are billed by the service provider to [Greystar] and then allocated to you based on the following formula: Your sub-metered usage is measured and billed using the utility’s rates.” Utility Addendum ¶ 1.a)-b). There is no statement or disclosure indicating that Greystar was going to bill Plaintiff Bosley and other tenants at rates greater than the statutory maximum rate.

67. Nonetheless, Greystar engaged in the systematic overcharging of Plaintiff Bosley and his fellow tenants for water and sewer service by charging them at a rate greater than the maximum statutory rate despite stating in their monthly statements that the services were provided by WASA and that they would be “billed at water service rates.” For instance,

- a. in September 2022, Plaintiff Bosley was charged \$7.57 for water per 1000/gallons in excess of the FY 2022 \$5.55 multifamily statutory rate; and
- b. in May 2023, Plaintiff Bosley was charged \$8.77 for water per 1000/gallons in excess of the FY 2023 \$6.55 multifamily statutory rate.

68. Further, pursuant to the Utility Addendum, Plaintiff Bosley was responsible for payment of electricity and gas services directly to the utility companies as his unit had a unit-level Public Meter, and his utility accounts were in his name. Utility Addendum ¶¶ 1.c), e).

69. However, the special provisions section of the Utility Addendum stated that Plaintiff Bosley would be responsible for paying additional Utility Rent for electricity and gas that was billed to the building through its Public Meter that would be assessed via submetering:

Gas- Hot Water Energy - residents are responsible for a portion of the energy required for hot water production/supply. The amount is calculated based on the total gas usage for the boiler units is divided to all occupied units based on the metered hot water usage for the unit. Gas is billed to the community by the utility based on the metered usage times the published rate per unit billed. Residents are responsible for a portion of the energy required for HVAC services. Calculations will be based on the total amount billed to the community for the electric energy required to generate HVAC service and divided to all occupied units based on sub-metered usage of the unit as a factor of all usage for all units based on the run-time meter reads.

Id. ¶ 11. Plaintiff Bosley did not know and was not told that Greystar’s submetering practices were in violation of the District’s prohibition on the Private Submetering of electricity and gas in residential apartment buildings. Plaintiff Bosley would not have agreed to the provision had he known that it was in violation of District law.

70. Each month, Plaintiff Bosley and all other Illume tenants received a bill from Pepco and Washington Gas for the electricity and gas used in their apartments based on the reading of the unit-level Public Meters.

71. Greystar engaged in illegal submetering of electricity and gas when, through Conservice, it sent Plaintiff Bosley and other tenants monthly statements demanding payment for electricity and gas based on the use of submetering or energy allocation equipment.²⁸ For instance, Plaintiff Bosley was charged and paid \$108.99 for electricity and \$12.02 for gas after receiving the statement dated April 18, 2023.

72. Greystar’s illegal submetering practices at Illume clearly illuminate why the PSC has not lifted the submetering ban. Plaintiff Bosley and other tenants at Illume have been subjected

²⁸ The monthly statements’ “Service Type” description stated: “Water heating service is provided by Washington Gas. Your submeter reads in gallons. Your bill for water heating is allocated based on the percentage of hot water you use compared to the other residents at your community. For example, if you use 5% of the hot water used by all the residents, then you will be billed for 5% of all the water heating.” It further stated: “HVAC service is provided by Pepco. Your submetering system measures the amount of electricity used by the HVAC system in your unit. Your submeter reads in kWh. Your bill for HVAC is based on the percentage of HVAC you use compared to the other residents at your community. For example, if you use 5% of the HVAC used by all the residents, then you will be billed for 5% of all the HVAC.”

to wild swings in charges for electricity that do not have any correlation to their alleged usage. In October 2022, Conservice and Greystar charged Plaintiff Bosley \$107.04 for 57.64 kWh, or \$1.86 per kWh. However, just the month before, he was charged \$47.69 for 60.19 kWh, or \$0.79 per kWh, which is still substantially more than the approved costs per kWh in the District of Columbia.

IV. CLASS ACTION ALLEGATIONS

73. This action is brought and may properly proceed as a class action pursuant to D.C. Super. Ct. R. Civ. P. 23.

74. Plaintiff Bosley seeks certification of the following **Class**:

All current and former District of Columbia residential tenants of Greystar-managed properties who were assessed and paid utility charges during the three years preceding the filing of this action.

75. Plaintiff Bosley seeks certification of the following two **Subclasses**:

Overcharge Subclass: All Class members who were assessed and paid utility charges for water and/or sewer service at a rate greater than the lawfully established maximum rates at any point during the three years preceding the filing of this action.

Submetering Class: All Class members (1) who were assessed and paid utility charges for electricity and/or gas services; (2) via sub-metering or energy allocation equipment at any point during the three years preceding the filing of this action.

76. The Class and Subclasses are collectively referred to herein as the “Classes.” The members of the Classes (collectively, the “Class members”) have been subjected to improper billing practices and, as a result, unfair, misleading, and/or deceptive treatment by Defendant.

77. Excluded from the Classes are Greystar’s officers and directors and current or former employees of Greystar, and their immediate family members, as well as any judge, justice, or judicial officer presiding over this matter and the members of their immediate families and staff.

78. **Numerosity**. Plaintiff is informed and believes that there are thousands of members of each Class. The Classes are so large that the joinder of all of their members is impracticable.

The exact number of members of each of the three Classes can be determined from information in the possession and control of Greystar.

79. **Commonality**. Greystar has acted or refused to act on grounds that apply generally to the Classes, including failing to disclose the amount of Utility Rent in the application and lease agreement, overcharging utilities per unit, using an illegal submetering scheme, failing to provide meaningful customer service related to suspected overcharges, and failing to investigate suspected overcharges. Absent certification of the Classes, the relief sought herein creates the possibility of inconsistent judgments and/or obligations imposed on Defendant. Numerous common issues of fact and law exist, including, without limitation:

- a. Whether Greystar violated District of Columbia law by failing to disclose the applicable rent to tenants at the time of application;
- b. The nature, extent, policies, and procedures of Greystar for including illegal provisions in residential leases for tenants in the District of Columbia;
- c. The nature, extent, policies, and procedures of Greystar for submetering utilities for leased residential properties in the District of Columbia;
- d. The nature, extent, policies, and procedures of Greystar in charging water and sewer rates per gallon in leased residential properties at a rate that exceeds the applicable utility service rates;
- e. The nature, extent, policies, and procedures of Greystar in communicating with customers promptly regarding suspected overcharges for District of Columbia residents; and
- f. Whether Greystar is in functional privity or privity of contract with Class members.

80. **Typicality**. Plaintiff Bosley's claims are typical, if not identical, to the claims that could be asserted by all members of the Classes. Plaintiff's claims arose from Greystar's practices applicable to all such class members.

81. **Adequacy**. Plaintiff Bosley is a member of each Class and will adequately represent the interests of those class members because there are no conflicts between Plaintiff and

those class members, and because Plaintiff's counsel has the experience and skill to zealously advocate for the interests of the members of the Classes.

82. **Predominance**. Common issues predominate over individualized inquiries in this action because Greystar's liability can be established as to all members of the Classes as discussed herein.

83. **Superiority**. There are substantial benefits to proceeding as a class action that render proceeding as the Classes superior to any alternatives, including that it will provide a realistic means for members of the Classes to recover damages; the damages suffered by members of the Classes may be relatively small; it would be substantially less burdensome on the courts and the parties than numerous individual proceedings; many members of the Classes may be unaware that they have legal recourse for the conduct alleged herein; and because issues common to members of the Classes can be effectively managed in a single proceeding. Plaintiff knows of no difficulty that could be encountered in the management of this litigation that would preclude its maintenance as a class action.

V. CAUSE OF ACTION

CLAIM 1

VIOLATIONS OF THE DISTRICT OF COLUMBIA CONSUMER PROTECTION PROCEDURES ACT

D.C. Code § 28-3901, *et seq.*

On Behalf of the Classes Against Defendant

84. The District of Columbia enacted the Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901, *et seq.*, to protect consumers from unfair and misleading business practices and to provide consumers with proper redress of grievances.

85. Any consumer who suffers damages as a result of violations of the CPPA may bring an action and recover \$1,500 per violation or treble damages per occurrence, whichever is greater, punitive damages, attorneys' fees, and other appropriate relief.

86. Plaintiff Bosley is a consumer under the CPPA as the utility bills at issue relate to his use and enjoyment of residential real estate in the District of Columbia.

87. Greystar is a merchant and subject to liability under the CPPA because it regularly provides consumer goods and services related to residential real estate leasing directly to consumers such as Plaintiff and the Class members. Additionally, and alternatively, Greystar is a merchant because it is sufficiently connected to the supply side of residential real estate leasing as the property manager of residential apartment buildings. Without Greystar's actions and services, the residential landlords could not fulfill their obligations under the lease and provide residential housing to consumers.

88. The CPPA prohibits a wide variety of unfair and deceptive trade practices perpetrated against consumers.²⁹ The practices prohibited include engaging in *any* unfair or deceptive trade practice, whether or not any consumer is, in fact, misled, deceived, or damaged by the practice.³⁰ D.C. Code § 28-3904 contains a non-exhaustive list of unfair and deceptive trade practices including:

- (e) misrepresent as to a material fact which has a tendency to mislead;
- (e-1) represent that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law;
- (f) fail to state a material fact if such failure tends to mislead;
- (f-1) use innuendo or ambiguity as to a material fact, which has a tendency to mislead;
- [and]

....

- (u) represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not[.]

89. A trade practice which violates any statute, regulation, rule of common law, or other law of the District of Columbia is an unfair or deceptive trade practice.³¹

90. The CPPA also applies to deceptive billing practices related to a contract for consumer goods and services.

91. Greystar violated the CPPA **as to Plaintiff Bosley and the Classes** when it engaged in the following unfair and deceptive trade practices:

²⁹ D.C. Code Ann. § 28-3904.

³⁰ *Id.*

³¹ D.C. Code Ann. § 28-3905(b)(1)(B).

- **[Subcount A]** In violation of **D.C. Code § 28-3904’s prohibition on unlawful conduct acts**, Greystar violated the CPPA by failing to disclose the “applicable rent for the rental unit” to **Plaintiff Bosley and the Classes** at the time of the filing of their rental application in violation of D.C. Code § 42-3502.22(b)(1)(A), as well as failing to disclose this information in the lease agreement. Greystar disclosed the Fixed Rent in the rental application but did not state that it would charge Utility Rent. Further, Greystar disclosed Fixed Rent in the lease agreement, but did not state the amount of Utility Rent it would charge. This is unlawful because the Utility Rent is part of the “rent” as it is included in “the entire amount of money, . . . demanded, received, or charged by [Greystar] as a condition of occupancy or use of a rental unit, its related services, and its related facilities.” D.C. Code § 42-3501.03.
- **[Subcount B]** In violation of **D.C. Code § 28-3904’s prohibition on deceptive and/or unfair acts**, Greystar violated the CPPA when it engaged in a drip pricing scheme by which it omitted the obligation to pay Utility Rent from its advertising and applications, and did not disclose the full financial obligations of tenancy until after tenants invested substantial time and effort into the leasing process, and valuable consideration had been paid in the form of an application fee, earnest money, or other pre-lease sums.
- **[Subcount C]** In violation of **D.C. Code § 28-3904’s prohibition on unfair acts**, Greystar violated the CPPA’s prohibition on unfair conduct when Greystar partitioned out costs typically covered by fixed rent and made Class members responsible for a variable Utility Rent. In so doing, Greystar deprived Class members of the protections and benefits they would enjoy with a single, predictable, monthly fixed rent and the standard legal protections afforded consumers when they are billed for utilities directly by utility companies, while using severe penalties to enforce the terms.

92. Greystar violated the CPPA as to Plaintiff Bosley and the Overcharge Class when it engaged in the following unfair and deceptive trade practices:

- **[Subcount D]** In violation of **D.C. Code § 28-3904(e-1)'s prohibition on representing a transaction confers obligations it does not have**, Greystar violated the CPPA each time it represented to the Overcharge Class members that they were obligated to pay a Utility Rent for water and/or sewer service calculated using utility rates that exceeded the District's lawful rates for multifamily residential properties, including the applicable established maximum allowable rate per gallon/1000 gallon for multiple family dwellings in violation of District of Columbia law and regulations.³² Because Greystar was obligated to charge the lawful rate and was prohibited by law from charging a higher rate, Greystar's representation to Overcharge Class members that a given month's Utility Rent transaction conferred an obligation to pay Greystar an arbitrary, inflated rate violated this prohibition.
- **[Subcount E]** In violation of **D.C. Code § 28-3904(f)'s prohibition on the failure to state a material fact if such failure tends to mislead**, Greystar violated the CPPA each time it failed to disclose at the time of lease signing that it intended to calculate Utility Rent for water and/or sewer service using rates in excess of the District's lawful rates for multifamily properties, and violated it again each month when it demanded Utility Rent and failed to disclose that it was assessing that rent using rates that exceeded the lawful rates.
- **[Subcount F]** In violation of **D.C. Code § 28-3904(f-1) prohibition on the use of innuendo or ambiguity as to a material fact, which has a tendency to mislead**, Greystar violated the CPPA each time it represented to the Overcharge Class members in monthly demands for Utility Rent that they are being charged at water

³² D.C. Code Ann. § 34-2202.16b; D.C. Mun. Regs. Tit. 21, § 4101-4101.1.

and/or sewer service rates based on the amount of water and/or sewer used when they are actually being charged at a rate higher than the District's lawful rates.

- **[Subcount G]** In violation of **D.C. Code § 28-3904's prohibition on unfair acts**, Greystar violated the CPPA each time it charged Utility Rent for water and/or sewer service at rates in excess of the District's lawful rates.
- **[Subcount H]** In violation of **D.C. Code § 28-3904's prohibition on unlawful conduct acts**, Greystar violated the CPPA each time it charged Utility Rent for water and/or sewer service at rates in excess of the District's lawful rates.

93. Greystar violated the CPPA **as to Plaintiff Bosley and the Submetering Class** when it engaged in the following unfair and deceptive trade practices:

- **[Subcount I]** In violation of **D.C. Code § 28-3904(e-1)'s prohibition on representing a transaction confers obligations it does not have**, Greystar violated the CPPA each time it represented to the Submetering Class members that they were obligated to pay for electricity and/or gas based on the use of submetering for reasons other than the charging of an electric vehicle, which is prohibited by law. Because Greystar was legally obligated to refrain from engaging in the assessment of rent via submetering, Greystar's representation to the Submetering Class members that a given month's Utility Rent transaction conferred an obligation to pay Greystar for utilities measured via submetering violated this prohibition.
- **[Subcount J]** In violation of **D.C. Code § 28-3904(f)'s prohibition on the failure to state a material fact if such failure tends to mislead**, Greystar violated the CPPA each time it failed to disclose at the time of lease signing and again each month when it demanded Utility Rent for electricity and/or gas that it lacked the legal authority to assess tenants Utility Rent on a submetering basis.
- **[Subcount K]** In violation of **D.C. Code § 28-3904(f-1)'s prohibition on the use of innuendo or ambiguity as to a material fact, which has a tendency to**

mislead, Greystar violated the CPPA each time it failed to disclose at the time of lease signing and again each month when it demanded Utility Rent for electricity and/or gas that it lacked the legal authority to assess tenants Utility Rent on a submetering basis.

- **[Subcount L]** In violation of **D.C. Code § 28-3904’s prohibition on unfair acts**, Greystar violated the CPPA each time it charged Utility Rent for electricity and/or gas using a submetering methodology. The PSC and DC Council have repeatedly established that the ban on submetering is necessary because of the substantial risk to consumers posed by unregulated utility charges.
- **[Subcount M]** In violation of **D.C. Code § 28-3904’s prohibition on unlawful conduct acts**, Greystar violated the CPPA each time it charged Utility Rent for electricity and/or gas using a submetering methodology because tabulating tenants’ gas and/or electric Utility Rent via submetering is illegal, as set forth in the preceding Subcount.

94. Greystar violated the CPPA **as to Plaintiff Bosley and the Classes** when it engaged in the following unfair trade practices:

- **[Subcount N]** In violation of **D.C. Code § 28-3904’s prohibition on unfair acts**, Greystar violated the CPPA through each of the aforementioned acts and practices because such practices caused and are likely to cause substantial harm to Plaintiff Bosley and the Class members, as they have been charged rent that was not disclosed in Greystar’s advertising nor at the time of application or lease signing, overcharged substantial amounts of money based on rates in excess of statutory maximums, charged for utility bills based on an illegal submetering methodology, and/or face the prospect of eviction from their homes if they resist or challenge these unfair practices. The unfairness prong of the CPPA was added to further “protect consumer independence by stopping business practices that impede a

consumer's ability to make informed choices.”³³ Greystar's practices violate this command.

95. Plaintiff Bosley and the Class members cannot reasonably avoid these practices. Prior to leasing the properties, they lack meaningful choice because (a) they may invest time and money in selecting the apartments before being apprised of the full details of the scheme; (b) Greystar utilizes take-it-or-leave-it leases and controls a significant portion of the housing supply in the District; (c) some of Greystar's competitors employ similar practices; and/or (d) Greystar has superior knowledge and tenants are not informed of the full extent of the Utility Rent scheme and the many ways in which it is illegal.

96. Moreover, once enrolled in the leases, Plaintiff Bosley and the Class members continue to lack meaningful choice to avoid paying the demanded Utility Rent because (a) Greystar can impose steep late fees and other harsh consequences, including negative credit and background reporting and eviction; (b) Greystar deprives them of information needed to dispute the accuracy of the Utility Rent demand; (c) Greystar makes the various aforementioned misleading representations and omissions regarding the basis and legality of the Utility Rent, further preventing tenants from understanding the full extent of its illegal acts; (d) Class members may still be locked into leases and under an obligation to finish their tenancy; and/or (e) Class members may not have other options for other housing due to the many expenses and burden associated with relocating, Greystar's control of the market, and other limitations.

97. Greystar's unfair and deceptive acts do not provide any benefit to consumers or competition, while Greystar gains an unfair advantage over competitors who do not engage in such practices.

98. As a result of Greystar's violations, Plaintiff and the members of the Classes were harmed, and are entitled to damages in the greater of actual damages or \$1,500 for each of the

³³ See Report on Bill 220185, available at <https://chairmanmendelson.com/wp-content/uploads/2018/03/B22-185-Consumer-Protection-Clarification-and-Enhancement-Amendment-Act-Packet.pdf> (last accessed Nov. 8, 2023).

aforementioned violations and attorneys' fees. In addition, they are entitled to declaratory and injunctive relief enjoining future conduct of this nature by Greystar, including but not limited to engaging in evictions and negative credit reporting against tenants who do not pay their Utility Rent or who do not do so in a timely manner, the collection of any Utility Rent from Class members when the entire amount of that Utility Rent is not included in the application or lease but is a condition of occupancy and use of the facilities, the assessment of any Utility Rent via Private Submetering, and the assessment of Utility Rent using rates in excess of any statutory maximum.

PRAYER FOR RELIEF

Plaintiff Bosley prays for relief as follows:

- a. Certifying the proposed Classes;
- b. Awarding Plaintiff and the Classes actual damages;
- c. Awarding Plaintiff and the Classes compensatory damages;
- d. Awarding Plaintiff and the Classes statutory damages, where permitted by applicable law;
- e. Awarding Plaintiff and the Classes treble damages, where permitted by applicable law;
- f. Awarding Plaintiff and the Classes exemplary and/or punitive damages, where permitted by applicable law;
- g. Awarding Plaintiff and the Classes restitution of the amounts unlawfully taken from them by Defendant;
- h. Disgorging Defendant of the amounts unlawfully taken from Plaintiff and the Classes;
- i. Awarding Plaintiff and the Classes attorneys' fees and costs;
- j. Awarding Plaintiff and the Classes pre- and post-judgment interest, as applicable;
- k. Enjoining Defendant from continuing to engage in unlawful advertising, leasing, and billing practices and implementing related penalties; and
- l. All further relief as the Court deems just and proper.

Date: December 1, 2023

/s/ Kristen A. Simplicio

Kristen A. Simplicio (DC Bar No. 977556)
ksimplicio@tzlegal.com

/s/ F. Peter Silva II

F. Peter Silva II (DC Bar No. 1010483)
psilva@tzlegal.com

Leora N. Friedman (DC Bar No. 1735514)
lfriedman@tzlegal.com

TYCKO & ZAVAREEI LLP

2000 Pennsylvania Ave., Northwest, Suite 1010
Washington, District of Columbia 20006

Telephone: (202) 973-0900

Facsimile: (202) 973-0950

Jason S. Rathod (DC Bar No. 100082)

Nicholas A. Migliaccio (DC Bar No. 484366)

Matthew A. Smith (pro hac vice anticipated)

MIGLIACCIO & RATHOD LLP

412 H Street NE

Washington DC 20002

Office: (202) 470-3520

Fax: (202) 800-2730

jrathod@classlawdc.com

nmigliaccio@classlawdc.com

Counsel for Plaintiff David Bosley



**Superior Court of the District of Columbia
Civil - Civil Actions Branch
500 Indiana Ave NW, Room 5000, Washington DC 20001
(202) 879-1133 | www.dccourts.gov**

Case Number: 2023-CAB-007340

Case Caption: David Bosley v. GREP Atlantic, LLC d/b/a Greystar et al.

INITIAL ORDER

Initial Hearing Date: Friday, 03/01/2024	Initial Hearing Time: 9:30 AM	Courtroom Location: Remote Courtroom 516
Please see attached instructions for remote participation.		
Your case is assigned to Associate Judge Donald Walker Tunnage.		

Pursuant to D.C. Code § 11-906 and District of Columbia Superior Court Rule of Civil Procedure (“Super. Ct. Civ. R.”) 40-1, it is hereby ORDERED as follows:

- 1) This case is assigned to the judge and calendar designated above. All future filings in this case shall bear the calendar number and judge’s name along with the case number in the caption.
- 2) Within 60 days of the filing of the complaint, plaintiff must file proof of service on each defendant of copies of the summons, the complaint, and this Initial Order. The court will dismiss the claims against any defendant for whom such proof of service has not been filed by this deadline, unless the court extended the time for service under Rule 4.
- 3) Within 21 days of service (unless otherwise provided in Rule 12), each defendant must respond to the complaint by filing an answer or other responsive pleading. The court may enter a default and a default judgment against any defendant who does not meet this deadline, unless the court extended the deadline under Rule 55(a).
- 4) At the time stated below, all counsel and unrepresented parties shall participate in a hearing to establish a schedule and discuss the possibilities of settlement. Counsel shall discuss with their clients before the hearing whether the clients are agreeable to binding or non-binding arbitration. This order is the only notice that parties and counsel will receive concerning this hearing.
- 5) If the date or time is inconvenient for any party or counsel, the Civil Actions Branch may continue the Conference once, with the consent of all parties, to either of the two succeeding days when the calendar is called. To reschedule the hearing, a party or lawyer may call the Branch at (202) 879-1133. Any such request must be made at least seven business days before the scheduled date. No other continuance will be granted except upon motion for good cause shown.
- 6) Parties are responsible for obtaining and complying with all requirements of the General Order for Civil cases, each judge’s Supplement to the General Order and the General Mediation Order. Copies of these orders are available in the Courtroom and on the Court’s website <http://www.dccourts.gov/>.

Chief Judge Anita M. Josey-Herring

To Join by Computer, Tablet, or Smartphone:

- 1) Copy and Paste or Type the link into a web browser and enter the Webex Meeting ID listed below.

Link: dccourts.webex.com/meet/ctb516

Meeting ID: 129 776 4396

- 2) When you are ready, click “Join Meeting”.
- 3) You will be placed in the lobby until the courtroom clerk gives you access to the hearing.

Or to Join by Phone:

- 1) Call 202-860-2110 (local) or 844-992-4726 (toll-free)
- 2) Enter the Webex Meeting ID listed above followed by “##”

Resources and Contact Information:

- 1) For best practices on how to participate in Webex Meetings, click here <https://www.webex.com/learn/best-practices.html>.
- 2) For technical issues or questions, call the Information Technology Division at 202-879-1928 and select option 2.
- 3) For case questions, call the Civil Actions Branch Clerk’s Office at (202) 879-1133.

ACCESSIBILITY AND LANGUAGE ACCESS

Persons with Disabilities:

If you have a disability as defined by the American Disabilities Act (ADA) and you require an accommodation, please call 202-879-1700 or email ADACoordinator@dcsc.gov . The D.C. Courts does not provide transportation service.

Interpreting and Translation Services:

The D.C. Courts offers free language access services to people having business with the court who are deaf or who are non-English speakers. Parties to a case may request free translations of court orders and other court documents. To ask for an interpreter or translation, please contact the Clerk's Office listed for your case. For more information, visit <https://www.dccourts.gov/language-access>.

Servicios de interpretación y traducción:

Los Tribunales del Distrito de Columbia ofrecen servicios gratuitos de acceso al idioma a las personas sordas o que no hablan inglés que tienen asuntos que atender en el tribunal. Las partes de un caso pueden solicitar traducciones gratuitas de las órdenes judiciales y otros documentos del tribunal. Para solicitar un intérprete o una traducción, póngase en contacto con la Secretaría de su caso.

Para más información, visite <https://www.dccourts.gov/language-access>.

El acceso al idioma es importante para los Tribunales del Distrito de Columbia. Puede dar su opinión sobre los servicios de idiomas visitando <https://www.dccourts.gov/services/information-and-resources/interpreting-services#language-access>.

የቃልና የጽሑፍ ትርጓሜ አገልግሎቶች:

የዲ.ሲ ፍርድ ቤቶች መስማት ለተሳናቸውና የእንግሊዝኛ ቋንቋ ተናጋሪ ላልሆኑ በፍርድ ቤቱ ጉዳይ ላላቸው ሰዎች ነጻ የቋንቋ ተደራሽነት አገልግሎቶች ያቀርባል። ተከራካሪ ወገኖች የፍርድ ቤት ትእዛዞችና ሌሎች የፍርድ ቤት ሰነዶች በነጻ እንዲተረጎሙላቸው መጠየቅ ይችላሉ። የቃል ወይም የጽሑፍ ትርጓሜ ለመጠየቅ እባክዎን በመዝገብዎ የተዘረዘረውን የጸሀፊ ቢሮ (ክለርክ'ስ ኦፊስ) ያናግሩ። ለተጨማሪ መረጃ <https://www.dccourts.gov/language-access> ይጎብኙ።

የቋንቋ ተደራሽነት ለዲ.ሲ. ፍርድ ቤቶች አስፈላጊ ነው። የቋንቋ አገልግሎቶች በተመለከተ አስተያየትዎን <https://www.dccourts.gov/services/information-and-resources/interpreting-services#language-access> በመጎብኘት መስጠት ይችላሉ።

Tips for Attending Remote Hearings - Civil Division

Your court hearing may be held remotely. This means that you will participate by phone or by video conference instead of coming to the courthouse. Here are some tips on how to prepare.

How do I know if I have a remote hearing?


The Court will contact you to tell you that your hearing is remote. They may contact you by sending you an email, letter in the mail, or by calling you.



How do I take part in a remote hearing?

The Court will give you step-by-step instructions on how to take part in the remote hearing.

If you lose your written notice, call the Civil Actions Clerk's Office for instructions at:

 202-879-1133

Is there anything that I should do before the day of the hearing?


- Let the court know immediately if you cannot join a hearing because you do not have a phone or computer.

 Civil Actions Clerk's Office: 202-879-1133

- You may want to contact an attorney for legal help.
- You can also find the list of legal services providers at dcourts.gov/coronavirus by clicking on the link that says, "List of Legal Service Providers for Those Without an Attorney."
- Evidence: if you want the judge to review photos or documents, ask the judge how to submit your evidence.
- Witnesses: tell the judge if you want a witness to testify at your hearing.
- Accommodations & Language Access: let the court know if you need an interpreter or other accommodation for your hearing.

Tips for the Hearing



- Join the hearing a few minutes early!
- Charge your computer or phone and make sure you have enough minutes to join the call. Find a private and quiet space. If possible, be alone in a room during the hearing. Try to limit distractions as much as possible. If others are in the room with you, ask if they can be quiet during the hearing.
- Mute your microphone when you are not talking. Mute all sounds on your phone or computer.
- Say your name before you speak so the record is clear. Be prepared to identify your role in the hearing (e.g., observer, plaintiff, defendant, witness, etc.). 
- Speak slowly and clearly so everyone hears what you are saying.
- Pause before speaking in case there is a lag. Use a headset or headphones if you can. This will free up your hands and sound better.
- Try not to talk over anyone else. Only one person can speak at a time. If you talk while someone else is talking, the judge will not be able to hear you.
- Have all your documents for the hearing in front of you. Have a pen and paper to take notes.
- If you are not ready for your hearing or want to speak with an attorney, you can ask the judge to postpone your hearing for another date.
- If your sound or video freezes during the hearing, use the chat feature or call the Clerk's Office to let them know that you are having technical issues.

Special Tips for Video Hearings

[\(Click here for more information\)](#)



- Download the court's hearing software, WebEx, in advance and do a test run! The Court will provide you with a WebEx link in advance of the hearing.
- Set up the camera at eye level. If you are using your phone, prop it up so you can look at it without holding it.
- Look at the camera when you speak and avoid moving around on the video.
- Wear what you would normally wear to court.
- Sit in a well-lit room with no bright lights behind you.
- If possible, find a blank wall to sit in front of. Remember the judge will be able to see everything on your screen, so pick a location that is not distracting.



District of Columbia Courts



Tips for Using DC Courts Remote

The DC Courts have **remote hearing sites** available in various locations in the community to help persons who may not have computer devices or internet service at home to participate in scheduled remote hearings. The Courts are committed to enhancing access to justice for all.

There are six remote access sites throughout the community which will operate: **Monday – Friday, 8:30 am – 4:00 pm.**

The remote site locations are:

<p>Remote Site - 1 Balance and Restorative Justice Center 1215 South Capitol Street, SW Washington, DC 20003</p>
<p>Remote Site - 2 Balance and Restorative Justice Center 1110 V Street, SE Washington, DC 20020</p>
<p>Remote Site - 3 Balance and Restorative Justice Center 118 Q Street, NE Washington, DC 20002</p>



<p>Remote Site - 4 Balance and Restorative Justice Center 920 Rhode Island Avenue, NE Washington, DC 20018</p>
<p>Remote Site - 5 Reeves Center 2000 14th Street, NW, 2nd Floor Community Room Washington, DC 20009</p>
<p>Remote Site - 6 Reeves Center 2000 14th Street, NW, Suite 300N Office of the Tenant Advocate Washington, DC 20009 <i>*** No walk-ins at this location***</i></p>

If you want to use a remote site location for your hearing, call **202-879-1900** or email DCCourtsRemoteSites@dcsc.gov at least **24 hours before your hearing to reserve a remote access computer station**. If you require special accommodations such as an interpreter for your hearing, please call **202-879-1900 at least 24 hours in advance of your hearing so the Courts can make arrangements**.

You should bring the following items when you come to your scheduled site location

1. Your **case number** and any **hyperlinks** provided by the Courts for your scheduled hearing.
2. Any documents you need for the hearing (evidence), including exhibits, receipts, photos, contracts, etc.
3. Materials for notetaking, including pen and paper.

***Safety and security measures are in place at the remote sites.**

Contact information to schedule your remote access computer station:

Call: **202-879-1900**

Email: DCCourtsRemoteSites@dcsc.gov



Tribunales del Distrito de Columbia

Consejos para usar los sitios de audiencia remota de los Tribunales de DC



Los Tribunales de DC disponen de **sitios de audiencia remota** en distintos centros de la comunidad para ayudar a que las personas que no tienen dispositivos informáticos o servicio de Internet en su casa puedan participar en audiencias remotas programadas. Los Tribunales honran el compromiso de mejorar el acceso de toda la población a la justicia.

En toda la comunidad hay seis sitios de acceso remoto que funcionarán de **lunes a viernes, de 8:30 am a 4:00 pm**.

Los centros de acceso remoto son:

<p>Sitio Remoto - 1 Balance and Restorative Justice Center 1215 South Capitol Street, SW Washington, DC 20003</p>
<p>Sitio Remoto - 2 Balance and Restorative Justice Center 1110 V Street, SE Washington, DC 20020</p>
<p>Sitio Remoto - 3 Balance and Restorative Justice Center 118 Q Street, NE Washington, DC 20002</p>



<p>Sitio Remoto - 4 Balance and Restorative Justice Center 920 Rhode Island Avenue, NE Washington, DC 20018</p>
<p>Sitio Remoto - 5 Reeves Center 2000 14th Street, NW, 2nd Floor Community Room Washington, DC 20009</p>
<p>Sitio Remoto - 6 Reeves Center 2000 14th Street, NW, Suite 300N Office of the Tenant Advocate Washington, DC 20009 <i>*No se puede entrar sin cita previa*</i></p>

Si desea usar un sitio remoto para su audiencia, llame al **202-879-1900** o envíe un mensaje de correo electrónico a DCCourtsRemoteSites@dcsc.gov **al menos 24 horas antes de la audiencia, para reservar una estación de computadora de acceso remoto**. Si necesita adaptaciones especiales, como un intérprete para la audiencia, llame al **202-879-1900 al menos 24 horas antes de la audiencia para que los Tribunales puedan hacer los arreglos necesarios**.

Cuando concurra al sitio programado debe llevar los siguientes artículos

1. Su **número de caso** y todos los **hipervínculos** que le hayan proporcionado los Tribunales para la audiencia programada.
2. Cualquier documento que necesite para la audiencia (prueba), incluidos documentos probatorios, recibos, fotos, contratos, etc.
3. Materiales para tomar nota, como papel y lápiz.

***Los sitios de acceso remoto cuentan con medidas de seguridad y protección.**

Información de contacto para programar su estación de computadora de acceso remoto:

Teléfono: **202-879-1900**

Correo electrónico: DCCourtsRemoteSites@dcsc.gov