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Mary A. Marquez  
Court Administrator

Circuit Court of Jackson County, Missouri

15-Sep-2020 By *Shirley Poplett*

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| <b>FILED</b>                        |
| <b>DIVISION 09</b>                  |
| <b>15-Sep-2020 14:59</b>            |
| CIRCUIT COURT OF JACKSON COUNTY, MO |
| BY <i>Shirley Poplett</i>           |

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY**

**ANA FUENTES, et al.,**

)

**Plaintiffs,**

)

**v.**

)

**KM-T.E.H. REALTY 8, LLC, et al.,**

)

**Case No. 1916-CV29273**

**Defendants.**

)

**Division 9**

**FINAL JUDGMENT**

On September 1, 2020, this matter was brought to trial on the issue of damages via video conferencing with consent of Plaintiffs. On July 23, 2020, Plaintiffs waived their right to a jury trial and the Court assented to their request for a bench trial. Defendants KM-T.E.H. Realty 8, LLC and Ruskin Place Apartments (“KM 8”) and Michael Fein (“Fein”) were given notice, but failed to appear at the September 1, 2020 trial.

Plaintiffs and Class Representatives Kelvin Lopez, Tannett Washington, Tiyonna Watkins, and Chris Walter, and class member Esthela Sandoval, appeared through Class Counsel, Gregory Leyh, Andrea M. Knernschild, and Nicholas Leyh. The Plaintiff Class announced ready for trial, gave an opening statement, and presented evidence. In addition to live testimony, the Class introduced into evidence Trial Exhibits 1 through 62. Class Counsel then made a closing argument to the Court. Following the closing argument, the Court took the matter under advisement. After considering the evidence presented, the credibility of the witnesses, and the argument of Class Counsel, the Court finds as follows.

**Background**

On October 29, 2019, Plaintiffs Ana Fuentes, Pedro Lopez, and Kelvin Lopez filed a four-count Class Action Petition against Defendant KM-T.E.H. Realty 8, LLC. The Class

Action Petition was amended on November 19, 2019 to add Plaintiffs Tannett Washington, Tiyonna Watkins, and Chris Walter, and Defendant Ruskin Place Apartments. On March 23, 2020, Plaintiffs filed their Second Amended Class Action Petition to add Michael Fein as a Defendant. Fein was successfully served with a summons and the Second Amended Class Action Petition on July 15, 2020. Defendants did not file an Answer or otherwise respond to the original, First Amended, or Second Amended Class Action Petition.

A Motion for Class Certification was filed on November 20, 2019. KM 8 did not file any response to the Motion. A hearing was held on the Motion for Class Certification on February 18, 2020, and it was granted on February 27, 2020. The Class notice was approved on March 23, 2020 and published on May 19, 2020 in the Kansas City Star. The Certified

Class was defined as follows:

All Missouri residents who signed a lease with defendants and rented at Ruskin Place Apartments between July 2015 and the present.

*See* February 27, 2020 Order granting Motion for Class Certification.

The Second Amended Class Action Petition alleges a cause of action for Injunction (Count I), violations of the Missouri Merchandising Practices Act (“MMPA”) (Count II), Breach of the Implied Warranty of Habitability (Count III), and an individual, non-class claim for Malicious Prosecution (Count IV). Count I was denied on November 27, 2019. On May 1, 2020, partial summary judgment on Count IV was granted in favor of Plaintiffs Ana Fuentes, Pedro Lopez, and Kelvin Lopez. Judgment was awarded in favor of the Plaintiff Class on Counts II and III as part of the Court’s Civil Contempt Order dated June 30, 2020. On August 12, 2020, the Plaintiff Class filed their Motion for Order Allowing Evidence of Punitive Damages, and the Court granted that Motion on September 1, 2020.

## Defendants' Pattern of Contempt

### I. Defendants' Non-Participation In This Court Proceeding

Defendants have demonstrated a pattern of contempt for the Missouri Supreme Court Rules as well as this Court's Orders. Defendants failed to satisfy their discovery obligations and produce Court-Ordered discovery, failed to appear at a Court-Ordered videoconference deposition, failed to deposit \$249,613.37 into the Court's escrow as Ordered, failed to appear at the April 27, 2020 and June 25, 2020 show cause hearings, and failed to respond to Plaintiffs' Class Action Petition, First Amended Class Action Petition, Second Amended Class Action Petition, Motion for Partial Summary Judgment, Rule 61.01 Motion for Sanctions, and Motion for Enforcement of Discovery.

Further, Defendants misled the Court and the Plaintiff Class regarding the deposit of \$249,613.37 escrow funds into the Court registry account causing Plaintiffs to incur unnecessary attorney's fees and costs in a futile attempt to obtain such Court-Ordered escrow funds. Plaintiffs spent the first half of 2020 addressing many discovery motions, participating in telephonic hearings on the discovery motions, obtaining Orders to produce discovery and witnesses, and litigating in various divisions of this Circuit Court to have Defendants deposit the Court-Ordered \$249,613.37 escrow funds. Defendants continuously obstructed Plaintiffs' discovery efforts. Defendants' repeated discovery abuses not only revealed the contumacious disregard of the Supreme Court's Rules and this Court's Orders, but also imposed undue and onerous burdens on the Plaintiff Class and Class Counsel.

### II. Defendants Were Found in Civil Contempt on April 28, 2020

Defendants failed to appear before this Court on April 27, 2020 for a Show Cause hearing. Thus, on April 28, 2020, this Court granted Plaintiffs' First Verified Motion for Civil

Contempt. That Civil Contempt Order fined Defendants \$1,000.00 per day until they produced to Class Counsel the: i) names and addresses of all current tenants of Ruskin Place Apartments, and ii) last known names and addresses of all former tenants who resided at Ruskin Place Apartments since July 2015 in a Word format, label-friendly manner. The requested information still has not been produced.

Pursuant to the Court's April 28, 2020 Order, the deadline for Defendants to produce to Class Counsel all business and personal contact information of Fein, the previous manager of KM 8, including any business or personal email addresses, telephone numbers, and business or personal mailing addresses was May 12, 2020. The requested information has never been produced. Therefore, the April 28, 2020 Civil Contempt Order has been violated and, as a direct consequence of Defendants' non-compliance, the Plaintiff Class has been prejudiced because its ability to prepare the case for trial has been impaired. Defendants have displayed a pattern of disdain for their obligations under the Supreme Court Rules and this Court's Orders.

### III. Defendants Were Found in Further Civil Contempt on June 30, 2020

Defendants failed to appear before this Court on June 25, 2020 for a second Order to Show Cause hearing. On June 30, 2020, the Court granted Plaintiffs' Second, Third, and Fourth Verified Motions for Civil Contempt. The Court found the Plaintiff Class suffered prejudice as a result of Defendants' actions. The Plaintiff Class incurred unnecessary attorney's fees and costs in their attempt to obtain discovery. The Plaintiff Class was prevented from obtaining information exclusively within Defendants' control that was directly relevant to the issues to be tried on September 1, 2020.

Thus as sanction for Defendants' actions, the Court struck Defendants' pleadings and entered a default Judgment against Defendants on Counts II and III of the Second Amended

Class Action Petition and a per diem fine of \$7,500.00 until Defendants complied with the Contempt Order. The Court further prohibited Defendants from presenting evidence at trial and awarded Class Counsel their reasonable attorney's fees and costs for litigating the Second, Third and Fourth Verified Motions for Civil Contempt.

#### Witness Testimony at Trial

The Plaintiff Class presented persuasive evidence in support of compensatory and punitive damages at trial. The Court finds the following witnesses to be credible and finds the following facts.

##### I. Plaintiff Kelvin Lopez

Kelvin Lopez and his parents, Ana Fuentes and Pedro Lopez, were shown a clean and habitable model unit when they were introduced to Ruskin Place Apartments in March of 2019. Once they made a security deposit with Defendants, the property manager gave Mr. Lopez and his family keys to a different upper unit that was not fit to live in. During the entire occupancy period at Ruskin Place Apartments, the apartment was unfit to live in. For example, the apartment had no heat, no air conditioning, mold, water intrusion, roach infestation, wild critters and rats living inside their walls and below in an unsecured unit, and homeless people wandering around in the unit below.

Mr. Lopez and his mother repeatedly complained to Defendants about their unsafe living conditions. Defendants' responses to the Lopez family's complaints were consistently ignored. Mr. Lopez and his parents suffered stress and anxiety from Defendants' disregard for their complaints. Mr. Lopez was forced to move into his parents' bedroom due to the severe water intrusion into his bedroom. Mr. Lopez' stay at Ruskin Place Apartments was the worst and most stressful experience of his life.

Mr. Lopez and his family were retaliated against by Defendants for complaining about their unsafe living conditions. They were served with a notice of eviction and Petition for rent and possession despite the family having made timely rental payments. Trial Exhibits 24, 28, 29 and 30. Mr. Lopez and his family were forced to hire an attorney to defend them from being kicked out of their home. He incurred lost wages and financial penalties from absences at his barber school and incurred attorney's fees. Mr. Lopez and his family incurred moving expenses and did not receive their security deposit back from Defendants.

## II. Esthela Sandoval

Class member Esthela Sandoval was a tenant at Ruskin Place Apartments for almost three years before she moved out in June of 2020 due to terrible living conditions. Ms. Sandoval resided at Ruskin Place Apartments in a two-bedroom, two-bathroom lower unit with her four young children ranging from ages one to seven. During her entire occupancy, Ms. Sandoval and her family experienced significant water leaks, holes in her bathroom and bedroom ceilings, mold, and a roach infestation that invaded her bedroom, children's bedroom, kitchen, living room, hallway, walls, and bathrooms. Trial Exhibits 31, 58, and 60. She and her children slept with the lights on to prevent more roaches from crawling on their bodies as they slept. Ms. Sandoval spent her nights swatting roaches off of her children and their bedroom mattress.

Ms. Sandoval's main bathtub was filled with black sewage from a common sewage pipe. Parts of the ceiling above the bathtub frequently fell with moldy remnants onto the tub, further preventing her from being able to bath her four children. Ms. Sandoval was forced to go to a motel so her children could take a bath. One evening when her children were sleeping in her bed, her ceiling collapsed and woke them up. Ms. Sandoval quickly grabbed her children out of her bed right before the light fixture fell down where they were just sleeping.

Ms. Sandoval repeatedly complained of their unsafe and unsanitary living conditions to Defendants. During her occupancy, no pest fumigation ever occurred at her apartment building. Ms. Sandoval contacted Healthy Homes Rental Inspection Program for help. Trial Exhibits 31 and 52. Defendants blamed Ms. Sandoval for living in a filthy apartment. Ms. Sandoval and her family left Ruskin Place Apartments in June of 2020 due to the unaddressed and abhorrent living conditions. Ms. Sandoval's security deposit was not returned.

### III. Tannett Washington

Tannett Washington is the only remaining class representative residing at Ruskin Place Apartments. Ms. Washington moved to Kansas City in November of 2019 and paid a security deposit to Defendants. Once she paid her security deposit, she was escorted to her unit and told by Defendants' property manager that her upper unit was the "best apartment we have." Ms. Washington quickly discovered she had no heat, no electricity, filthy carpets, missing doors, a broken and moldy dishwasher, a moldy refrigerator, and a cracked glass patio door.

Ms. Washington immediately complained to Defendants. Defendants' response was "we'll get to it." Ms. Washington had to rely on her oven for heat to stay warm. She contacted a friend experienced in HVAC work and they went to the basement to observe the furnace. Ms. Washington observed a broken window pane, broken furnace, and burnt and exposed electrical wiring. Ms. Washington complained to Defendants about the broken furnace. Defendants' response was "we'll get to it." Ms. Washington was awakened one night by a loud boom. Her only source of heat – her oven – exploded and caught fire. The smoke detector did not alert her since it was broken. Over a month went by with no heat in Ms. Washington's home. Ms. Washington also repeatedly complained of the unsecured basement door because she was fearful of homeless people entering the basement. KM 8 and Fein never secured the basement door.

Ms. Washington contacted the local media and Healthy Homes Rental Inspection Program for help. Trial Exhibits 36, 37, 53 and 62.

Ms. Washington endured lack of sleep during cold nights. She developed a bad cough and sickness. Since April of 2020, she witnessed a live shooting across from her living room. Ms. Washington cannot enjoy the company of her grandchildren at her home due to the presence of large groundhogs and overflowing trash at her complex.

#### IV. Tiyonna Watkins

Tiyonna Watkins, while pregnant, moved into Ruskin Place Apartments with her two young daughters in April of 2019. Ms. Watkins discovered her unit had no air conditioning, no working light in her living room, a broken bathroom sink, and a strong sewage smell coming from the basement into her home. Ms. Watkins complained to Defendants of her unsafe living conditions. Defendants' response was "we'll get to it." Ms. Watkins also contacted the local media and Healthy Homes Rental Inspection Program for help. Trial Exhibits 32, 34 and 62.

Ms. Watkins feared for the safety of her two young daughters and unborn child due to exposure to sewage smells and the lack of air conditioning and functional ventilation. Throughout the duration of her lease, Ms. Watkins' home was unfit to live in. Ms. Watkins believed that Defendants did not take her complaints seriously and did not care about her or her family. Ms. Watkins did not get her security deposit back when she moved out.

#### V. Chris Walter

Chris Walter moved into Ruskin Place Apartments in March of 2018. Mr. Walter's apartment had no functioning air conditioning. His home was unfit to live in due to water intrusion, leaky pipes, an unsecured patio door, and a collapsed ceiling. He routinely complained to Defendants in person, in writing, and on the telephone. The Defendants did not respond to his



complaints. Mr. Walter contacted Healthy Homes Rental Inspection Program for help. Trial Exhibits 41, 42, and 43.

Mr. Walter suffers from refractory epilepsy that is triggered by excessive heat. Mr. Walter visited his doctor to get a note to persuade Defendants to fix his air conditioning. Trial Exhibit 40. Mr. Walter provided the note to Defendants. He had a seizure in Defendants' management office while complaining of no air conditioning. Because of Defendants' refusal to provide air conditioning, Mr. Walter experienced life-threatening seizures – up to eight seizures a month (an increase from his monthly average when he had air conditioning). Due to his fixed income, he felt trapped at Ruskin Place, but when he received “Covid money,” Mr. Walter was able to move away in April of 2020. He did not get his security deposit back.

#### VI. Raymond Forbes

Raymond Forbes was formerly employed by T.E.H. Management as a “roamer” maintenance worker at thirteen various T.E.H. apartment complexes – including Ruskin Place Apartments – in the Kansas City metro area during 2017-2019. Mr. Forbes testified Defendants routinely had two or three-year old work orders outstanding, some dated as old as 2016. Defendants' instructions to Mr. Forbes were to prioritize work orders from tenants who were timely paying rent, leaving other tenants to deal on their own with whatever conditions they faced.

Mr. Forbes observed unfit apartment units that required expertise from outside vendors. However, T.E.H. Management, KM 8, and Fein refused to hire outside vendors to make necessary repairs. He stated that T.E.H. Management, KM 8, and Fein's business model included maintaining an unoccupied model apartment that was clean with brand new appliances to show to perspective tenants. But, tenants would be assigned a different and uninhabitable

apartment after signing a lease. Mr. Forbes described KM 8 and Fein as intentionally utilizing a “bait and switch” strategy to induce tenants to move into their apartments – including Ruskin Place Apartments. Fein made it clear to Mr. Forbes that he and KM 8 would provide service only to those tenants who paid rent.

## VII. Property Manager Felisha Mitchell

Felisha Mitchell testified by deposition. Trial Exhibit 7. Ms. Mitchell was the property manager for KM 8 during September 2019 until January of 2020 and was employed as a property manager at Ruskin Place Apartments. Trial Exhibit 7 at 22:4-25. Ms. Mitchell confirmed Defendants’ practice of marketing Ruskin Place Apartments to tenants knowing that amenities were not available for use. Trial Exhibit 7 at 60:22-25 – 61:1-3. Ms. Mitchell witnessed trash being left uncollected for weeks because Defendants would not pay their vendors. Trial Exhibit 7 at 61:16-25 – 62:1-3 and 62:7-9. She saw that trash was left in the stairwells and she picked up the trash at times. Trial Exhibit 7 at 62:13-17 and 62:22-25 – 63:1-2.

Ms. Mitchell “scavenged parts from vacant units just to try to get things fixed around [t]here . . . [because] there was no money to fix anything.” Trial Exhibit 7 at 72:21 – 73:4. Ms. Mitchell took money out of her own pocket to fix things and purchase toilet paper and office supplies. Trial Exhibit 7 at 73:4-9 and 95:12-21. Defendants never refunded her out-of-pocket costs. Trial Exhibit 7 at 73:24-25 – 74:1-6. Ms. Mitchell observed Defendants did not pay their debts and did not go a month without having an outstanding bill for services from vendors and employees – including herself. Trial Exhibit 7 at 63:18-25 – 64:1-19. During Ms. Mitchell’s employment by KM 8, no exterminator stepped on the property. Trial Exhibit 7 at 76:8-23. She observed that Defendants simply did not care. Trial Exhibit 7 at 78:1-6.

Ms. Mitchell recalled a conversation with Fein regarding a tenant who left his apartment

in good condition and wanted his deposit returned. She explained she would never hear back from Fein. Trial Exhibit 7 at 69:23 – 70:1-10 and 70:13-22. Ms. Mitchell confirmed the Defendants knew about Chris Walter’s medical condition, including having seizures, while living without air conditioning. Trial Exhibit 7 at 121:14 -122:9. Ms. Mitchell testified that Ana Fuentes was evicted by the Defendants “out of spite” for constantly complaining about her family living in unsafe living conditions. Trial Exhibit 7 at 28:21-25 – 29:1-17; 79:17-20; 79:25; and 80:7-24. Ms. Mitchell admitted that KM 8 and Fein were aware of but did not fix the following unsafe conditions before March 31, 2020:

- Water intrusion;
- No air conditioning;
- No heat;
- Mold;
- Holes in ceilings, floors and walls;
- Deteriorating decks;
- Roach infestation;
- Mice;
- Unsecured doors;
- Trash;
- Critters;
- Exposed electrical wires;
- Sewage smell;
- Non-working common hall lights.

Trial Exhibit 7 at 98:25 – 101:1; 101:4-25 – 105:4; 105:10 – 106:8; and 106:11-22.

Ms. Mitchell admitted that KM 8 and Fein received inspection reports from Healthy Home Rental Inspection Program reporting unsafe conditions complained of by tenants – including Esthela Sandoval, Tannett Washington, and Chris Walter. Trial Exhibit 7 at 107:23-25; 109:16 – 110:1; 111:10-19; 111:24 – 112:4; 112:20-113:4; 117:2-118:10; 118:14-22; and 120:8 – 122:9. Defendants intentionally disregarded their tenants and their complaints and paid fines to Healthy Homes instead of fixing repairs because it was cheaper. Trial Exhibit 7 at

107:23-25; 109:16 – 11.

Ms. Mitchell described KM 8 and Fein as “slumlords” because of what she observed while employed at Ruskin Place Apartments. Trial Exhibit 7 at 107:12-22. KM 8 and Fein did not give a “damn,” and she was “shocked by some of the things that were going on” at Ruskin Place Apartments. Trial Exhibit 7 at 107:12-22. Defendants did not have sympathy for their tenants. Trial Exhibit 7 at 118:23-25.

#### Documentary Evidence Admitted at Trial

Plaintiffs presented documentary evidence of the amount of rent paid and of security deposits through the leases of class representatives. Trial Exhibits 1-5. Plaintiffs submitted “notice(s) of termination of lease” they received from Defendants for the reason of “non-payment” of rent, even though Plaintiffs were not behind on rent and these notices only came after Plaintiffs complained about the conditions in their homes. Trial Exhibits 24 and 33. Plaintiffs submitted records of paying their rent into the Court. Trial Exhibits 35, 38, and 45.

Plaintiffs also described the uninhabitable state of their Ruskin Place apartments. Plaintiffs’ affidavits detailed the conditions of their apartments and their separate experiences living in those conditions. Trial Exhibits 23, 31, 34, and 37. Plaintiffs’ were living in unsafe and unsanitary conditions at Ruskin Place Apartments. Trial Exhibits 23, 31, 34 and 37. In addition, they submitted photographic evidence depicting unsanitary and unsafe aspects of Plaintiffs’ homes. Trial Exhibits 25, 44, and 57-61.

Plaintiffs submitted Healthy Home Rental Inspection reports of their apartments at Ruskin Place Apartments. Trial Exhibits 34 (attached report to affidavit), 41-43, and 52-53. Plaintiffs sent written complaints of uninhabitable conditions to Defendants to no avail. Trial Exhibits 39 and 51. Plaintiffs contacted local news agencies after Defendants ignored their

complaints about the conditions present at Ruskin Place Apartments. Trial Exhibits 32, 36, and 62.

Plaintiffs submitted Plaintiffs' First Request for Admissions, to which Defendants failed to respond. Trial Exhibit 15. Missouri Supreme Court Rule 59.01(a) states, "[a] failure to timely respond to requests for admissions in compliance with this Rule 59.01 shall result in each matter being admitted." Mo. Sup. Ct. R. 59.01(a).<sup>1</sup> Thus, Plaintiffs' First Request for Admissions is deemed admitted by the Defendants and the Court finds the presence of mold, cockroaches, mice, and the lack of air conditioning and heat were conditions that rendered apartments unsafe and required remediation by Defendants. Trial Exhibit 15.

The Court also deems admitted that the Property Condition Assessment ("PCA") of Ruskin Place Apartments conducted in July of 2019 accurately described the conditions present there. Trial Exhibits 6 and 15. Specifically, there was the presence of mold, the leaking of raw sewage and corrosion of piping systems, broken air conditioning units, faulty smoke detectors, exposed drywall in apartments, severely damaged areas of asphalt and sidewalk, and other serious conditions. Trial Exhibit 6. The PCA detailed the total number of apartments and occupancy rate at Ruskin Place Apartments. Trial Exhibit 6 at p. 4. Fein was present for the inspection as he "escorted" the assessor through the complex personally. Trial Exhibit 6 at p. 5. The Court finds Fein had personal knowledge of the unsafe and unsanitary conditions described in this Judgment. The PCA also contains a list of all units, the rent amount for each unit's lease, the "market rent" for each unit, among other information. Trial Exhibit 6 at "Exhibit E." This list

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<sup>1</sup> See also Plaintiffs' Trial Exhibit 15 at page 1 containing notice in all capital letters and in bold font, as required by Missouri Supreme Court Rule 59.01, that "A FAILURE TO TIMELY RESPOND TO REQUESTS FOR ADMISSIONS IN COMPLIANCE WITH RULE 59.01 SHALL RESULT IN EACH MATTER BEING ADMITTED BY YOU AND NOT SUBJECT TO FURTHER DISPUTE."

was relied on by Dr. Kurt Krueger in forming his expert opinion as to Plaintiffs' damages.

Compensatory Damages For Counts II and III

Judgment was entered in favor of Plaintiffs on Counts II and III on June 30, 2020. Count II asserted a claim under the MMPA relating to Defendants' management and leasing of Ruskin Place Apartments, including their failure to deliver leased rental units in a safe, sanitary and livable condition, and by failing to fulfill promises to make necessary repairs. Count III asserted a cause of action for breach of the warranty of habitability. Plaintiffs presented expert testimony in support of damages. Dr. Kurt Krueger of John Ward Economics testified on behalf of the class. Dr. Krueger's opinions regarding compensatory damages are reflected on Trial Exhibit 21.

This Court issued four previous Orders assessing fines and monetary awards against KM 8. Trial Exhibit 21. Dr. Krueger tallied the respective amounts, added 9% prejudgment interest to each of the individual fines or awards, and carried the amount forward through September 1, 2020, the date of trial. The total amount of damages owed to the class arising from this Court's previous Orders is \$866,566.94.<sup>2</sup> Dr. Krueger also testified that the per diem value of these damages after September 1, 2020, is \$8,711.76. The Court finds that the Class is entitled to the damages arising from previous Orders in the amount of \$892,702.22.

The Court finds the rental units were not fit for human habitation and had a market value of \$0.00. *Kolb v. DeVille I Properties, LLC*, 326 S.W.3d 896, 903 (Mo. Ct. App. 2010). Dr. Krueger testified the amount of rent paid by class members between July 2015 and March 2020, when the property was foreclosed and a new owner took over, was \$6,550,216.95. The per diem

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<sup>2</sup> This amount does not include an award of attorney's fees, a subject that will be addressed in a subsequent application for fees to be submitted by Class Counsel.

value of these damages after September 1, 2020, is \$1,291.02. The Court finds the class is entitled to damages arising from lost rent payments in the amount of \$6,554,090.01.

The Plaintiff Class is entitled to emotional distress damages under the MMPA. *Lewellen v. Franklin*, 441 S.W.3d 136, 147 (Mo. 2014). Trial Exhibit 6 contained information about the number of tenants living at Ruskin Place Apartments as well as the turnover rate of tenants. Evidence was submitted demonstrating that the Class consists of 426 persons. The distress and anxiety caused to Class Members by the decisions of KM 8 and Fein is considerable. Thus, an award of \$10,000.00 for each Class Member's emotional distress is reasonable. The Court finds the Class is entitled to \$4,260,000.00 in emotional distress damages.

Finally, pursuant to this Court's Order dated December 4, 2019, Plaintiffs were directed to pay future rent payments to the Court until the apartments were restored to a fit, safe and habitable condition. Trial Exhibits 35, 38 and 45 reflect the amounts of rent paid to the Court by Tiyonna Watkins, Tannett Washington, and Chris Walter. Ms. Watkins paid \$690.00, Ms. Washington paid \$3,600.00, and Mr. Walter paid \$1,605.00. These rent payments shall be returned to each payee in the full amount paid.

#### Defendants' Business Model Supports Punitive Damages

Defendant KM 8 buys distressed properties and rents them without hands-on management or oversight despite receiving numerous complaints of substandard conditions from its tenants. Second Amended Class Action Petition, at ¶ 1. Plaintiffs demonstrated that KM 8's business model and structure is designed to insulate themselves from paying judgments. KM 8's website archives show it specifically targeted "lower-middle class" housing units with a deliberate decision to manage the property themselves to ensure "attractive cash flow." Trial Exhibits 12, 13, and 14. As evidenced by witness testimony and photographic evidence, this "in-

house” property management allowed Defendants to retain rent money without making necessary repairs to tenants’ homes, thereby maximizing Defendants’ profit at the expense of tenants’ safety and well-being.

Defendants’ parent, sister, and holding companies are implementing this business model throughout Missouri, principally in Kansas City and St. Louis. Trial Exhibit 16. According to records available at the Missouri Secretary of State’s Office, there are twenty-six “KM-T.E.H.” (dealing with Kansas City properties) and twenty-four “SM-T.E.H.” (dealing with St. Louis properties) entities active and registered through the Missouri Secretary of State. Trial Exhibit 16. Plaintiffs submitted the articles of incorporation of various KM-T.E.H.-related entities to demonstrate that: (1) the same organizers created and structured these LLCs and, (2) these LLCs are created to be single-asset LLCs (and are thus undercapitalized) so as to insulate the organizers and associates from judgments. Trial Exhibit 47.

As part of Defendants’ business practice, these various T.E.H. entities, including KM 8, regularly utilize the Missouri Associate Circuit Courts to evict and recover double rent from their tenants in rent and possession lawsuits. For example, since 2015, KM 8 filed ninety-one eviction cases in the Jackson County, Missouri – Associate Circuit Court. Trial Exhibit 17. Since 2017, Defendant Ruskin Place Apartments has filed twenty-one evictions against its tenants of Ruskin Place Apartments in the Jackson County, Missouri – Associate Circuit Court. Trial Exhibit 18.

One such rent and possession case was filed against class representatives Ana Fuentes, Pedro Lopez, and Kelvin Lopez. *See KM-T.E.H. Realty 8, LLC v. Fuentes*, Case No. 1916-CV22828, in the Associate Circuit Court of Jackson County – Kansas City. Trial Exhibit 29. The rent and possession case was dismissed and was the subject of a partial summary judgment ruling in favor of the class representatives and a finding that Defendants are liable for malicious



prosecution. Trial Exhibit 30. The law firm that filed that baseless rent and possession case admitted that Fuentes and Lopez were in full compliance with the terms of their lease. Trial Exhibit 28.

Although Defendants are very active in litigating in Associate Circuit Courts, the facts detailed in Trial Exhibit 19 demonstrate they routinely fail to participate in litigation against them in Missouri Circuit Courts. Defendants' conduct in this case, for example, as detailed above, is an example of the Defendants' disregard for the Supreme Court of Missouri Rules and Orders of Missouri Circuit Courts. Rarely do Defendants hire attorneys to defend them in Circuit Court cases. Trial Exhibits 19 and 20. In this case, although two attorneys appeared for a few hearings, either in person or by telephone, only one entered his appearance after that entry was compelled by an Order of this Court on March 23, 2020. KM 8 and Fein have manipulated the Missouri court system to exploit low-income citizens for rent payments while ignoring both their tenants and this Court in the Circuit Courts.

KM 8, Fein and other KM entities also displayed a history of non-compliance with housing authorities at their St. Louis and Kansas City apartment complexes. Trial Exhibits 55 and 56. Both St. Louis and Kansas City Housing Authorities removed T.E.H. entities from their respective housing voucher programs for "non-compliance" and failing to remediate "substandard conditions." Trial Exhibits 55 (pointing out "substandard conditions) and 56 (describing "history of non-compliance"). Of note, the Kansas City Housing Authority addressed its letter directly to Fein to explain the "frequency of complaints and number of deficiencies found" on T.E.H. properties in Kansas City. Trial Exhibit 56. Fein has been accused of defrauding others through his role as manager of apartment complexes. Fein was removed as Manager of KM 8 for his failure "to take reasonable steps to protect the Company's

assets.” Trial Exhibit 10. Fein was recently indicted by a St. Louis federal grand jury for wire and bank fraud in relation to his management of T.E.H.-owned apartment complexes. Trial Exhibit 48.

### Punitive Damages For Count II

The MMPA was enacted to “preserve fundamental honesty, fair play and right dealings in public transactions.” *Conway v. Citimortgage, Inc.* 438 S.W.3d 410, 414 (Mo. 2014). Under the MMPA, a prevailing plaintiff may be awarded punitive damages and attorney’s fees. Missouri Statute § 407.025.1; *see also Conway*, 438 S.W.3d at 414. The purpose of punitive damages is to serve the State’s interest in punishment and deterrence: “[t]he decision to punish a tortfeasor through an award of punitive damages is an exercise of state power that must comply with the Due Process Clause of the Fourteenth Amendment of the United States Constitution and with Article I, Section 10, of the Missouri Constitution.” *Mansfield v. Horner*, 443 S.W.3d 627, 643 (Mo. Ct. App. 2014). The Court’s consideration of punitive damages includes analysis of the reprehensibility of a defendant’s conduct, the ratio of the punitive award to the actual and potential harm from the defendant’s wrongdoing, and the criminal and regulatory sanctions for comparable misconduct. *BMW of North America v. Gore*, 517 U.S. 559, 574-75 (1996). “The most important indicium of the reasonableness of a punitive damages award is the degree of reprehensibility of the defendant’s conduct.” *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003). The Supreme Court directed several factors should be reviewed when considering reprehensibility, including whether the harm was physical or economic, whether the target of the conduct was financially vulnerable, whether the conduct was an isolated event or part of a broader pattern of conduct, and if the harm was the result of intentional malice, trickery, or deceit. *Id.* at 419.

The conduct of KM 8 and Fein was outrageous and reprehensible. KM 8 and Fein were aware of unsafe and life-threatening conditions faced by tenants living at Ruskin Place Apartments, but chose to ignore their responsibility to repair those conditions. KM 8 and Fein knew, for example, that apartments resided in by class members contained mold, cockroaches, rats, and leaking windows and ceilings. KM 8 and Fein also knew raw sewage was present in the basement of some of the buildings and that trash was littered all over the property. The trash attracted unwelcome rodents like groundhogs that presented further threats, especially to children living at Ruskin Place Apartments. Repeatedly when complaints were made about the unsafe conditions, Defendants refused to fix the problems and retaliated against tenants. The harms to tenants were physical, emotional, and economic and were aimed at a financially vulnerable Class, adding to the reprehensibility of the conduct of KM 8 and Fein.

Trial Exhibit 46 consists of 591 pages of complaints to the office of the Missouri Attorney General about various T.E.H. entities operating in the State of Missouri. The complaints include specific evidence of the substandard living conditions at T.E.H. apartment complexes in St. Louis and Kansas City, and includes evidence of Fein's response to a mother's complaint of the effect of water damage and mold on her son's health condition. Trial Exhibit 46 at 143. Trial Exhibit 46 demonstrates the misconduct of KM 8 and Fein at Ruskin Place Apartments was part of a broader pattern of conduct, and was clearly not an isolated incident. Trial Exhibits 55 and 56 supplement other proof by showing that, in both St. Louis and Kansas City, KM 8 and other T.E.H. entities have been found by housing authorities to have acted in a manner contrary to the law. Such evidence adds to the reprehensibility of the conduct.

KM 8 and Fein designed a method to insulate themselves from their legal responsibility for the harm they knowingly inflicted on tenants. KM 8 and Fein, as well as other T.E.H. entities

operating in the State of Missouri, consistently utilized Missouri's Associate Circuit Courts to seek monetary damages from tenants, some of whom did not owe rent. Trial Exhibits 17 and 18. However, when KM 8 is sued in the Circuit Courts of the State of Missouri, KM 8 routinely declines to: i) retain counsel, ii) defend itself from the claims asserted, or iii) take responsibility to comply with the Orders of the Court. Trial Exhibit 19. This pattern of conduct demonstrates that KM 8 and Fein are part of a scheme to manipulate Missouri's judicial system by generally ignoring their responsibility to comply with Circuit Court Orders and Supreme Court Rules relating to Circuit Court practices, while also affirmatively availing themselves of the authority of the Associate Circuit Courts to seek relief against low-income citizens, many of whom are unable to afford legal counsel.<sup>3</sup> This scheme provides additional support for a punitive damages award against KM 8 and Fein.

Dr. Krueger's opinion regarding KM 8's ability to pay a punitive damage award was partly predicated on evidence that KM-T.E.H. has assets worth \$260 million and has a net worth of \$120 million. Using a cap rate of 8%, Dr. Krueger opined that KM-T.E.H. has an annual net operating income of \$20,800,000.00. Dr. Krueger testified that KM 8 has the ability to pay a punitive damage award of at least two times \$20,800,000.00. According to Trial Exhibit 11, Fein testified that he has an ownership interest in 3,500 apartments. Using data from several sources, Dr. Krueger opined that each apartment had a market value of \$30,000.00 and therefore Fein's ownership interest in 3,500 apartments has a market value of \$105,000,000.00. Applying a cap rate of 8%, Fein's annual net operating income from his ownership interest in apartments is

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<sup>3</sup> This is particularly concerning because the Associate Circuit Court Judges rely on pleadings and information provided to them by counsel for the Defendants. Those attorneys are officers of the Court and the Associate Judges are kept unapprised of Defendants' larger, reprehensible scheme.

\$8.4 million. Dr. Krueger testified Fein has the ability to pay a punitive damage award of at least two times \$8.4 million. The Court finds his testimony to be supported and credible.

The Court finds the harms to Class Members were the result of Defendants' intentional malice. KM 8 and Fein took advantage of financially vulnerable tenants and denied to them the basic dignity of safe, sanitary and livable apartments. The business model used by KM 8 and Fein preys on low-income citizens and is cruel. KM 8 and Fein displayed contempt for this Court and the Supreme Court Rules throughout this proceeding. The Court finds Defendants' use of Missouri's judicial system is an abuse and seeks to degrade our system of justice.

The Court awards the class punitive damages against KM-8 in the amount of \$23,393,584.46, which is two times the total compensatory damages of \$11,696,292.23. The Court awards the class punitive damages against Fein in the amount of \$16.8 million.

#### Damages Judgment on Count IV

Partial Summary Judgment on Count IV in favor of Plaintiffs Ana Fuentes, Pedro Lopez and Kelvin Lopez was entered on May 1, 2020. Count IV is not a Class claim. In Count IV, the three Plaintiffs asserted a malicious prosecution claim against KM 8 and Fein on the basis of a Rent and Possession suit filed against them and subsequently dismissed with prejudice. These three Plaintiffs suffered economic damages in the amount of \$13,604.50. As KM 8's lawyer admitted, they were in full compliance with the terms of their lease. Trial Exhibit 28. The threat of an eviction caused this family to suffer anxiety and distress. The Court finds that each of the three Plaintiffs is entitled to \$15,000.00 in emotional distress damages arising from the malicious prosecution of the Rent and Possession suit. Finally, the testimony from Kelvin Lopez regarding the intentional harm inflicted on his family by KM 8 and Fein warrants punitive damages. The Court finds that Ana Fuentes, Pedro Lopez and Kelvin Lopez are entitled to \$13,604.50 in

economic damages, a total of \$45,000.00 for emotional distress, and \$100,000.00 in punitive damages.

For the foregoing reasons, it is hereby

ORDERED Judgment is entered in favor of the Plaintiff Class and against the Defendants KM 8 and Michael Fein in the sum of \$11,706,792.23 for compensatory damages and emotional distress damages. It is further

ORDERED Plaintiffs Tiyonna Watkins, Tannett Washington, and Chris Walter's rent monies paid into this Court shall be returned to the respective payee in the full amount paid. It is further

ORDERED Judgment is entered in favor of the Plaintiff Class and against the Defendant KM 8 in the sum of \$23,413,584.46 for punitive damages. It is further

ORDERED Judgment is entered in favor of the Plaintiff Class and against the Defendant Michael Fein in the sum of \$16,800,000.00 for punitive damages. It is further

ORDERED Judgment is entered in favor of the Plaintiffs Ana Fuentes, Pedro Lopez, and Kelvin Lopez on the individual claim for malicious prosecution (Count IV) against the Defendants KM 8 and Michael Fein in the sum of \$58,604.50 for economic damages (\$13,604.50) and emotional damages (\$45,000.00). It is further

ORDERED Judgment is entered in favor of the Plaintiffs Ana Fuentes, Pedro Lopez, and Kelvin Lopez on the individual claim for malicious prosecution (Count IV) against the Defendants KM 8 and Michael Fein in the sum of \$100,000.00 for punitive damages. It is further

ORDERED Judgment is entered that this Judgment shall run at 5.0% plus the Federal Funds Rate of 0.25% for a total of 5.25% per annum, and shall be calculated as running from the

date of this Judgment. It is further

ORDERED Judgment is entered that Class Counsel is entitled to an award of attorney's fees and costs in an amount to be determined in the future and be paid by the Defendants KM 8 and Michael Fein in addition to other damages awarded. Class Counsel is directed to file an Application for Award of Attorney's Fees and Costs within fourteen days of the date of this Judgment. It is further

ORDERED costs of this action are assessed against Defendants KM 8 and Michael Fein.

DATED: September 15, 2020

  
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JUDGE JOEL P. FAHNESTOCK