

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

<p>ARLENA CHANEY, YISEHAC YOHANNES, and JOHN BOU-SLIMAN, on behalf of themselves and all others similarly situated,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CAPITOL PARK ASSOCIATES, an Illinois Limited Partnership, CAPITOL PARK LAND CORPORATION, A.I.M. PARTNERSHIP, NO. 1, an Illinois Limited Partnership, EJF REAL ESTATE SERVICES, INC., and AMERICAN RENTAL MANAGEMENT CO.,</p> <p>Defendants,</p> <p>and</p> <p>DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS,</p> <p>Defendant.</p>	<p>Civil Action No. 2012 CA 005582</p> <p><b>THIRD AMENDED CLASS ACTION COMPLAINT</b></p> <p><b>JURY TRIAL DEMANDED</b></p> <p>Judge Neil E. Kravitz Calendar 13</p>
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Plaintiffs Arlena Chaney, Yisehac Yohannes, and John Bou-Sliman (“Plaintiffs”), by counsel, bring this action on behalf of themselves and all others similarly situated (“the Class”), and allege the following upon personal knowledge as to their own actions, and upon information belief as to the actions of others:

## **NATURE OF THE ACTION**

1. This action is based on Defendants' ownership and management of parking facilities appurtenant to the Capitol Park Towers Apartments, located at 301 G Street SW, Washington, DC 20024 ("the Towers").

2. Defendants Capitol Park Associates, an Illinois Limited Partnership ("CPA"), Capitol Park Land Corporation ("CPLC") and A.I.M. Partnership, No. 1, an Illinois Limited Partnership ("AIM") (collectively "Owner Defendants") charge or caused to be charged residents of the Towers who wish park their vehicles on-site a monthly parking fee.

3. Owner Defendants retain or retained Defendants EJF Real Estate Services, Inc. ("EJF") and American Rental Management Co. ("ARMC") to manage the parking facilities and to act as their agents in charging the monthly parking fees.

4. Defendants charged or caused to be charged the monthly parking fees without obtaining a license, as required by D.C. Municipal Regulations title 24, § 602.1, from at least 1984 until January 1, 2012.

5. CPA finally obtained a license on January 1, 2012. However, upon information and belief, CPA failed to submit a certificate of occupancy permitting use as a parking facility for profit or gain in support of its application. Accordingly, the license was improperly issued, and Defendants remain non-compliant with applicable licensing regulations.

6. Defendants' practice of charging monthly parking fees to Towers residents also violates D.C. zoning regulations.

7. Further, Defendants lease parking spaces to non-residents of the Towers ("Non-Towers Customers") in violation of D.C. zoning regulations.

8. Defendants' practices violate District of Columbia law, and Plaintiffs and the Class are entitled to the damages and equitable relief demanded herein.

### **JURISDICTION AND VENUE**

9. Jurisdiction of this Court is founded on D.C. Code § 11-921. The Court has subject matter jurisdiction because this action arises under the laws of the District of Columbia.

10. The Court has personal jurisdiction over Defendants pursuant to D.C. Code § 13-423 because the claims asserted herein arise from Defendants' transaction of business in the District of Columbia; contracting to supply services in the District of Columbia; and/or interest in, use, or possession of real property in the District of Columbia.

11. Additionally, the Court has personal jurisdiction over CPLC and EJF pursuant to D.C. Code § 13-422 because they are entities organized under the laws of the District of Columbia.

12. Venue is proper in this Court because the claims asserted herein arose within the District of Columbia; Plaintiffs and some Defendants reside in the District of Columbia; Plaintiffs seek to represent a Class of residents of the District of Columbia; the parking fee transactions alleged herein occurred within the District of Columbia; and Defendants transact business and have caused injury within the District of Columbia.

### **THE PARTIES**

13. Plaintiff Arlena Chaney ("Ms. Chaney") has been a resident of the Towers since 1982 and has rented a parking space there since 2007. Defendants charged or caused to be charged monthly parking fees to Ms. Chaney, which she has paid.

14. Plaintiff Yisehac Yohannes (“Mr. Yohannes”) has been a resident of the Towers since 1989 and has rented a parking space there since 1989. Defendants charged or caused to be charged monthly parking fees to Mr. Yohannes, which he has paid.

15. Plaintiff John Bou-Sliman (“Mr. Bou-Sliman”) has been a resident of the Towers since 1992 and has rented a parking space there since 1992. Defendants charged or caused to be charged monthly parking fees to Mr. Bou-Sliman, which he has paid.

16. Defendant CPA is an Illinois limited partnership doing business in the District of Columbia. CPA owns the Towers building and parking facilities.

17. Defendant CPLC is a District of Columbia Corporation. CPLC owns the land on which the Towers is situated.

18. Defendant AIM is an Illinois limited partnership doing business in the District of Columbia. AIM is a general partner in CPA, and directs the actions of CPA in the District of Columbia.

19. Defendant EJJ is a District of Columbia corporation. EJJ has managed the parking facilities at the Towers on behalf of Owner Defendants since 2008.

20. Defendant ARMC is a Delaware corporation doing business in the District of Columbia. ARMC managed the parking facilities of the Towers on behalf of Owner Defendants from 1998 until 2008.<sup>1</sup>

21. Defendant District of Columbia Department of Consumer and Regulatory Affairs (“DCRA”) is the agency of the District responsible for issuing licenses to operate parking facilities for profit or gain. On March 11, 2013, DCRA was added as a party to this action pursuant to Superior Court Civil Rule 19, by order of the Court. Plaintiffs assert no causes of

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<sup>1</sup> ARMC was dismissed as a party by order of the Court on March 11, 2013. Plaintiffs keep ARMC in the complaint solely to preserve their appellate rights.

action against DCRA. DCRA is joined as a party to this action for the purpose of allowing it to assert its interests with respect to its issuance of a license to operate a parking facility for profit or gain to Defendant CPA on or about January 1, 2012. As used herein, except in the caption of this complaint and the first sentence of this paragraph, the terms “Defendant” or “Defendants” do not include or refer to DCRA.

22. At all times relevant hereto, each of the Defendants was the principal or agent of each of the other Defendants, and was at all times acting within the course and scope of such agency.

### **SUBSTANTIVE ALLEGATIONS**

23. The Towers is a rent-controlled 289-unit gated multi-family housing project with 263 parking spaces. The Towers was built in or before 1961.

24. CPA acquired the Towers buildings on May 29, 1981. CPA concurrently acquired all of the capital stock of CPLC, which owns the land underlying the Towers buildings. These transactions effectively placed the Towers completely under CPA’s ownership and control.

25. AIM is a general partner in CPA, and directs the activities of CPA in the District of Columbia.

26. The Towers premises contain parking facilities, consisting of an indoor garage and an outdoor lot.

27. The Owner Defendants have charged or caused to be charged monthly parking fees to residents of the Towers since at least 1984, and, upon information and belief, since CPA’s acquisition of the Towers in 1981. *See* Exhibit A (Notice of Towers parking rate increase dated April 26, 1984).

28. Since 2008, Owner Defendants employed EJJ as their agent to manage the parking facilities at the Towers.

29. From 1998 to 2008, Owner Defendants employed ARMC as their agent to manage the parking facilities at the Towers.

30. Before 1998, Owner Defendants employed Interstate General Company as their agent to manage the parking facilities at the Towers. Interstate General Company is no longer in business.

### **Defendants Operate the Towers Parking Facilities Without a License**

31. D.C. Code § 47-3832.01 provides that a license or permit for a parking establishment shall be issued as a General Service and Repair Endorsement to a basic business license.

32. Owners or managers of any premises, where vehicles of any description are stored or kept for other people, for profit or gain, must obtain a license and pay a license fee. D.C. Mun. Regs. tit. 24, § 602.1.

33. Operating a parking establishment business without a license is a Class 1 Infraction under District of Columbia law. D.C. Mun. Regs. tit. 16, § 3301.1(o).

34. By charging or causing to be charged monthly parking fees to residents of the Towers, Defendants have owned or managed premises where vehicles are stored or kept for other people for profit or gain.

35. Throughout the Owner Defendants' tenure (until January 1, 2012) as owners of the Towers, Defendant made no attempt to obtain the required parking establishment license.

36. During this period, Defendants failed to disclose to Towers residents the fact that they did not have the required parking establishment license.

37. From 1984<sup>2</sup> to 2011, the monthly parking fee at the Towers ranged from \$20.00 to \$65.00.

38. However, in August 2011, Defendants notified Towers residents that, effective October 1, 2011, they would increase monthly parking fees nearly 54%, to \$100.00 per month. *See* Exhibit B (Notice of Parking Rate Increase dated August 1, 2011). This increase was unprecedented in its size; the single rate increase was greater than all combined rate increases since 1992. The rate increase impacted Towers residents severely, placing many of them under financial hardship.

39. After Defendants distributed the notification of rate increase, members of the Towers tenants' association held a meeting on September 10, 2011 ("the September 10 Meeting"), to discuss options for avoiding or reducing the rate increase. Plaintiffs are members of the tenants' association, and attended the meeting.

40. The tenants' association made a request to the D.C. Department of Consumer and Regulatory Affairs ("DCRA") for a representative to attend the September 10 Meeting to discuss these issues, and the DCRA sent Mr. Garrett Whitescarver. At the meeting, Mr. Whitescarver informed Plaintiffs and the other residents that Defendants did not have a license to operate a parking facility for profit or gain, as required by D.C. Municipal Regulations title 24, § 602.1.

41. This was the first time Plaintiffs knew, or with reasonable diligence could have known, of Defendants' lack of licensure and the injuries resulting from it, which Defendants had concealed from Plaintiffs.

42. This revelation to Towers residents that Defendants had been illegally operating a parking facility for profit or gain without a license prompted Defendants to finally take action.

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<sup>2</sup> 1984 is the earliest year for which Plaintiffs have located records of parking fees at the Towers. Plaintiffs believe that complete records can be obtained through discovery.

CPA finally applied for the required license, which was issued by the DCRA on January 1, 2012. *See* Exhibit C (DCRA license certification).

43. The DCRA requires applicants for a license to operate a parking facility for profit or gain to submit a Certificate of Occupancy, to demonstrate that the proposed use “does not conflict with building and zoning codes.”<sup>3</sup>

44. Upon information belief, all Certificates of Occupancy issued for the Towers have been limited to use as an apartment house, with no permission given to operate a commercial parking facility. *See* Exhibit D (copies of Certificates of Occupancy for the Towers issued in 1962, 1976, and 1985).

45. Therefore, CPA failed to meet the requirements for issuance of its license to operate a parking facility for profit or gain, the license was issued in error, and Defendants remain non-compliant with licensing regulations.

46. Indeed, at the September 10 Meeting, DCRA representative Whitescarver told tenants that it was unlikely that a license could ever be properly issued, because of the Towers’ residential zoning classification.

#### **Defendants Lease Parking Spaces in Violation of Zoning Regulations**

47. The Towers are located in an R-5-C zoning district. *See* Exhibit E (Zoning Report for 301 G Street SW). Residential districts such as the one in which the Towers is located strictly limit commercial activity.

48. The limitations for R-5-C districts include, without limitation, D.C. Code of Municipal Regulations title 11 § 355.1, which provides: “A parking garage constructed as a

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<sup>3</sup> *See* <http://dc.gov/DC/DCRA/For+Business/Apply+for+a+Business+License/General+Service+and+Repair+License+Information/Get+a+Parking+Lot+Establishment+License> (last visited July 30, 2012).



principal use on a lot other than an alley lot in an R-5-E District shall be permitted as a special exception in an R-5 District if approved by the Board of Zoning Adjustment under § 3104, subject to the provisions of this section.”

49. Defendants have never sought or received approval from the Board of Zoning Adjustment to operate a parking facility in an R-5 zoning district.

50. Accordingly, Defendants are prohibited from operating a parking facility as a commercial use, i.e. charging Towers residents monthly fees for parking.

51. Alternatively, even if charging monthly parking fees to residents is deemed permissible, Defendants’ blatantly commercial marketing and leasing of parking spaces to Non-Towers Customers, i.e. nearby employees of businesses and government agencies who are not Towers residents, is surely prohibited.

52. In 2011, residents observed a sign on the Towers’ surrounding fence advertising parking to Non-Towers Customers. The sign was removed briefly during what Plaintiffs believe was the licensing application period as a means of concealing from the DCRA that Defendants were running a commercial parking facility in a residentially zoned area.

53. Additionally, one Towers resident at the September 10 Meeting related a conversation she had with a Non-Towers customer who rented the parking space next to hers. The Non-Towers Customer told the resident that she had learned of the availability of parking at the Towers from a flyer posted on the bulletin board of her nearby place of employment. Thus, in addition to signage, it is believed, and therefore averred, that Defendants market commercial parking spaces to nearby workers.

54. Despite never having sought or received approval to operate a parking facility in a residential zone from the Board of Zoning Adjustment, Defendants commercially lease parking spaces on the Towers premises to Non-Towers Customers in violation of the zoning regulations.

55. Non-Towers Customers are mostly individuals who work nearby, and use the parking spaces for daytime parking. Defendants charge Non-Towers Customers a higher rate than Towers residents. Towers residents currently pay \$100 per month for parking, while Non-Towers Customers pay \$150 per month.

56. Defendants give Non-Towers Customers preferential treatment in the assignment of parking spaces, assigning them a disproportionate number of spaces closer to the building or that are covered or sheltered.

57. Defendants' commercial leasing of parking spaces to Non-Towers Customers reduces the number and quality of parking spaces available to Towers residents.

58. Because they generally use their parking spaces for parking while at work, Non-Towers Customers tend to arrive and depart *en masse* at certain times of day. This traffic pattern creates increased traffic congestion and attendant traffic noise in the Towers parking lot, and blocks Tower residents from convenient use and enjoyment of their parking spaces and the surrounding grounds. This traffic pattern has also led to a number of car accidents in the parking lot between Towers residents and Non-Towers Customers.

### **CLASS ACTION ALLEGATIONS**

59. Plaintiffs bring this action on their own behalf and as a class action pursuant to Rule 23 of the District of Columbia Superior Court Rules of Civil Procedure on behalf of a Class consisting of: All current and former residents of 301 G Street SW, Washington, DC who paid monthly fees to park a vehicle at 301 G Street SW, Washington, DC.

60. Plaintiffs believe that there are hundreds of members of the Class, although the exact number and the identities of the members of the Class are currently unknown to Plaintiffs and can only be ascertained from the books and records of Defendants.

61. The members of the Class are so numerous that joinder of all members is impracticable.

62. Plaintiffs paid monthly fees to park vehicles at 301 G Street SW, Washington, DC, and are therefore members of the Class.

63. Plaintiffs' claims are typical of the claims of the Class. They paid monthly parking fees despite the fact that Defendants did not have a license to operate a commercial parking facility. Defendants concealed this fact from Plaintiffs. Plaintiffs have been harmed by paying the parking fees, the congestion and noise resulting from Defendants practice of leasing parking spaces at the Towers to Non-Towers Customers, and Defendants' practice of assigning more desirable spaces to Non-Towers Customers.

64. Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting any individual member of the Class, including, but not limited to:

- a. whether Defendants violated District of Columbia licensing regulations by operating a commercial parking facility without a license;
- b. whether CPA's failure to submit a Certificate of Occupancy authorizing use as a commercial parking facility with its application for a parking facility license invalidates such license;
- c. whether Defendants violated District of Columbia zoning regulations by charging Plaintiff and the Class monthly parking fees;

- d. whether Defendants violated District of Columbia zoning regulations by leasing parking to Non-Towers Customers;
- e. whether it was, or is, unlawful for Defendants to charge Plaintiffs and the Class for parking;
- f. whether Defendants' practices and regulatory violations violated the District of Columbia Consumer Protection Procedures Act ("DCCPPA");
- g. whether Defendants' were unjustly enriched by the practices complained of herein; and
- h. whether Plaintiffs and Class members are entitled to the monetary and injunctive relief demanded herein.

65. The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

66. Plaintiffs will fairly and adequately represent and protect the interests of absent members of the Class. They have retained counsel competent and experienced in complex class action litigation and have no interest adverse to any absent Class member.

67. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Because the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it virtually impossible for the Class members to seek redress for the wrongful conduct alleged. Plaintiffs know of no difficulty which will be encountered in the management of this litigation which would preclude its maintenance as a class action.

**COUNT I:**  
**VIOLATION OF THE DCCPPA, D.C. Code § 28-3901 *et seq.***  
**(Against All Defendants)**

68. Plaintiffs re-allege all previous paragraphs as if fully set forth herein.

69. The DCCPPA makes it unlawful, whether or not any consumer is in fact misled, deceived or damaged thereby, for any person to:

- a. represent that the person has a sponsorship, approval, status, affiliation, certification, or connection that the person does not have. D.C. Code § 28-3904(b);
- b. fail to state a material fact if such failure tends to mislead. D.C. Code § 28-3904(f);
- c. violate any provision of title 16 of the District of Columbia Municipal Regulations. D.C. Code § 28-3904(dd); or
- d. engage in any other trade practice in violation of the law of the District of Columbia. D.C. Code § 28-3905(k)(1).

70. The DCCPPA provides a private right of action to remedy and restrain these violations.

71. By charging Plaintiffs and the Class monthly parking fees without obtaining a proper license, Defendants falsely represented that they had “approval” or “certification” to do so, in violation of D.C. Code § 28-3904(b).

72. By failing to disclose the fact that they lacked a license to charge monthly fees for parking to Plaintiffs and the Class, Defendants failed to state a material fact (legal inability to charge fees for parking) in a manner tending to mislead, in violation of D.C. Code § 28-3904(f).

73. By operating a parking facility for profit or gain without a license, Defendants violated D.C. Code of Municipal Regulations title 16, § 3301.1(o), which is a predicate violation of D.C. Code § 28-3904(dd).

74. By charging Towers resident monthly parking fees and leasing parking to Non-Towers Customers in violation of District of Columbia zoning regulations, Defendants engaged in a trade practice in violation of laws of the District of Columbia, giving Plaintiffs and the Class a private right of action to restrain such violation, pursuant to D.C. Code § 28-3905(k)(1).

**COUNT II**  
**VIOLATION OF DISTRICT OF COLUMBIA ZONING REGULATIONS**  
**(Against All Defendants)**

75. Plaintiffs re-allege all previous paragraphs as if fully set forth herein.

76. D.C. Code § 6-641.09 makes it unlawful to use any building, structure, or land without obtaining a required certificate of occupancy permitting such use, or to otherwise use such building, structure, or land in violation of District of Columbia zoning regulations.

77. § 6-641.09 provides a private right of action to any neighboring property owner or occupant who is specially damaged by such use to prevent or abate such use.

78. By operating a commercial parking facility without a certificate of occupancy permitting such use, and otherwise in violation of D.C. Zoning regulations, Defendants are acting unlawfully under § 6-641.09.

79. Plaintiffs own leasehold estates in apartment units in the building neighboring the Towers parking facilities.

80. Plaintiffs have been specially damaged by Defendants' violations by being forced to pay unlawful monthly parking fees; being subjected to the increased congestion, noise, and

danger caused by Non-Towers Customers; and by being denied more desirable parking spaces in favor of Non-Towers Customers.

**COUNT III:  
UNJUST ENRICHMENT  
(Against All Defendants)**

81. Plaintiffs re-allege all previous paragraphs as if fully set forth herein.

82. By paying monthly parking fees to Defendants, Plaintiffs and the Class conferred a benefit on Defendants.

83. Defendants have not returned the monthly parking fees to Plaintiffs and the Class, and have therefore retained the benefit.

84. Defendants' failure to obtain a license to operate a parking facility for profit or gain, and operation of such a facility in violation of D.C. Zoning regulations prevented them from lawfully charging parking fees to Plaintiffs and the Class.

85. By violating zoning regulations, Defendants also have unclean hands. Under these circumstances, Defendants' retention of the benefit conferred by Plaintiffs and the Class is unjust.

86. Plaintiffs and the Class have no adequate remedy at law.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiffs, on behalf of themselves and the class, pray for judgment against Defendants as follows:

A. Determining that this action is properly maintainable as a class action, certifying Plaintiffs as Class representatives, and appointing Plaintiffs' counsel as Class counsel;

B. awarding treble damages, or \$1,500 per Class member per violation under the DC CPPA;

- C. awarding reasonable attorneys' fees;
- D. awarding punitive damages;
- E. determining that Defendants do not have a valid commercial parking license;
- F. enjoining Defendants from charging Class members monthly parking fees;
- G. enjoining defendants from leasing parking to Non-Towers Customers;
- H. awarding additional relief as may be necessary to restore to the Class money

which may have been acquired by means of Defendants' unlawful trade practices;

I. enjoining Defendants from operating a commercial parking facility in violation of D.C. Code § 6-641.09;

J. ordering the restitution of all monthly parking fees Plaintiffs and the Class have paid to Defendants in order to remedy Defendants' unjust enrichment;

K. preventing Defendants from retaliating against Plaintiffs and the Class due to the filing of this suit in violation of D.C. Code § 42-3505.02 by denying them parking spaces, raising their monthly parking fees, or otherwise taking adverse action against them; and

L. awarding any other relief the Court deems proper.

### **JURY DEMAND**

Plaintiffs demand a trial by jury of all issues so triable.



Dated: March 14, 2013

Respectfully submitted,

**FINKELSTEIN THOMPSON LLP**

/s/ \_\_\_\_\_

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