GERALDINE BROWN, and all others similarly situated, *et al.*, *Plaintiffs*, v. 246 ASSOCIATES LLC, *et al.*, *Defendants*.	COURT OF COMMON PLEAS PHILADELPHIA COUNTY CIVIL DIVISION NO. 251100203 **CLASS ACTION**

ORDER OVERRULING DEFENDANTS' PRELIMINARY OBJECTIONS

AND NOW this ___ day of _____, 2026, upon consideration of the Preliminary Objections raised by Defendants and Plaintiffs' opposition thereto, it is hereby **ORDERED** that Defendants' Preliminary Objections are **OVERRULED**. Defendants shall file an Answer within twenty days of this Order.

BY THE COURT:

_____

J.

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PLAINTIFFS' ANSWER TO DEFENDANTS' PRELIMINARY OBJECTIONS

Plaintiffs oppose Defendants' Preliminary Objections and in support of that opposition file the accompanying Brief, which is incorporated by reference herein. Plaintiffs further respond to the Preliminary Objections as follows:

1. Admitted.

2. Denied as stated. Upsal Garden is a U-shaped apartment complex with seven apartment towers labeled as "buildings" "A" through "G." Though they are labeled buildings, each apartment tower is connected by a common Basement Tunnel or first-floor.[1] *See* Compl. ¶ 20.

3. Admitted.

4. Denied as stated. To the extent that Paragraph 4 states a legal conclusion, no response is required. While Defendant 246 Associates LLC is listed as the record owner of the Property on the deed, Defendant Alan Lieberman is listed as the registered owner of the Property on Upsal Garden's rental licenses, and he holds himself out as the owner of the Property in eviction filings against residents of the Property. *See* Compl. ¶ 12.

5. Plaintiffs are without sufficient information to admit or deny the allegations in paragraph 5.

6. To the extent that Paragraph 6 states legal conclusions, no response is required. To the extent that Paragraph 6 alleges facts, they are denied as stated. Defendant Lieberman is listed as the registered owner of the Property on Upsal Garden's rental licenses and, according to a mortgage recorded against the Property on April 28, 2021 (Phila. Ct'y No. 53823604), one of the co-managing members of Defendant 246 Associates LLC. *See* Compl. ¶ 11.

[1] Defendants' structural engineer refers to the Basement Tunnel as the first-floor. *See* Defs.' Opp. to Pls.' PI Mot., Ex. D pg. 2.

7. To the extent that Paragraph 7 states legal conclusions, no response is required. It is admitted that REAL Properties Management is an unregistered business entity that provides property management services at Upsal Garden. Plaintiffs are without sufficient information to admit or deny that it does so "in house."

8. Admitted in part; denied in part. It is admitted that plaintiffs filed their complaint on October 31, 2025 and that it was accepted for filing on November 3, 2025. The complaint is a document that speaks for itself and any characterization of it is denied.

9. Denied. It is specifically denied that the complex's 144 apartments are not similarly situated for purposes of this action or relevant L&I violations. In the Unsafe Violation, L&I stated that the unsafe conditions are complex-wide and located in "all buildings." *See* Compl., Ex. A Violation CF-2025-089276 at 0002. Plaintiffs are without sufficient information to admit or deny the scope of any remediations.

10. Denied. Each class representative plaintiff resides in a separate unit within the same apartment complex, Upsal Garden Apartments. Each plaintiff avers to the serious, unsafe, complex-wide conditions described in the Unsafe Violation. *See* Compl., Ex. A Violation CF-2025-089276 at 0002. The complaint is a document that speaks for itself and any characterization of it is denied.

11. The complaint is a document that speaks for itself and any characterization of it is denied.

12. The complaint is a document that speaks for itself and any characterization of it is denied.

13. The complaint is a document that speaks for itself and any characterization of it is denied. Paragraph 13 states a legal conclusion to which no response is required. By way of

further response, as a matter of law and equity, Plaintiffs and tenants are entitled to restitution and the disgorgement of this unlawfully collected rent. Defendants' reliance on *Rittenhouse v. Barclay White, Inc.*, 4625 A.2d 1208 (Pa. Super. 1993) and the unpublished opinion of Judge Bradley Moss in *Richetti v. Ellis*, 174 A.3d 104 (Pa. Super. 2017) is misplaced. Plaintiffs' claims for disgorgement are based upon their right to a refund of unlawfully collected rents as a form of restitution damages under the UTPCPL. *Com. by Corbett v. Ted Sopko Auto Sales & Locator,* 719 A.2d 1111, 1114 (Pa. Commw. Ct. 1998) (holding that restitution is available under UTPCPL); *Nexus Real Est., LLC v. Erickson,* 174 A.3d 1, 6 (Pa. Super. 2017); *Pasley et al. v Eastwick Joint Venture, LLC et al.* (C.C.P. Phila. No. 211201045) (overruling Defendants' preliminary objection that disgorgement under a UTPCPL theory was barred by *Richetti*). *See also Hughey v. Robert Beech Associates*, 378 A.2d 425, 427 (Pa. Super. Ct. 1977) ("Where one has in his hands money which in equity and good conscience belongs and ought to be paid to another, an action for money had and received will lie for the recovery thereof.").

14. Denied. Defendants were required to obtain a Make-Safe Permit to begin making repairs. The Make-Safe Permit process was not issued until November 11, 2025.[2] Plaintiffs lack sufficient information to admit or deny the facts alleged in paragraph 14. To the extent that paragraph 14 states legal conclusions, no response is required. By way of further response, see Plaintiffs' accompanying Brief.

15. Paragraph 15 states a legal conclusion to which no response is required.

16. No response is required.

[2] *See* "Permit Number: CP-2025-005606," L&I Property History, available at: https://li.phila.gov/property-history/search/permit-detail?address=246%20W%20UPSAL%20ST&Id=CP-2025-005606 (Last accessed Dec. 18, 2025).

17. Paragraph 17 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

18. Paragraph 18 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

19. Paragraph 19 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

20. Paragraph 20 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

21. Paragraph 21 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

22. Paragraph 22 states a legal conclusion to which no response is required. To the extent Paragraph 22 states factual averments, they are specifically denied. By way of further response, see Plaintiffs' accompanying Brief.

23. Paragraph 23 states a legal conclusion to which no response is required. To the extent Paragraph 23 states factual averments, they are specifically denied. By way of further response, see Plaintiffs' accompanying Brief.

24. Paragraph 24 states a legal conclusion to which no response is required. To the extent Paragraph 24 states factual averments, they are specifically denied. By way of further response, see Plaintiffs' accompanying Brief.

25. Paragraph 25 states a legal conclusion to which no response is required. To the extent Paragraph 25 states factual averments, they are specifically denied. By way of further response, see Plaintiffs' accompanying Brief.

26. Paragraph 26 states a legal conclusion to which no response is required. To the extent Paragraph 26 states factual averments, they are specifically denied. By way of further response, see Plaintiffs' accompanying Brief.

27. Paragraph 27 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

28. Paragraph 28 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

29. No response is required.

30. Paragraph 30 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

31. Paragraph 31 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

32. Paragraph 32 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

33. Paragraph 33 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

34. Paragraph 34 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

35. Paragraph 35 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

36. Paragraph 36 states a legal conclusion to which no response is required. The complaint is a document that speaks for itself and any characterization of it is specifically denied. By way of further response, see Plaintiffs' accompanying Brief.

37. Paragraph 37 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

38. Paragraph 38 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

39. Paragraph 39 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief.

40. Paragraph 40 states a legal conclusion to which no response is required. By way of further response, see Plaintiffs' accompanying Brief

WHEREFORE, Defendants' Preliminary Objections should be overruled.

Dated: December 19, 2025

Respectfully submitted,

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PLAINTIFFS' BRIEF IN OPPOSITION TO DEFENDANTS' PRELIMINARY OBJECTIONS

Plaintiffs Geraldine Brown, Carl Williams, and William Dennis Scott, on behalf of themselves and all others similarly situated, by and through their undersigned attorneys, answer and oppose Defendants' Preliminary Objections and in support of that opposition rely upon this

Brief in Opposition to Defendants' Preliminary Objections to Plaintiffs' Class Action Complaint.

I. MATTER BEFORE THIS COURT

The matter before this court is the Preliminary Objections of Defendants 246 Associates, LLC, Alan Lieberman, and Real Properties Management, and Plaintiffs' response in opposition thereto. Defendants ask that this Court dismiss Plaintiffs' complaint based on two flawed premises: that Plaintiffs lack standing due to irrelevant class certification arguments, and that the Rent Withholding Act provides their exclusive remedy for their claims. Defendants' first preliminary objection asserts that Plaintiffs lack standing, yet they offer no real argument that Plaintiffs—tenants of Upsal Garden harmed by Defendants' failure to maintain safe and habitable premises, resulting in a complex-wide Unsafe Violation—lack a substantial, direct, and immediate interest in this litigation. Instead, Defendants conflate standing with class certification and argue that the proposed class lacks commonality, an argument that is both premature and meritless. The court cannot consider class certification until the close of pleadings, and even then, Plaintiffs' claims arise from a single structural hazard affecting all buildings, which give rise to a common question of facts and law, not disparate conditions. Likewise, Defendants' second preliminary objection—that the Rent Withholding Act bars Plaintiffs' claims—also fails. This argument is contrary to Pennsylvania Supreme Court precedent: the Act is permissive, not exclusive, and does not foreclose statutory, contractual, or equitable remedies. For these reasons, Defendants' objections must be overruled.

II. STATEMENT OF QUESTIONS INVOLVED

1. Do Plaintiffs possess standing to maintain their causes of action against Defendants?

Suggested Answer: Yes.

2. Are Defendants' arguments about class commonality premature and meritless?

Suggested Answer: Yes

3. Does the existence of a potential remedy under the Rent Withholding Act preclude Plaintiffs' claims?

Suggested Answer: No

III. BACKGROUND

Plaintiffs Geraldine Brown, Carl Williams, and William Dennis Scott reside in their respective rental units at Upsal Garden, an apartment complex that has been certified "unsafe" since August 2025 due to complex-wide hazardous conditions. *See* Compl., ¶ ¶ 4-6; 29-35. Defendants jointly own and manage Upsal Garden, a 144-unit U-shaped apartment complex with seven towers – labeled "A" through "G" – connected by a Basement Tunnel a/k/a the first-floor accessible to all residents. *See* Compl., ¶¶ 10-18, Defs.' POs ¶¶ 4-7; Defs.' Opp. to Pls.' PI Mot., Ex. H.

On August 22, 2025, the Philadelphia Department of Licenses and Inspections ("L&I") issued a Notice of Violation declaring Upsal Garden an "unsafe structure" due to dangerous conditions in "all buildings," including a deteriorated stone foundation, fractured exterior masonry walls, and deteriorated interior floor joists. *See* Compl., Ex. A, Violation No. CF-2025-089276 (the "Unsafe Violation") at 0002-3. In the Unsafe Violation, L&I "certifie[d] that the violations are a condition of immediate danger or hazard to health safety and welfare which requires immediate compliance and/or are intentional," advised that "if these violations [were] not corrected by 9/26/25 the Department will act as soon as reasonably possible to vacate and/or

demolish the unsafe structure." *Id*. Per the Unsafe Violation, the unsafe conditions are not isolated to one tower of the complex but rather located in "all buildings" across the complex. *Id.*

To this day, the Unsafe Violation remains open, and the underlying unsafe conditions continue to threaten the safety of all residents throughout the complex.[3] Indeed, Defendant's own structural engineer found deteriorating floor joists showing "signs of advanced deterioration…" that "raises concerns about potential loss of load-carrying capacity in localized areas." Defs.' Opp. to Pls.' PI Mot., Ex. D, pp. 2-3. Defendants have an obligation – pursuant to Philadelphia and Pennsylvania law and the promises made in tenants' leases, in their Certificates of Rental Suitability, and in public statements – to maintain the safety and habitability of the Property and promptly resolve any safety hazards. *See* Compl., ¶¶ 19-24; ¶¶ 64-71; Phila. Code § 9-3903(d). Defendants violated this obligation by allowing the complex-wide, unsafe conditions described in the Unsafe Violation to arise in the first instance and then again by failing to promptly resolve the violation. *See* Compl., ¶ 76.

While the Unsafe Violation sits unresolved, Defendants have violated Plaintiffs' rights in a second and distinct way: by demanding and collecting rent that is not legally owed. Since September 22, 2025, Defendants have been statutorily barred from collecting rent.[4] And yet, each month since then, Defendants have demanded, charged, and collected rent from Plaintiffs and other tenants. *See* Compl., ¶ 81-82. Defendants' conduct amounts to an unfair and deceptive act and practice that violates the Pennsylvania Unfair Trade Practices and Consumer Protection

[3] L&I maintains a public database of L&I violations that tracks when violations are closed. As of December 12, 2025, the L&I database continues to show the Unsafe Violation as "open." See "Case Number: CF-2025-089276," L&I Property History, available at: https://li.phila.gov/property-history/search/violation-detail?address=881099015&Id=CF-2025-089276 (Last accessed Dec. 19, 2025).

[4] Once issued the Unsafe Violation on August 22, 2025, Defendants were required to correct the Unsafe Violation within thirty days – by September 22, 2025. Phila. Code §9-3903(d). By failing to comply with that requirement, Defendants lost the right to collect rent. Phila. Code § 3901(4)(e); 9-3903(d).

Law ("UTPCPL"), which gives rise to a "distinct cause of action for consumer protection." *Fazio v. Guardian Life Ins. Co. of Am.*, 62 A.3d 396 (Pa. Super. 2012).

IV. ARGUMENT

Defendants seek to dismiss the Complaint with two baseless preliminary objections. The Court should overrule them both.

A. Standard of Review

When ruling on preliminary objections, this Court accepts as true "all material facts set forth in the challenged pleadings, . . . as well as all inferences reasonably deducible therefrom." *See Godlove v. Humes*, 303 A.3d 477, 481 (Pa. Super. 2023) (quoting *Fiedler v. Spencer*, 231 A.3d 831, 835-36 (Pa. Super. 2020)). When preliminary objections "seek [] dismissal of a cause of action"—as Defendants' do—then the Court should only sustain them "in cases in which it is clear and free from doubt that the pleader will be unable to prove facts legally sufficient to establish the right to relief." *Id.* Any doubt about whether a cause of action exists should be resolved in favor of the Plaintiff. *See id.*

B. Plaintiffs Have Standing and Defendants' First Preliminary Objection Should Be Overruled

a. Plaintiffs Have Standing

Defendants' first preliminary objection conflates whether Plaintiffs should proceed as individuals or as a class—a question that this court cannot consider until the class certification stage—with whether Plaintiffs have standing. Defs.' POs at 13 ("Plaintiffs cannot establish standing to proceed as a singular class, whereby depriving this Court of the jurisdiction to proceed"). Named Plaintiffs represent a class of Upsal Garden tenants who leased a rental unit during the Noncompliance Period and were harmed when Defendants failed to maintain the premises in a habitable, legal and safe manner, resulting in the complex-wide Unsafe Violation.

See generally Compl. There is no serious dispute that Plaintiffs have standing to seek remedies for their redress. *Johnson v. Am. Standard*, 8 A.3d 318, 333 (2010) ("A party must be aggrieved in order to possess standing to pursue litigation. Aggrievability is obtained by having a substantial, direct, and immediate interest in proceedings or litigation.").

Indeed, Defendants never actually make a standing argument. And while Plaintiffs' grievances arise out of Defendants' same practices and conduct and are correctly pled as a class action, that question is not properly raised as a preliminary objection under Pa. R.C.P. 1028(a) and should be dismissed.[5] *See infra*.

b. Defendants' Challenge to Class Certification is Both Premature and Meritless

Rather than standing, what Defendants actually argue is that there is not commonality among the proposed class. Defs.' POs at 13. This objection should be overruled as a procedural matter, because "preliminary objections are not the proper procedure for attacking the merits of class action averments." Pa. R.C.P 1707, Explanatory Comment. This court cannot consider class certification questions until after pleadings are closed and a hearing on class certification is held. *Sears v. Corbett*, 49 A.3d 463, 485–86 (Pa. Commw. Ct. 2012), *rev'd on other grounds*. Plaintiffs must be afforded the "opportunity to sustain their burden of proving that this case is properly maintainable as a class action." *Scott v. Adal Corp.*, 419 A.2d 548, 551–52 (Pa. Super. 1980). Rule 1705 of the Pennsylvania Rules of Civil Procedure further states that "[i]ssues of fact with respect to the Class Action Allegations may not be raised by preliminary objections but shall be raised by the answer." Impermissibly, this is exactly what Defendants do here: raise

[5] Even if this court should later decline to certify a class in this matter, the named Plaintiffs would still have standing to proceed with their individual cases. *Luitweiler v. Northchester Corp.*, 319 A.2d 899, 903, n.7 (Pa. 1974). Plaintiffs in a class action need to plead their grievances and meet the same standing requirements as ordinary litigants. *See Nye v. Erie Ins. Exch.*, 470 A.2d 98, 100 (Pa. 1983). Here, Defendants by arguing that Plaintiffs' claims are too disparate to proceed as a class, implicitly concede that Plaintiffs at least have standing to pursue "their subsect of claims" based on their "unique set of maintenance needs." Defs.' POs at 13.

factual questions about commonality in their preliminary objections that should be raised in an answer.

Though the analysis should end there, Defendants' underlying substantive argument is also groundless. Defendants misrepresent Plaintiffs' claims and rely on a single case, *Allegheny County Housing Authority v. Berry*, that bears little resemblance to the facts here. 487 A.2d 995 (Pa. Super. 1985). In *Allegheny*, plaintiff-tenants sought to certify a class and argued that the uninhabitability of individual tenants' respective apartments gave rise to a common question of fact to justify certification. *Id.* at 996-97. The *Allegheny* court declined to certify the class, reasoning that the relevant facts were too "disparate" and "personalized" and that different proof would be needed for each tenant to prove their habitability claim because various conditions, such as mold or pests, may arise from different "origin[s]." *Id*. at 997-998. Furthermore, the Defendant Housing Authority may have different defenses depending on individual tenants' conduct or liability. *See id*.

By contrast, the conditions at the heart of this case are not unit-specific habitability conditions, but rather a complex-wide safety hazard. The gravamen of this matter is the Unsafe Violation issued by L&I on August 23, 2025 that states that the unsafe conditions – deteriorated foundation, fractured exterior walls, and deteriorated interior floor joists – are located in "all buildings." Compl., Ex. A, at 0002. The safety hazards arising from these conditions are not confined to one unit or one building of the complex; to the contrary, the conditions are located in the foundation of the property and in the basement tunnel that undergirds every building in the complex. See Compl. ¶ 20. Indeed, Defendants' own engineer observed in open areas in the first- and second-floor framing that "multiple floor joists exhibited signs of advanced deterioration, including wood rot, moisture damage, and localized decay" that "appears

consistent with long-term water infiltration and lack of ventilation" such that "it is likely that concealed portions [of the floor framing] may exhibit similar or varying degrees of damage." Defs.' Opp. to Pls.' PI Mot., Ex. D. The structural engineer then directed the Defendants to take immediate steps to address the complex-wide hazard by "remov[ing] floor finishes and subflooring . . . across *all* units." *Id.* (emphasis added). The numerous photographs and notes included in Defendants' engineer's inspection demonstrate widespread damaged and weakened structural joists throughout Upsal Garden.

Unlike the plaintiff-tenants in *Allegheny*, Mr. Williams—who lives in Building E—would not require a "different manner of proof" than Ms. Brown—who lives in Building B—since their claims arise from the same "origin"—that is, the issues addressed in the Unsafe Violation that threaten the structural integrity of the entire apartment complex. *Allegheny*, at 997-8. Nor can Plaintiffs be found responsible for these complex-wide unsafe conditions. *See id*. Each of the putative class members' "legal grievances are directly traceable to the same . . . [unsafe] conduct" and, as a result, this class is suitable for certification. *Sommers v. UPMC*, 185 A.3d 1065, 1076 (Pa. Super. 2018) ("a common issue of fact or law 'will generally exist if the class members' legal grievances are directly traceable to the same practice or course of conduct on the part of the class opponent.'").

Moreover, Defendants' focus on Plaintiffs' warranty of habitability claim ignores Plaintiffs' claims under the Unfair Trade Practices and Consumer Protection Law that beg the common question of whether Defendants breached the promises made in the tenants' leases and in the Certificates of Rental Suitability by failing to maintain the safety of the Property. This type of contractual interpretation question "generally give[s] rise to common questions, for purposes of class certification." *Baldassari v. Suburban Cable TV Co.,* 808 A.2d 184 (Pa. Super.

2002). Similarly, Plaintiffs' unjust enrichment and equitable disgorgement claims raise the common question of whether Defendants violated the law by charging and collecting rent that was not validly owed. That question too is a common question of law and fact. *See Luitweiler v. Northchester Corporation*, 319 A. 2d 899, 903 (Pa. 1974) (finding class of tenants asserting claims related to rent and utility billing was likely suitable for certification, pending determination of the numerosity requirement). In sum, the Defendants' first preliminary objection is not based in law, fact, or reason and must be overruled.

C. <u>The Rent Withholding Act is Not the Exclusive Remedy at Law for Claims Related to Rental Habitability and the Second Preliminary Objection Should be Overruled</u>

Defendants argue that Plaintiffs could have brought a claim under the Rent Withholding Act, 35 P.S.A. §1700-1, and that the existence of a possible remedy under the Rent Withholding Act compels the dismissal of the entire Complaint. This second preliminary objection is both wrong and misguided.

First, longstanding Pennsylvania Supreme Court precedent establishes that the Rent Withholding Act *is not* an exclusive remedy that would foreclose Plaintiffs' claims in this case. Citing *DeLuca v. Buckeye Coal Co.*, 345 A.2d 637 (1975), Defendants argue that if there is an adequate remedy at law, then equitable relief is not available. But this principle only applies where the statutory remedy is "mandatory and exclusive," rather than "permissive or alternative." *DeLuca*, 345 A.2d at 640. In *DeLuca* itself, the Court held that the statutory remedy at issue in that case was not "exclusive and mandatory," and therefore there was no issue about whether equitable relief might lie. Here, there is no language in the Rent Withholding Act to suggest that the Legislature intended that Act to be the exclusive remedy where a residential rental property is unfit for human habitation. *See* 35 P.S.A. §1700-1. To the contrary, and in response to a similar argument that the Rent Withholding Act represented an exclusive remedy

for tenants complaining about property conditions, the Pennsylvania Supreme Court expressly stated that the Rent Withholding Act "does *not* purport to be the exclusive tenant remedy for unsavory housing, nor does it attempt to replace or later certain limited and already existing tenant remedies… ." *Pugh v. Holmes*, 405 A.2d 897, 904 (1979) (emphasis added). In short: the Rent Withholding Act is not an exclusive remedy and thus the potential existence of that remedy does not preclude the availability of equitable relief for Plaintiffs.

Second, Plaintiffs seek a remedy that the Rent Withholding Act does not provide: disgorgement of the rent money that has already been unlawfully demanded and collected by Defendants. Defendants' arguments miss this critical point. The voluntary Rent Withholding Act permits tenants to withhold rent but offers no remedy to tenants who require restitution to be made whole. The Pennsylvania Supreme Court has repeatedly held that "equitable relief is available to prevent a multiplicity of lawsuits." *Luitweiler*, 319 A.2d at 902 (holding that tenants subjected to continuing unlawful rent surcharges had no adequate remedy at law). Plaintiffs are thus entitled to seek equitable relief in this case to make themselves whole, regardless of the Rent Withholding Act.

Third, even if the Rent Withholding Act was an exclusive remedy—which it is not—Defendants' argument ignores that Plaintiffs assert a variety of claims under the law, not just the equitable claims of unjust enrichment and Plaintiffs' prayers for injunctive relief and equitable disgorgement. Plaintiffs have also brought claims for violation of the Philadelphia Certificate of Rental Suitability Law, the Unfair Trade Practices and Consumer Protection Law, and breach of contract. Even under Defendants' incorrect interpretation, nothing in the Rent Withholding Act bars the Upsal Garden tenants from also seeking relief for violations of these laws or their leases.

In sum, when faced with such an "immediate danger" as the Unsafe Violation and this Complaint describe, neither the law nor the circumstances in this case limit the remedies of the Upsal tenants to withholding their rent under the Rent Withholding Act and hoping for the best. The permissive existence of that potential remedy does not suggest that any of Plaintiffs' claims, let alone their entire Complaint, should be dismissed.

V. CONCLUSION AND RELIEF SOUGHT

Defendants' preliminary objections are legally unsupportable. They should be overruled.

Dated: December 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that, consistent with Pa. R. Civ. P. 205.4(g)(1)(ii), Plaintiffs' Opposition to Defendants' Preliminary Objection to Plaintiffs' Complaint was electronically filed with the Philadelphia Court of Common Pleas electronic filing system website, which effectuates services on counsel of record.

Dated: December 19, 2025

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