CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

KATHERINE FUNK, *et al.*,	:	
Plaintiffs,	:	
v.	:	Case No. 448050V
TWO MEN AND A TRUCK INTERNATIONAL, INC., *et al.*	:	
Defendants.	:	

MEMORANDUM OPINION

I. Introduction

This putative class action case[1] brought by plaintiff Katherine Funk ("Plaintiff" or "Ms. Funk") involves claims for relief under the Maryland Household Goods Movers Act ("MHGMA"),[2] the Maryland Consumer Protection Act ("MCPA"),[3] and for unjust enrichment/restitution ("Amended Complaint"). On October 18, 2018, the court heard argument on motions filed by defendants to dismiss the First Amended Class Action Complaint and Request for Jury Trial [DE # 43,44].[4]

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1 Briefing on the class certification question will be addressed at the Scheduling Conference set for December 14, 2018.

2 Md. Code Ann. Com. Law. ("CL") §14-3101, *et seq.*

3 CL §13-101, *et seq.*

4 Plaintiff opposed the motions [DE # 47,48], and reply [DE # 49,50] and sur-reply [DE # 59] memoranda were also filed.

61

At the conclusion of the October 18th hearing, the court took the matter under advisement. For reasons now explained below, the motions will be granted in part and denied in part as related to defendants Potomac 370 LLC ("Potomac") and Two Men and a Truck International, Inc. ("International"). As related to defendants Chesapeake Bay Movers, Inc. ("Chesapeake") and Frankin' Awesome Movers, LLC ("Frankin"), the motion will be granted, and the claims against them will be dismissed. Claims against the as-yet-unidentified principals/owners of all defendants will also be dismissed.

II. Standard of Review

When reviewing a motion to dismiss a complaint for failure to state a claim, the court "is to assume the truth of the factual allegations of the complaint and the reasonable inferences that may be drawn from those allegations in the light most favorable to plaintiff." *Heavenly Days Crematorium, LLC v. Harris, Smariga & Assocs.*, 433 Md. 558, 568 (2013). Documents referenced in a complaint may be considered as supplementing the complaint, and properly considered by the court in ruling on the motion, without converting that motion into one for summary judgment motion. *See e.g., Margolis v. Sandy Spring Bank,* 221 Md. App. 703, 710, n. 4 (2015) (where plaintiff "expressly referred to [a Deposit Account Agreement] and repeatedly alleged that its disclosures did not satisfy the" Consumer Protection Act, the court properly regarded the agreement as "simply

supplementing the allegations in the complaint.").[5] Here, the court treats the motions only as motions to dismiss, not as motions for summary judgment.

III. Background

A. Overview of the Amended Complaint

The Amended Complaint, which seeks class action certification under Rule 2-231,[6] alleges wrongdoing by multiple defendants, including (i) Potomac, the local "Two Men and a Truck" franchisee that actually moved Ms. Funk's possessions; (ii) International, the Michigan-based franchisor (registered to do business in Maryland) which controls the "Two Men and a Truck" trademark; (iii) Frankin, a Columbia, Maryland-based Two Men and a Truck franchisee; (iv) Chesapeake, an Annapolis, Maryland-based Two Men and a Truck franchisee; and (v) the as-yet-unidentified "John Doe and Jane Doe" owners of each of the entity defendants.[7]

According to the Amended Complaint, Ms. Funk used defendant International's website to obtain an estimate for an intrastate move between residences in Bethesda. *See* Am. Compl. at ¶39. She then received an email from

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5 In ruling on this motion, the court has considered only the exhibits attached to the Amended Complaint, and the portions of the Franchise Agreement attached as Exhibit A to the Memorandum filed by the Non-Potomac Defendants. See *Advance Telecom Process LLC*, 224 Md. App. 164, 181-82 (2015) (trial court's consideration of the written Teaming Agreement, referenced in the Complaint but provided with a motion to dismiss, did not convert the motion into one for summary judgment).

6 Plaintiff seeks to represent a class of all consumers in Maryland who have used the entity defendants' services for intrastate moves. *See* Am. Compl. ¶4.

7 Defendants International, Frankin, and Chesapeake are collectively referenced herein as the "Non-Potomac Defendants").

International, directing her to contact her local mover, defendant Potomac. *Id.* at ¶37.

The Amended Complaint alleges that on September 6, 2017, Ms. Funk completed an inventory form identifying the number and types of items to be moved, after which she spoke to a representative of Potomac to confirm the information on her inventory form. *Id.* at ¶¶39, 40. One day later, Ms. Funk received an estimate of costs from Potomac projecting a charge of $250 per hour and a total estimated cost for the move ranging from $1,750 to $2,250. *See* Am. Compl. Ex. 2. As alleged in the Amended Complaint, the estimate did not expressly indicate whether the range of prices was to be binding or nonbinding. *Id.* The estimate also included a consumer guide stating that International follows Virginia regulations when providing services in Maryland. *See* Am. Compl. Ex. 1.

On September 7, 2017, Ms. Funk paid Potomac a deposit of $100, and after the move, Potomac charged $3,223 to Ms. Funk's credit card.[8] *See id.* at ¶¶41, 48. According to Plaintiff, Potomac did not deliver her belongings until a day after the scheduled move, demanded an additional payment of $1,323 due to services provided on the second day, and refused to resolve her claim of lost and damaged property because of her alleged lack of payment. *See id.* at ¶¶45, 46. Ms. Funk exchanged phone calls and emails with Potomac in an effort to resolve her dispute, *id.* at ¶49; however, when those attempts failed, Ms. Funk contacted International, with whom she maintained communication until this suit commenced. *Id. at* ¶¶49, 50.

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8 Funk asserts that she suffered actual damages in the amount of $973.

Plaintiff alleges that her decision to use Two Men and a Truck for her move was based, at least in part, on the existence of a national organization. *Id.* at ¶57. Moreover, the Amended Complaint alleges, Ms. Funk was led to believe that International and Potomac were one and the same organization because she used International's website to obtain services, used a toll-free number to contact defendants, and used the email address, customercare@twomen.com, to communicate with Potomac and International. *Id.* at ¶¶55, 56. Indeed, a representative of International's customer care team, it is alleged, at some point provided his/her opinion on the non-applicability of the MHGMA to Plaintiff's move. *Id.* at ¶53.

The Amended Complaint does not allege that Ms. Funk had any dealings whatsoever with defendants Chesapeake or Frankin. It does allege, however, that a non-party, Donna Whitaker, used International's website to obtain an estimate for her intrastate move. *Id.* at ¶61. The Amended Complaint alleges that Ms. Whitaker was directed to contact Chesapeake,[9] and that Chesapeake provided her with a verbal estimate of $650, and then a written estimate in a range between $495 to $855. *Id.* Ms. Whitaker, it is alleged, was ultimately charged $1,028.48.[10] *Id.* at ¶71. Ms. Whitaker's estimate is attached to the Amended Complaint as Exhibit 3.

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9 Chesapeake is a successor entity to Frankin and has taken over its franchise operations. Defs. Mot. Dismiss 4.

10 It is asserted that Ms. Whitaker suffered actual damages in the amount of $173.48.

Plaintiff alleges that International, through its franchise system, exerted sufficient control over the local franchisees, including Potomac, Chesapeake, and Frankin, so as to render International responsible for violations committed by its franchisees. For example, Plaintiff posits that the franchise agreements between International and the other entity defendants require the franchisees to use, among other things, the same logos, website, graphics, and computer operating system throughout Maryland. *See id.* at ¶22. According to Plaintiff, International controlled most, if not all, aspects of its franchisees' operations including "color and design of the store, who to hire, how to advertise, [and] what forms to use." *Id.* at 24. Moreover, Plaintiff alleges, the detailed requirements also implicate the John Doe and Jane Doe defendants as they had knowledge of practices that harmed Plaintiff. *Id.* at 26.

B. The Counts of the Amended Complaint

With respect to the specific claims asserted in the Amended Complaint, Plaintiff alleges in *Count I* that defendants have violated and continue to violate the MHGMA by not clearly indicating whether an estimate was/is binding or nonbinding, exceeding the statutorily limited charge for a binding estimate, and by failing to identify the respective entity's resident agent on the documentation supplied to Plaintiff. In *Count II*, Plaintiff alleges that defendants, through their MHGMA violations, committed unfair and deceptive trade practices, in violation of the MCPA.

In *Count III*, Plaintiff alleges that the entity defendants were unjustly enriched because they accepted illegal charges, which would be inequitable for

them to retain. And, in *Count IV*, Plaintiff alleges that the John Doe and Jane Doe defendants were similarly unjustly enriched by the entity defendants collecting amounts in excess of the statutory maximum, and that it would be inequitable to allow them to retain such unjust gains.

C. Summary of the Motions to Dismiss

All defendants have moved to dismiss the Amended Complaint. According to defendant Potomac, the Amended Complaint fails to state a claim under the MHGMA because (i) the estimate it provided to Ms. Funk was a non-binding estimate on its face, and the statute does not require it to state that it is "nonbinding;" and (ii) Potomac was allowed to charge more than the estimated amount, and Plaintiff's failure to allege that the additional charges were not due to circumstances beyond Potomac's control or reasonably anticipated is a fatal pleading flaw. *See* Def. Potomac Mot. Dismiss 5-6. Continuing, Potomac claims that Plaintiff's failure to state a claim under the MHGMA precludes a claim under the MCPA, because any MCPA violation is dependent upon a MHGMA violation. *Id.* at 7. As related to the unjust enrichment claim, Potomac asserts that when parties have an express contract, unjust enrichment is unavailable, and that in the absence of fraud there is no basis to assert a claim against the individual owners. *Id.* at 8. Moreover, and in any event, Potomac posits, this court lacks subject matter jurisdiction because of the small amount in controversy. *Id.* at 13-14. Plaintiff disputes each of Potomac's contentions, as explained further below.[11]

[11] Plaintiff also notes that Potomac has failed to address the argument that its invoice fails to disclose the name of Potomac's resident agent as required under the MHGMA, CL §14-3104(2)(i).

The Non-Potomac Defendants, in addition to asserting some of the same arguments raised by Potomac, challenge Plaintiff's standing to assert any claims against them. They argue that Plaintiff did not contract with them, and because they neither moved Plaintiff's belongings, nor charged her a fee, they are not subject to claims under the MHGMA. *See* Defs. Mot. Dismiss 7. Furthermore, according to the Non-Potomac Defendants, the mention of Ms. Whitaker's experience with Chesapeake does nothing to bolster Plaintiff's standing to assert a claim against them, and the request to certify the case as a class action does not strengthen the absence of standing under the facts existing here. *Id.* at 12. Finally, according to International, it is a mere franchisor, and there is no basis for asserting a claim against it either directly or based on an agency theory. *Id.* at 15-16. Plaintiff disputes each of the Non-Potomac Defendants' contentions, as explained further below.

IV. Discussion – Claims Against Potomac And Its Owners

A. The MHGMA and MCPA Claims

The MHGMA, CL § 14-3101 et seq., is at the heart of Plaintiff's claims against all defendants and is the starting point for the court's analysis.[12] That

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[12] In addition to Maryland, numerous other states have enacted legislation to address issues related to the intrastate move of household goods. *See e.g.*, Mich. Comp. Laws Ann. § 477.7b (1) (West 2015); Nev. Rev. Stat. § 706.442(1)-(2) (2017); N.J. Stat. Ann. § 45:14D-29(a) (West 1998); Tex. Transp. Code Ann. § 643.153(b)(2) (West 2018); Va. Code Ann. § 46.2-2157(A)(2), (4) (West 2006); Wash. Rev. Code Ann. § 480-15-630 (West 2018). State action to address wholly intrastate activity in this area followed deregulation and legislation at the federal level which affected interstate moves. In 1980, the federal government enacted the Household Goods Transportation Act of 1980 to reduce economic regulations of trucking operations. *See* Andrew Downer Crain, *Ford, Carter, and Deregulation in the 1970s*, 5 J. Telecomm. & High Tech. L. 413, 436 (2007). Prior to the enactment of the federal statute, moving companies filed their rates with a

statute, originally enacted in 2002, was amended in 2011 to add the substantive estimate provisions upon which Plaintiff relies.[13]

As now codified, the MHGMA imposes obligations on a "[h]ousehold goods mover," defined as "a person who provides household goods moving services." CL § 14-3101(e). As relevant here, "[h]ousehold goods moving services means the loading, packing, moving, transporting, storing while transporting, unloading, or otherwise taking possesion or control from a consumer of household goods for the

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federal agency and it was illegal for moving companies to give binding estimates. *Id.* The federal Household Goods Transportation Act, however, provided pricing freedom to moving companies and also allowed them to "guarantee pick-up and delivery times." *Id.*

[13] *See* 2011 Md. Laws 1760. According to its Preamble, the 2011 Act was:

> FOR the purpose of requiring a household goods mover to provide a written estimate to a consumer before providing household goods moving services for an intrastate move; specifying the contents of the written estimate; providing that a consumer who receives a binding estimate may not be required to pay more than a certain price for certain household goods moving services; providing that a consumer who receives a nonbinding estimate may not be required to pay more than a certain percentage of a certain price for certain household goods moving services, plus certain excess charges; authorizing a consumer to waive the right to receive a written estimate under certain circumstances; and generally relating to the regulation of household goods movers.

Id. The "Fiscal and Policy Note" from the Maryland Department of Legislative Services describing the bill states that it "requires a household goods mover to provide a written estimate containing specified information to a consumer before providing household goods moving services for an intrastate move. A consumer that receives a binding estimate from a household goods mover may not be required to pay more than the stated estimated total price for the services described in the estimate." 2011 Md. Legis. Serv. H.B. 1134 (West).

purpose of moving them to another location at the direction of the consumer for a fee." CL § 14-3101 (f)(1).

Subject to the consumer's right to waive receipt of a written estimate, CL §14-3103(e) provides that "a household goods mover shall provide a written estimate to a consumer before providing household goods moving services for an intrastate move." CL §14-3103 (b). With respect to the specifics of the estimate, the statute provides as follows:

> (c) The written estimate shall:
>
> (1) Separately identify each household goods moving service that the household goods mover will provide and the price for each service;
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> (2) Separately identify each fee that the consumer will or may be required to pay;
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> (3) State the estimated total price;
>
> (4) State and time and method of payment for the household goods moving services; and
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> (5) Indicate clearly whether the estimate is binding on the consumer and household goods mover.

CL § 14-3103(c). A consumer who receives a binding estimate from a household goods mover may not be required to pay more than the total price stated in the estimate for the household goods moving services described in the estimate. CL § 14-3103(d)(1). And, "[a] consumer who receives a nonbinding estimate from a household goods mover may not be required to pay more than 125% of the estimated total price stated in the estimate for the household goods moving services described in the estimate, plus any applicable excess charges." CL § 14-31-3(d)(2).

A violation of the MHGMA "is an unfair or deceptive trade practice within the meaning of [the MCPA] and is subject to the enforcement and penalty provisions contained [therein]." CL §14-3105(a). In addition, "a household goods mover that violates [subtitle 14] is subject to any other civil or criminal action provided by law." CL §14-3105(b).

Here, Plaintiff asserts claims under the MHGMA against Potomac, as well as against the Non-Potomac Defendants. Because it is undisputed that Potomac was both the entity with which Plaintiff contracted, and the entity which actually moved her goods, there is no question about Potomac's status as a "household goods mover" under the MHGMA. Potomac claims, however, that Plaintiff has nevertheless failed to state a claim against it because the estimate Potomac provided to Ms. Funk was apparent on its face to be non-binding, that no particular language was needed to "indicate clearly whether the estimate [was] binding," CL §3103(c)(5) and, the absence of identifying language necessarily rendered the estimate "non-binding." Moreover, according to Potomac, Plaintiff's failure to allege that the excess charges were not permissible defeats Plaintiff's claims.

Potomac's arguments cannot succeed at this preliminary stage of the case. First, although Potomac offers a plausible construction of the statute as related to the requirements of the estimate,[14] the court disagrees with Potomac's argument

[14] The MHGMA requires that the estimate "[i]ndicate clearly whether the estimate is binding..." As written, the statute does not state, as Plaintiff suggests, that the estimate indicate clearly whether it is "binding or nonbinding." Indeed, if the synonym "if" were to be substituted for "whether," the statute would read "indicate clearly IF the estimate is binding." *See* Charlton Laird, Webster's New World Roget's A-Z Thesaurus (1999). Various other statutes/regulations clearly state that the estimate must state whether it is to be binding OR nonbinding. *See e.g.*, Tex. Transp. Code Ann. §

that Plaintiff was required to negate through pleading allegations the possibility that excess moving charges were permitted.[15] Thus, Plaintiff's allegations are sufficient to state a claim against Potomac for alleged overcharges, even assuming the estimate was "nonbinding." In addition, Plaintiff has alleged (and Potomac's motion did not contest) that Potomac violated the MHGMA by failing to identify its resident agent on its invoice, in violation of CL §3104(2)(i) (although Plaintiff has not specified how, if at all, she was damaged by any such violation).

For these reasons, Potomac's motion to dismiss Count I of the Amended Complaint for failing to state a claim will be denied. That denial also compels the denial of Potomac's motion to dismiss Count II, as a violation of the MHGMA is deemed a violation of the MCPA.

B. The Unjust Enrichment/Restitution Claim

With respect to Potomac's request to dismiss Counts III and IV, Potomac's motion will be granted. Plaintiff has failed to state a claim in those counts for restitution/unjust enrichment against Potomac and its as-yet-unidentified principals.

It is well established that a claim for unjust enrichment may not be brought where the subject matter of the claim is covered by an express contract between the parties. *See e.g.*, *Janusz v. Gilliam*, 404 Md. 524, 537 (2008); *Robinette v.*

643.153(b)(2) (West 2018); Wash. Admin. Code §480-15-630 (August 1, 2018). Maryland's statute simply requires the estimate to state if it is "binding."

[15] The issue of whether the "excess charges" were "beyond the control of [Potomac" and whether they could "have been reasonably anticipated," CL §14-3103(a)(2)(i), (ii), are not issues that can be resolved by way of the instant motion to dismiss.

Hunsecker, 212 Md. App. 76, 126 (2013). Here, such an express contract exists and contract-based claims between the parties are governed by that express contract. And, while Plaintiff argues that her suit arises not from the contract but from the MHGMA violation, this suggested distinction does not change the outcome.[16]

Plaintiff's unjust enrichment/restitution claims against Potomac's as-yet unidentified principals also fails. While it is true that individual operators of entities have been found liable in certain consumer protection act cases brought by the Division of Consumer Protection of the Attorney General's Office (the "Division"), *see e.g.*, *Consumer Protection Div. v. Morgan*, 387 Md. 15 (2004); *State Central Collection Unit v. Kossel*, 138 Md. App. 33(2001), underpinning those holdings was the broad remedial authority granted to the Division under sections of the MCPA inapplicable to the non-governmental plaintiff here. *See e.g.*, CL §§13-403, 13-406. The allegations of the Amended Complaint are legally insufficient to state a claim against the John Doe and Jane Doe owners of Potomac. Count IV of the Amended Complaint will be dismissed with prejudice as related to Potomac's owners.[17]

C. The Subject Matter Jurisdiction Issue

Potomac also claims that the Amended Complaint should be dismissed because the amount in controversy does not rise to the $5,000.00 threshold needed

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[16] A claim for unjust enrichment could not be viewed as another civil action "provided by law" under CL§14-3105(b) because as stated above such a claim is not recognized where an express contract exists.

[17] While the corporate veil may be pierced when "necessary to prevent fraud or enforce a paramount equity," *Hildreth v. Tidewater Equip. Co., Inc.*, 378 Md. 724, 733 (2003), the allegations of the Amended Complaint do not support doing so here.

for circuit court jurisdiction. *See* Md. Code Ann., Cts. & Jud. Proc. ("CJP") §4-405. Plaintiff counters that CJP §4-402(d)(1)(ii) provides an exception in the case of class actions, and allows "the separate claims of the proposed members of the class [ ] to be aggregated to meet the minimum amount in controversy required under [the $5,0000.00 provision]."

The subject matter jurisdiction issue depends on the determination of whether the case will proceed as a class action. The court will, accordingly, defer ruling on the subject matter jurisdiction issue until such time as the class certification issue is determined. [18]

V. Discussion – Claims Against Non-Potomac Defendants

The Non-Potomac Defendants have also moved to dismiss the Amended Complaint. Their motion will be granted in part and denied in part as described below.

A. The MHGMA and MCPA claims against International

International and the other Non-Potomac Defendants first argue that the MHGMA does not apply to them because, as related to Ms. Funk, they did not provide "household goods moving services" within the meaning of CL §14-3101 (f)(1). They argue that they neither charged a fee nor rendered services, both of which are necessary predicates for finding each of them to be "household goods mover" under CL §14-3101 (e). Moreover, defendants assert, Potomac cannot under

[18] In light of the court's determination, as set forth below, that certain of the remaining defendants should be dismissed, any class certification determination will relate only to defendants Potomac and International.

the facts alleged be deemed an agent of International for imputed liability purposes. Plaintiff disagrees and argues first that liability may be imposed upon International directly under the MCPA, and that in any event, liability under the MHGMA may in fact be imputed to International because the facts support a finding of agency, whether actual, apparent or by estoppel.

The court agrees with the Non-Potomac Defendants on the first issue. International did not provide "household goods moving services," CL §14-3101 (f)(1), and is not directly liable under the MHGMA. Without liability under the MHGMA, direct liability under the MCPA also fails, as the latter depends upon a MHGMA violation to establish an "unfair or deceptive trade practice." This case is unlike *State v. Cottman Transmission Systems, Inc.*, 86 Md. App. 714 (1991) where liability was imposed directly on the franchisor for MCPA violations. In *Cottman*, the Attorney General brought claims under the MCPA directly (and only) against the franchisor related to its policies in requiring its franchisees to engage in unfair and deceptive practices. *Cottman* is factually inapposite to the claims asserted in this case.

The issue of International's potential agency liability is not as simple.[19] Whether International may be held accountable for the actions of Potomac cannot

[19] Agency issues arising in the franchise context pose analytical challenges due to the nature of franchising itself. The franchising model, which on the one hand provides business opportunities to "independent" business people who run the day to day operations, requires on the other hand that the franchisor impose levels of control necessary to protect its trademark. *See* 15 U.S.C. §1501, *et seq.* Whether in any given case the level of "control" crosses a line so as to result in vicarious liability is not a simple question. *Compare Wise v. Kentucky Fried Chicken Corp.*, 555 F. Supp. 991, 995-96 (D.N.H. 1983) (holding that a jury could hold franchisor vicariously liable for injuries suffered by franchisee's employee because the parties had a "sophisticated system for selecting, approving, testing . . . and maintaining quality control") *with Allen v. Choice*

be determined at this early pleading stage of the case. The factual allegations of the Amended Complaint (and the reasonable favorable inferences to be drawn from those facts) are sufficient for pleading purposes to support an apparent agency or agency by estoppel claim against International such that alleged violations by Potomac could arguably be imputed to it. *See Chevron, U.S.A., Inc. v. Lesch*, 319 Md. 25, 31-36 (1990) (affirming trial court's grant of summary judgment in favor of a motor fuel distributor on agency issues); *B.P. Oil Corporation v. Mabe*, 279 Md. 632 643-48 (1977) (affirming trial court's grant of motion for judgment notwithstanding the verdict on issues of franchisor's liability under agency principles). Accordingly, defendant International's motion to dismiss Counts I and II of the Amended Complaint will be granted as related to any direct liability, but denied as related to potential agency liability.[20]

B. The Unjust Enrichment/Restitution Claims

For reasons stated in part IV, above, the unjust enrichment/restitution claim asserted in Counts III and IV will also be dismissed with prejudice against International, and International's as-yet-unidentified principals.

C. Claims against Chesapeake/Frankin

Hotels Int'l Inc., 276 Fed. Appx. 339, 343 (4th Cir. 2008) (holding that the franchisor was not vicariously liable for its franchisee's actions because the franchisor's policies "simple ensure[d] uniformity" among its franchisees); *Allen v. Greenville Hotel Partners, Inc.*, 409 F. Supp. 2d 672, 677 (D.S.C. 2006) (noting that "operational standards and inspection rights of control contained in the franchise agreement do not establish a franchisor's control or right of control over the franchisee," to impose vicarious liability); *Thornton v. Ford Motor Co.*, 279 P.3d 413, 425 (Okla. Civ. App. 2012) (holding that the franchisor was not liable under the state's consumer protection act or responsible for protecting customers from its undercapitalized and inexperienced franchisees).

[20] While both *Lesch* and *Mabe* ultimately rejected franchisor liability, neither was decided on a motion to dismiss.

As indicated above, Plaintiff has also sued Chesapeake and Frankin, entities with which Plaintiff had no direct dealings or contact. Plaintiff alleges, however, that a non-party, Donna Whitaker, had dealings with Chesapeake wherein it allegedly engaged in conduct similar to what Plaintiff alleges against Potomac in connection with a moving estimate. According to Plaintiff, Chesapeake has properly been named as a party defendant in this putative class action case under the "juridical link" theory discussed in *Master Fin., Inc. v. Crowder*, 409 Md. 51 (2009).

Crowder involved putative class actions (not yet certified as such under Rule 2-231) wherein the plaintiffs sought relief under the Maryland Secondary Mortgage Loan Law and (as to some) the Maryland Consumer Protection Act. The defendants included entities that had originated loans to plaintiffs, entities that had purchased loans, and in some of the cases, defendants which had purchased loans "made to persons other than the named plaintiffs [the non-holder defendants] but which were alleged to be 'juridically linked' to the named plaintiffs." *Id.* at 56. The circuit court dismissed all of the cases primarily on limitations grounds; however, it also found that the class action plaintiffs "had no cause of action against the non-holder defendants, which had no connection with any of those plaintiffs or their loans." *Id.* The Court of Special Appeals affirmed the trial court on most grounds, including that there was no cause of action stated against the non-holder defendants. *Crowder v. Master Fin., Inc.*, 176 Md. App. 631, 649 (Md. Ct. Spec. App. 2007)

As relevant to the issues here, the Court of Appeals affirmed the intermediate court decision. After reviewing the origin and history of the "juridically linked" theory,[21] and while "not decid[ing] whether to adopt the 'juridical link' doctrine with respect to class action suits," *id.* at 80, the Court indicated that even if it did recognize the theory, it would not apply it beyond the "limited scope" to which it has been recognized by various other courts,[22] and as so limited there would be no basis for its application in the context of the case before it. Noting that its result would be the same even if it decided the case based on a lack of "standing"[23] the Court instead found that "because the named plaintiffs ha[d] utterly no connection with [the non-holder] defendants, they [could not] 'fairly and adequately protect the interests' of those class members who might have such a connection." *See* Md. Rule 2-231(a).

Just as the plaintiffs in *Crowder* were found to lack sufficient connection with the non-holder defendants, so too in this case Ms. Funk lacks sufficient connection with Chesapeake and Frankin to enable her to assert claims against

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21 The theory being "that, although they [the defendants] have done nothing to harm the named plaintiffs, they have violated the statutory rights of other putative members of the class and are therefore 'juridically linked' either to the named plaintiffs or the other defendants." *Master Fin., Inc. v. Crowder*, 409 Md. 51, 74 (2009).

22 *See e.g., LaMar v. H&B Novelty & Loan Co.*, 489 F.2d 461 (9th Cir. 1973); *Payton v. County of Kane*, 308 F.3d 673 (7th Cir. 2002)

23 As the Court of Appeals noted, when the *Crowder* case was decided by the Court of Special Appeals, "[i]t found persuasive the discussion and holding in Miller v. Pacific Shore Funding 224 F. Supp. 2d 977 (D. Md. 2002), aff'd 92 Fed. Appx. 933 (4th Cir. 2004) (*per curiam* unpublished), that '[i]n a multi-defendant action or class action, the named plaintiffs must establish that they have been harmed by each of the defendants' and that they may not use the procedural device of a class action to bootstrap themselves into standing they lack." *Crowder v. Master Fin., Inc.*, 176 Md. App. 631, 649 (2007).

them. Whether viewed as an issue of standing or as an issue under Rule 2-231(a) (inability to "fairly and adequately" represent the interests of prospective class members who might actually have had a connection with Chesapeake/Frankin), the result is the same. Plaintiff is simply not a proper party to assert claims against defendants with which she has absolutely no connection.[24] Accordingly, the Amended Complaint will be dismissed in its entirety and with prejudice against defendants Chesapeake, Frankin, and any related John Doe and Jane Doe defendants.

VI. Conclusion

In conclusion, defendant Potomac's motion to dismiss the Amended Complaint will be denied as related to Plaintiff's claims against it under the MHGMA and the MCPA, as alleged in Counts I and II. Defendant Potomac's motion will be granted as related to all claims against it for unjust enrichment/restitution, and as related to all claims asserted by Plaintiff against its as-yet-unidentified individual owners, as alleged in Counts III and IV (and those counts will be dismissed with prejudice).

Defendant International's motion to dismiss the Amended Complaint will be granted as related to any claims asserted under the MHGMA and the MCPA in Counts I and II based upon direct statutory liability but denied as related to potential agency liability. Defendant International's motion will be granted as

[24] The mere fact that Chesapeake/Frankin mayhappen to operate as part of the same franchise system is insufficient reason for applying the "juridically linked" theory, even assuming that the Court of Appeals would ultimately recognize its applicability in the class action context.

related to Plaintiff's claims for unjust enrichment/restitution, and as related to all claims asserted against its as-yet-unidentified individual owners under Counts III and IV (and those counts will be dismissed with prejudice).

The motion to dismiss the Amended Complaint filed by defendants Chesapeake/Frankin will be granted, and all claims against those defendants and the related John Doe and Jane Doe defendants will be dismissed with prejudice.

An appropriate Order accompanies this Memorandum Opinion.

Harry C. Storm, Judge
Circuit Court for Montgomery County, Maryland

November 20, 2018