

DATE FILED  
April 27, 2022 10:56 AM  
FILING ID: 687C72D6ED508  
CASE NUMBER: 2021CV30718

DISTRICT COURT, Adams County, State of Colorado 1100 Judicial Center Drive Brighton, CO 80601 (303) 659-1161  ALEXANDER KOCH, Plaintiff,  vs.  GRIFFIS GROUP OF COMPANIES, LLC d/b/a/ GRIFFIS RESIDENTIAL. Defendant	
Attorneys for Plaintiff Alexander Koch:  Jason Legg (#42946) Scott Cadiz (#42490) Cadiz Law, LLC 501 S. Cherry St., Suite 1100 Denver CO 80246 720-330-2800 <a href="mailto:jason@cadizlawfirm.com">jason@cadizlawfirm.com</a> <a href="mailto:scott@cadizlawfirm.com">scott@cadizlawfirm.com</a>  Steven Woodrow (#43140) Woodrow & Peluso, LLC 3900 E. Mexico Ave., Suite 300 Denver CO 80210 720-213-0675 <a href="mailto:swoodrow@woodrowpeluso.com">swoodrow@woodrowpeluso.com</a>	<b>▲ COURT USE ONLY ▲</b>  Case No: 2021CV30718  Division: C
<b>AMENDED CLASS ACTION COMPLAINT</b>	

Plaintiff, Alexander Koch (“Koch” or “Plaintiff”), individually and on behalf of all others similarly situated (the “Class” or “Class Members”), by and through their counsel, Woodrow & Peluso, LLC and Cadiz Law, LLC, files his Amended Class Action Complaint against Defendant Griffis Group of Companies, LLC d/b/a Griffis Residential (“Griffis” or Defendant”) - a large Colorado landlord – seeking a judgment: (1) declaring that certain fees Griffis has charged its tenants are unlawful penalties, unconscionable, and/or breach the implied covenant of good faith and fair dealing as a standard practice; (2) an award of damages to Koch and a class of all other

similar situated to recover amounts wrongfully assessed and collected by Griffis; and (3) an award of all other available relief to Koch and other persons similarly harmed by Defendant's conduct, including without limitation all actual, consequential, and special damages, pre- and post-judgment interest, costs and reasonable attorneys' fees. Plaintiff, for his Amended Class Action Complaint, alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.

## **BACKGROUND**

1. Plaintiff brings this action against Griffis, a property manager who has leased apartments to Plaintiff and other Class Members for improperly assessing and collecting late fees and notice service fees (referred to as the "Late Fee" and the "Notice Fee"); (2) credit card surcharges (referred to as the "Surcharge Fee"); and (3) a trash fee associated with a trash collection service Griffis mandates (referred to as the "Trash Fee") (the "Late Fee", "Notice Fee", "Surcharge Fee", and "Trash Fee" are collectively referred to herein as the "Challenged Fees").

2. Defendant charges the Challenged Fees in addition to the rent it charges Plaintiff and other Class Members, and requires its tenants to pay the Fees in order to continue to live in their apartments. That is to say, Class Members have paid the Challenged Fees under the threat of incurring more fees and eviction and, in all cases, to protect their interest in their rental units.

3. If the Plaintiff and Class Members do not pay the monthly rent in full by the end of the third day of the month, Defendant charges a litany of extra fees, almost always in conjunction with commencing an eviction proceeding, which can equal up to \$355.00 in a single month. Specifically, Defendant charges:

- a. A \$50.00 Late Fee on the fourth day of the month plus \$10.00 per day commencing on the fifth day of the month for each and every day monthly rent *or any portion thereof* remains outstanding and unpaid; and
- b. A Notice Fee related to the Defendant serving a tenant with a notice "because of Resident's default" which also is the first step in Colorado's eviction process. The Form Lease does not disclose the amount of the Notice Fee, but in practice it is \$35.00.

4. The Defendant, through its Form Lease, also requires the Plaintiffs and Class Members to pay rent and any and all other sums due under the lease via the Defendant's website. To be clear, *the Defendant does not provide its tenants with the option to pay rent in person to an agent of Defendant or via U.S. mail.*

5. Unless its tenants pay Defendant through the Defendant's website using ACH - which the Defendant can and does eliminate as an option for its tenants, including Plaintiff, as outlined in its Form Lease - they are forced to incur additional fees, in amounts not disclosed in

the lease but rather left to the Defendant's discretion to set, associated with the other payment methods that the Defendant offers at its discretion through its website. The available payment methods include payment by credit card, against which Defendant adds the Surcharge Fee, the amount of which is disclosed for the first time at the point of payment.

6. Defendant additionally requires the Plaintiff and Class Members to sign both a form "Utility Billing Addendum" and a form "Valet Trash Addendum" that enrolls Plaintiff and the Class Members for a trash collection service for which the Defendant charges and collects the Trash Fee. The Form Lease incorporates the "Utility Addendum" into the lease explicitly but does not incorporate the "Valet Trash Addendum". The Valet Trash Addendum represents that the trash collection service is performed by Valet Waste Inc., a third-party vendor engaged by Defendant.

7. The Defendant's Utility Billing Addendum describes itself as allocating common area and master metered utilities among Residents. Specifically, it states "This Addendum references allocation of common area and master metered utilities and is in addition to any utilities billed directly to Resident from municipal utility providers."

8. The Utility Billing Addendum provides that the trash collection service "will be based on a monthly flat rate not to exceed \$50.00 per month." It leaves to the Defendant's discretion the setting of the monthly price of the Trash Fee at somewhere between \$0.00 to this \$50.00 upper bound. The "Valet Trash Addendum" states that the "cost for trash collection is \$30.00 per month". The Defendant, however, has charged the Trash Fee in amounts ranging from \$30.00 to \$42.00, and possibly more, per month to the Plaintiff and Class Members for the trash collection service.

9. Despite the Valet Trash Addendum stating that the *cost* for trash collection is \$30.00 per month, the Defendant is in fact charged substantially less than this amount by the vendor who provides this service, Valet Waste Inc., on a per residence per month basis; the Defendant does not disclose the mark-up.

10. The Defendant commences Colorado's eviction process demanding the payment of rent (and any and all other amounts owing under the lease, which the lease also characterizes as rent for this purpose), the Challenged Fees, and any and all other charges alleged owing under the lease to avoid eviction if not paid in full by the 3rd day after the monthly due date and requires the payment in full of both rent and the Fees to prevent eviction. To facilitate this practice, the Defendant characterizes the Challenged Fees as "rent" when useful to utilize the threat of eviction to compel their prompt payment.

11. On information and belief, Defendant, as the property manager and agent for the actual owner of the rental residences that it manages, receives compensation from the owners for amounts collected as the Challenged Fees at a more lucrative percentage than it receives for rent. To be clear, *Defendant is entitled to keep as income a higher share of the Challenged Fees than it is the base rent that it collects from the Plaintiff and Class Members.* Even if that wasn't the case, because Defendant's revenue is based on a percentage of revenue collected from its tenants for property owners, increasing the amount of revenue collected by assessing the Challenged Fees has the effect of increasing the Defendant's revenue and profits regardless.

12. The Defendant's practice of charging the Challenged Fees allows it to attract tenants such as the Plaintiff and Class Members by advertising and creating expectations of lower rental rates and then, after Plaintiff and Class Members have incurred significant application fees and opportunity costs, forcing the additional Challenged Fees upon them through its Form Lease for amounts which are sometimes not even disclosed until the point of payment and for services that its tenants, including the Plaintiff and prospective Class Members, reasonably expected to be included in what they pay in base rent.

13. The assessment and collection of the Challenged Fees—because they amount to a substantial fraction of a month's rent—can operate to stack the deck against tenants like Plaintiff and the other Class Members making it more difficult for them to pay their rent on time, often keeping them stuck perpetually behind and at risk of eviction.

14. The Late Fees and Notice Fees are not intended to compensate Defendant for its losses. Rather, the Late Fees and Notice Fees are penalties, designed to compel compliance with the tenant's legal obligations under the Lease to pay on time. Furthermore, to the extent the Form Lease provides Defendant with the discretion to charge a fee for posting a legal notice, any such discretion was abused in bad faith by Griffis' charging of \$35 per notice, an amount that grossly exceeded its actual costs incident to a late payment. The Trash Fees are not intended to compensate Defendant for the cost of the trash service as stated in the Form Lease, but rather as a hidden source of additional profit for Defendant. Again, to the extent the Form Lease provides Defendant with the discretion to determine the amount of the Trash Fee, such discretion has been exercised in bad faith by Griffis' undisclosed, significant markup. The Surcharge Fees are expressly proscribed by Colorado law and were unlawful on their face. As explained below, all tenants who were charged and paid any of the Challenged Fees, or had such amounts pursued against them by Griffis' through collections, are entitled to refunds and such other additional relief that is necessary and just.

## **PARTIES**

15. Plaintiff is a tenant with a lease agreement for an apartment at the real property commonly known as Griffis Fitzsimmons South apartments in Aurora, Colorado which is managed and administered by Griffis as the general agent for the owner of the property. Plaintiff has been charged, and has paid, each of the Challenged Fees individually to Griffis. Each payment was made to protect Plaintiff's interest in the property, avoid incurring additional fees, and under the threat of eviction.

16. Defendant Griffis Group of Companies, LLC is a Colorado limited liability company with its principal office at 6400 S. Fiddler's Green Circle, Suite 1200, Greenwood Village, CO 80111. Griffis Residential is and has been registered as a trade name for Griffis Group of Companies, LLC since June 19, 2012 through the present. Griffis is a multifamily real estate investment company that owns and manages approximately 8,000 apartment homes, a substantial number of which are located in Colorado. Plaintiff Koch signed a lease with Griffis—Defendant's Form Lease—on or about July 13, 2018. Koch thereafter executed renewals on or about November 29, 2018 and March 8, 2020.

## **JURISDICTION AND VENUE**

17. This Court is vested with jurisdiction over Defendant pursuant to C.R.S. § 13-1-124(1)(a) and (c) because Defendant transacts business and owns, uses, or possesses real property situated in this state.

18. Venue is proper in Adams County because the residential lease between Plaintiff and Defendant was entered, set to be performed in, and concerns real property located in Adams County.

### **COMMON FACTUAL ALLEGATIONS**

19. At all relevant times, Griffis has acted as the general agent, property manager, and landlord of the Griffis Fitzsimmons South apartments (where Plaintiff resides as a tenant) on the property owner's behalf.

20. On information and belief, Griffis has employed a standardized, uniform Lease together with form addenda (referred to herein as the "Form Lease") and practices relevant to the allegations of this Complaint at all of the properties in Colorado under its management, including but not limited to the Griffis Fitzsimmons South, Griffis 3100 Pearl, Griffis Belleview Station, Griffis Cherry Creek, Griffis Cherry Creek North, Griffis Fitzsimmons South, Griffis Highline, Griffis Lafayette Station, Griffis Marston Lake, Griffis North Union, Sagebrook, Griffis Union Station, and Griffis Westminster Center.

21. This standard Form Lease includes substantially the same provisions regarding Rent, Payment of Rent, Default Remedies, Late and Dishonored Payments, Eviction, and Other Fees and Charges, Utility Billing Addendum, and a Valet Trash Addendum.

22. Such terms are non-negotiable and are presented by Defendant on a "take it or leave it" basis.

23. The Defendant has overwhelmingly more disparate bargaining power than Koch and the Class Members in setting the terms of its Form Lease.

24. Because, in part, Koch and the Class Members had already sunk significant costs into a potential tenancy with the Defendant by the time they were presented with the Form Lease, the residential apartments for lease offered by the Defendant were not readily attainable elsewhere.

25. The Defendant's Form Lease is a contract of adhesion

26. Plaintiff's lease at issue in this case is a copy of Defendant's Form Lease.

27. The Defendants' Form Lease with Koch and the other Class Members includes the following provisions:

- a. A provision purporting to allow the Defendant to charge the tenant the following fees in addition to the rent amount due for the rental period for which the payment was delinquent by at least three days:

- i. An initial \$50.00 late fee on the fourth day of the month and an additional \$10.00 per day late fee beginning to accrue on the fifth day of the month and continuing thereafter;
  - ii. A notice service fee for an unspecified amount if Griffis “serves Resident with any notice because of Resident’s default”, including the late payment of rent.
- b. Characterizing the Late Fee as follows:
 

“Resident shall owe and pay a late charge as of the 4th day of the month. The late charge will be either \$50.00 if rent is paid on or after the 4th day of the month, plus \$10.00 per day commencing on the 5th day of the month for each and every day monthly rent or any portion thereof remains outstanding and unpaid, ...”
- c. Describing the Notice Fee as follows:
 

“If Owner serves Resident with any notice because of Resident’s default, Resident shall pay Owner a Notice Service Fee.”
- d. Mandating that “Resident shall pay all amounts due under this Agreement online via the community’s website in accordance with Owner’s policies.” that “Owner may change Resident’s payment methods upon thirty (30) days written notice to resident”, and that “Upon written notice and regardless of Resident’s default, Owner may at any time require Resident to pay Owner all sums in certified funds, or in one monthly check or payment rather than in multiple checks or payments.”
- e. Deeming these charges other than rent to be additional rent thereby providing the Defendants with the same legal remedies for non-payment as available for the non-payment of rent. Specifically:
 

“Regardless of whether specifically stated in any provision of this Agreement, including any Addenda, any and all rent, amounts, charges, sums, damages, or money owed by Resident under this Lease shall be considered Rent, and Owner shall have all remedies for non-payment of any amount, *including eviction.*”

(emphasis added).
- f. Allowing Griffis, once an eviction has been filed, to not accept any monthly rent payment or other amounts due after their due date unless all fees and charges owed by the tenant accompany such payment.
- g. Purporting to invalidate any endorsement or writing evidencing protest on any instrument tendered to provide partial payment. Specifically:

“If Resident tenders any payment to Owner that is less than the full amount due, Owner may accept and Owner’s acceptance shall not constitute payment under protest or an accord and satisfaction under any circumstances, regardless of any endorsement to the contrary or other writing on any instrument tendered or offered in payment. Any such payment shall only be deemed a partial payment “on account” of the full amount due.”

- h. Stating that the Defendant shall be awarded its reasonable attorneys’ fees and cost should it prevail in any “suit” concerning the collection of rent, amounts, or damages arising out of the lease, community handbook or addendums, or to enforce any provision of the lease, and providing that “suit” shall have the broadest possible meaning.
- i. Including a “Rent” section that itemizes and enumerates the dollar amount of a tenant’s “total monthly rent” that does not include nor reference the Challenged Fees.
- j. Incorporating, through Paragraph 31 of the Defendant’s Form Lease, a Utility Addendum into the lease.
- k. Providing in the Utility Addendum that any utility charges or administrative fees outlined in the addendum may be changed by the Defendant with the provision of thirty days’ notice, and that the “Addendum references the allocation of common area and master metered utilities and is in addition to any utilities billed directly to Resident from municipal utility providers.”
- l. Stating in Paragraph 3 of the Utility Billing Addendum that the Defendant’s tenants must for pay trash collection services for their apartments and common areas, that trash collection bills will be based on a monthly flat rate not to exceed \$50.00 per month, but leaving the actual price of the monthly flat rate to be set by the Defendant at its discretion.
- m. Providing in Paragraph 13 of the Utility Addendum that Defendant’s tenants may be charged and must pay an “Administration Fee” not to exceed \$10.00 per month to cover Defendant’s costs associated with the billing of utilities, trash, and other services for which Defendant’s tenants are responsible. Paragraph 13 also says that the “Administration Fee” is separate and in addition to the utilities, trash, or other services billed to Defendant’s tenants.
- n. Defendant’s Form Lease documents also include a “Valet Trash Addendum” that describes the trash collection service in further detail.
- o. Defendant’s lease does not incorporate the “Valet Trash Addendum” into the lease in Paragraph 31 as it does the “Utility Addendum”, but Defendant

nonetheless requires its tenants to sign the “Valet Trash Addendum” at the same time as the rest of the lease documents.

- p. The “Valet Trash Addendum” states that the cost for trash collection is \$30.00 per month and references a “Valet Waste Inc.” as Defendant’s vendor providing the service.

28. The Notice Fee charged by the Defendant relates to the preparation and posting of a “Demand for Payment or Possession”, as contemplated by C.R.S. § 13-40-104(1)(d), on a tenant’s door by the Defendant’s staff.

29. Despite not including an amount or date of assessment for the Notice Fee in its Form Lease, the Defendant regularly assesses the Notice Fee on the fourth day after rent is not paid in full in the amount of \$35.00.

30. The posting of these “Demands for Payment or Possession” is included in the day-to-day job responsibilities of the Defendant’s staff and does not cause the Defendant to incur any additional expense or cost. On belief, such staff are salaried positions.

31. In practice, the Defendant requires tenants who have had a payment via ACH - the only surcharge-free payment option available to Plaintiff and the Class Members to pay their rent - returned for insufficient funds to make payments via credit or debit card, or electronic money order for a period of twelve months.

32. Despite providing in its form “Valet Trash Addendum” that “The cost for trash collection is \$30.00 per month.”, the Defendant has in practice frequently charged Plaintiff and the Class Members \$42.00 per month for the service.

33. Upon investigation of counsel, Valet Waste Inc., the vendor Defendant engages to provide the valet trash service, solicits business by offering its services for as little as \$12.95 per residence per month while suggesting that property manager clients bill tenants such as Plaintiff and the Class Members at a rate of \$25.00 or \$30.00 per month to increase the profit margin and income capitalization rate-based valuation of their rental properties.

34. As a regular practice and as provided in its Form Lease, Defendant threatens to evict tenants (including Mr. Koch) in communications with the tenants and by commencing the eviction process against tenants when they fail to pay the Challenged Fees in addition to rent in full by the fourth day from their due date.

#### **FACTS SPECIFIC TO PLAINTIFF KOCH**

35. Plaintiff Koch is one of Defendant’s tenants subject to the Form Lease. Koch has been assessed, and has paid, the Challenged Fees to Defendant.

36. Koch did not expect that the Defendant, in using the discretion to determine charges and fees reserved in its Form Lease, would double charge for its ordinary costs of doing business,



upcharge for services it requires its tenants to procure from third party vendors, or assess charges expressly prohibited by law.

37. In addition to his monthly rent and other fees, Griffis charged Mr. Koch the following Fees from the period of July 13, 2018 through June 1, 2021:

- a. A \$50.00 Late Fee on both December 4, 2018 and January 4, 2019;
- b. A \$35.00 Notice Fee on December 4, 2018 and January 4, 2019;
- c. A credit card surcharge in the amount of \$35.52 on December 3, 2019;
- d. A \$42.00 Trash Fee in each of the twenty-one months from August of 2018 through April of 2020;
- e. A \$30.00 Trash Fee in each of the fifteen months from May of 2020 through June of 2021; and
- f. A \$5.00 Utility Fee or Utility Charge, believed to be the “Administrative Fee” referenced in paragraph 13 of the Utility Addendum in every month from August of 2018 through May of 2021.

38. The Late Fee and Notice Fee are unlawful penalties under Colorado law. The Parties never intended to liquidate damages in the event rent was not paid on time, the damages to be suffered by Griffis, if any, would not have been difficult to calculate at the time the lease was signed in the event the rent was not paid on time, and the sums charged as Late Fees and Notice Fees, again when viewed at the time the lease was signed, are not a reasonable estimate of the damages, if any, to be suffered by Griffis.

39. Further, Koch did not expect that Griffis would use its discretion in determining the amount of the Notice Fee as a source of profit or to recoup its ordinary costs of doing business, but rather to reflect a pass through of any related third-party expenses incurred by Griffis in association with the notices in question.

40. Koch expected and understood the provisions of the lease agreement to mean that the Defendant would use its discretionary authority to endeavor to set the monthly price of the Trash Fee at an amount consistent with expenses it incurred for the trash collection service.

41. The Defendant did not use its discretionary authority to set the monthly amount of the Trash Fee at an amount consistent with costs it incurred in connection with the trash collection service, but rather used that discretionary authority to set the amount of the Trash Fee at an amount that significantly exceeded these costs so that it could pocket the difference as an additional source of profit

42. Mr. Koch was forced to incur the surcharges related to payment by credit card by the Defendant because it disabled his ability to pay via ACH after an ACH payment was returned for insufficient funds in December of 2018.

43. The amount of the surcharges related to payment by credit card were not disclosed to Mr. Koch until the point of payment.

44. Koch did not expect that Griffis would use its discretion in determining which payment methods to make available to tenants to limit them, at times, to methods causing Koch and its other tenants to incur additional costs as Koch understood accepting payment and payment processing to be an ordinary cost of the Defendant's business included in what his monthly rent covered

45. Defendant emailed the Plaintiff and Class Members notifying them that the Surcharge Fees would be suspended beginning in May of 2020 but reinstated as of July 31, 2020 as an allowance given the COVID-19 pandemic.

46. Koch requested that the Surcharge Fees he had paid during his tenancy with the Defendant be refunded on the basis that the charges were not permitted on September 11, 2020.

47. The Defendant declined to refund the Surcharge Fees paid by Koch to him in an email response dated September 11, 2020.

48. Koch has paid and continues to pay all of the fees Griffis charged him in order to stay in his home, protect his interest in his leasehold, and avoid additional unlawful fees and eviction proceedings.

49. To redress these injuries, Plaintiff, on behalf of himself and a class of similarly situated individuals, brings this suit under Colorado law which prohibits the charging and collection of the Challenged Fees as unlawful penalties, in breach of its Form Lease and the implied covenant of good faith and fair dealing included therein, void as against public policy, and procedurally and substantively unlawful and unconscionable sums.

50. On behalf of the Class, Plaintiff seeks an Order from this Court enjoining Griffis from charging and/or collecting the Challenged Fees on the basis that the Fees constitute unlawful and unconscionable penalties under the Form Lease, are disallowed by law, are unconscionable and disallowed by public policy, and/or are in breach of its lease contract including the covenant of good faith and fair dealing, and an award of damages to the class members, together with costs, pre- and post-judgment interest, and reasonable attorneys' fees.

### **CLASS ACTION ALLEGATIONS**

51. Plaintiff brings this action in accordance with Colorado Rule of Civil Procedure 23 on behalf of himself and a Class defined as follows:

All persons in the State of Colorado who (1) from the date six years prior to the filing of this Complaint through the date notice is sent to the Class; (2) leased a residence from Defendant using Defendant's Form Lease; (3) who Griffis caused to be charged any of the Challenged Fees.

52. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendant, Defendant's principals, subsidiaries, parents, successors, predecessors, contractors, and any entity in which the Defendant or its parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Defendant's counsel and Plaintiff's counsel; and (6) the legal representatives, successors, and assignees of any such excluded persons.

53. Plaintiff anticipates the need to amend the class definition following a period of appropriate class-based discovery.

54. **Numerosity:** The exact number of Class Members is unknown and not available to Plaintiff at this time, but individual joinder is impracticable. On information and belief, Defendant has charged the inflated and unlawful Challenged Fees to thousands of tenants who fall into the Class as defined. The number of Class Members and class membership can be identified through objective criteria, including Defendant's business records and tenant payment ledgers.

55. **Typicality:** Plaintiff's claims are typical of the claims of other members of the Class in that Plaintiff and the members of the Class were assessed the same Challenged Fees under Defendant's Form Lease and uniform policies and sustained the same legal injuries and damages arising out of Defendant's uniform wrongful conduct. If Plaintiff has an entitlement to relief, so do the rest of the Class Members.

56. **Adequate Representation:** Plaintiff will fairly and adequately represent and protect the interests of the Class and has retained counsel competent and experienced in complex class actions, including class actions against landlords and class actions seeking damages and declaratory relief arising out of form contracts. Neither Plaintiff nor his counsel has any interest in conflict with or antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiff.

57. **Commonality and Predominance:** There are questions of law and fact common to the claims of Plaintiff and the Class, and those questions will drive the litigation and predominate over any questions that may affect individual members of the Class. Common questions for the Class include, but are not necessarily limited to the following:

- (a) Whether Defendant's Late Fees constitute unlawful penalties under Colorado law, are otherwise unconscionable or against public policy, and/or violate the implied covenant of good faith and fair dealing;
- (b) Whether Defendant's Notice Fees constitute unlawful penalties under Colorado law, are otherwise unconscionable or against public policy, and/or violate the implied covenant of good faith and fair dealing;

- (c) Whether Defendant's Surcharge Fees, assessed for amounts disclosed for the first time at point of payment, are unconscionable or against public policy, and/or violate the implied covenant of good faith and fair dealing;
- (d) Whether Defendant's Trash Fees, assessed for amounts not disclosed in the Form Lease but rather set at the discretion of Defendant, breached the implied covenant of good faith and fair dealing, or are otherwise unconscionable or against public policy;
- (e) Whether the Class is entitled to declaratory relief; and
- (f) Whether the Class is entitled to damages.

58. **Conduct Similar Towards All Class Members:** By committing the acts set forth in this pleading, Defendant has acted or refused to act on grounds substantially similar towards all members of the Class so as to render certification of the Class for final injunctive relief and corresponding declaratory relief appropriate under Rule 23(b)(2). All Class members were subject to uniform imposition of the Challenged Fees. On information and belief Defendant used an automated system to impose such fees mechanically on tenants.

59. **Superiority & Manageability:** This case is also appropriate for class certification because class proceedings are superior to all other available methods for the fair and efficient adjudication of this controversy. Joinder of all parties is impracticable, and the damages suffered by the individual members of the Class will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendant's actions. It would be virtually impossible for the individual members of the Class to obtain effective relief from Defendant's misconduct. Even if members of the Class could sustain such individual litigation, it would still not be preferable to a certified class action, because individual litigation would increase the delay and expense to all parties due to the complex legal and factual controversies presented in this Complaint. By contrast, a class action presents far fewer management difficulties and provides the benefits of single adjudication, economies of scale, and comprehensive supervision by a single Court. Economies of time, effort and expense will be fostered and uniformity of decisions ensured. Also, there are no pending governmental actions against Defendant for the same conduct.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory and Injunctive Relief**  
**Against Defendant)**

60. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth fully herein, and further alleges:

61. Plaintiff seeks a declaration individually and on behalf of the class that the Late Fee and Notice Fees provided in the Defendant's lease constitute unenforceable penalties under Colorado law in accordance with *Ravenstar, LLC v. One Ski Hill Place, LLC*, 2017 CO 83 (Colo. 2017). Plaintiff further seeks a declaration that the Late Fees and Notice fees are not lawful

liquidated damages, that the Parties did not intend to liquidate damages, that estimating the damages to be suffered by Defendant in the event of non-payment wouldn't have been difficult, and that the sums charged for the Late Fee and Notice Fee are not reasonable estimates, again when looking at the time the lease was entered into, of the damages to be suffered by Defendant in the event Plaintiff breached.

62. Alternatively, Plaintiff seeks a declaration individually and on behalf of the class that the Late Fee and Notice Fee provisions in the Defendant's lease and its uniform practices in enforcing those provisions violate the implied covenant of good faith and fair dealing as provided in *Amoco Oil Co. v. Ervin*, 908 P.2d 493 (Colo. 1995).

63. Plaintiff seeks a declaration individually and on behalf of the class that the Surcharge Fee provisions in the Defendant's lease and its uniform practices in enforcing those provisions violate the implied covenant of good faith and fair dealing as applied in *Amoco Oil Co. v. Ervin*, 908 P.2d 493 (Colo. 1995).

64. Plaintiff seeks a declaration individually and on behalf of the class that the Trash Fee provisions in the Defendant's lease and its uniform practices in enforcing those provisions violate the implied covenant of good faith and fair dealing as provided in *Amoco Oil Co. v. Ervin*, 908 P.2d 493 (Colo. 1995).

65. Alternatively, Plaintiff seeks a declaration individually and on behalf of the class that the Challenged Fees set forth in Defendant's Form Lease are unconscionable and therefore unenforceable.

66. Alternatively, Plaintiff seeks a declaration individually and on behalf of the class that the Challenged Fees set forth in Defendant's Form Lease are against public policy and therefore unenforceable.

67. Defendant should be ordered to be disgorged of all of the Challenged Fees that are invalid or unenforceable under Colorado law and/or the Form Lease that they have been paid from Plaintiff and the Class.

68. Defendant should be enjoined from attempting to collect and/or collecting the improper Challenged Fees provided in its Form Lease.

**SECOND CLAIM FOR RELIEF**  
**(Breach of Contract)**  
**Against Defendant**

69. Plaintiff realleges and incorporates by reference the allegations set forth above, and further alleges:

70. Defendant utilizes standard Form Lease documents.

71. The Late Fees and Notice fees are not lawful liquidated damages. The Parties did not intend to liquidate damages. Any language in the Form Lease suggesting otherwise was non-

negotiable boilerplate. Estimating the damages to be suffered by Defendant in the event of non-payment wouldn't have been difficult. The damages and costs to Defendant were known at that time or were easy to calculate. Further, the sums charged for the Late Fee and Notice Fee are not reasonable estimates, again when looking at the time the lease was entered into, of the damages to be suffered by Defendant in the event Plaintiff breached. The charges were known at the time yet Defendant inflated the amounts sought far over and above its costs. The fees were intended to punish Plaintiff, not compensate Defendant for its supposed losses.

72. To the extent that the Late Fees and Notice Fees are declared to be invalid penalties (unlawful liquidated damages), Plaintiff breached the contract by charging and collecting such amounts.

73. To the extent that the Challenged Fees – the Late Fees, Notice Fees, Surcharge Fees, and/or Trash Fees - are declared to be unenforceable because they are unconscionable or against public policy, Plaintiff breached the contract by charging and collecting such amounts.

74. Plaintiff's breach caused Koch and the Class Members to suffer damages in the form of the wrongfully paid Challenged Fees.

75. Plaintiff and Class Members seek to recover damages equal to the amount of all penalties paid and/or all overpayments made due to the Defendant's improper assessment and collection of the Challenged Fees plus such additional amounts to be proven at trial.

**THIRD CLAIM FOR RELIEF  
(Breach of Implied Covenant of Good Faith)  
Against All Defendants**

76. Plaintiff realleges and incorporates by reference the allegations set forth above, and further alleges:

77. Defendants owe Plaintiff and the Class Members, as an implied covenant, an obligation of good faith and fair dealing.

78. Defendant had a duty to perform the terms of the contract in good faith, and Defendants had a concomitant duty to refrain from doing things that would deprive Plaintiff and the Class Members of the reasonably and mutually anticipated benefits of those agreements.

79. Defendant's conduct in using its discretion to set the amounts of the Notice Fees, Surcharge Fees, and Trash Fees deprived Plaintiff and the Class Members of the reasonable expectation of benefiting from the contract, including double charging for the Defendant's cost to administer the billing of utilities, trash, notice, and other services, up charging for services that Defendant mandates the Plaintiff and Class Members procure from third party vendors, and otherwise as more fully described above.

80. Defendant also breached the implied covenant of good faith and fair dealing by acting in a manner to deny Plaintiff the benefit of the bargain. Defendant did so by, *inter alia*,

charging unlawful penalties, including Late Fees and Notice Fees, that were not lawful liquidated damages under Colorado law. Such fees were not intended to be liquidated damages, estimating the damages wouldn't have been difficult (when viewed at the time of contract formation) and the amounts charged were not reasonable estimates of the damages to be suffered in the event rent wasn't paid on time (again when viewed at contract formation).

81. Defendant's breaches of the implied covenant of good faith and fair dealing caused Plaintiff and the Class Members actual and consequential damages in amounts to be proven at trial, including the amounts collected for the Challenged Fees, that they seek to recover.

\_\_\_\_ WHEREFORE, Plaintiff prays that the following relief be granted to Plaintiff and Class Members on their claims set forth above:

- A. The Court certify a class of persons as set forth herein or as may be amended, appoint Mr. Koch as Class Representative, and appoint his counsel as Class Counsel;
- B. The Court enter a declaratory judgment establishing that the Challenged Fee provisions of the lease are unconscionable and unenforceable;
- C. The Court enter a declaratory judgment establishing that the Late Fee and Notice Fee provisions of the lease are not lawful liquidated damages provisions and thus constitute unenforceable penalties;
- D. The Court enter a declaratory judgment establishing that the Defendant breached the implied covenant of good faith and fair dealing in assessing and collecting the Challenged Fees;
- E. The Court enter a declaratory judgment establishing that the Fees provided in Defendant's lease do not constitute rent;
- F. The Court enter a declaratory judgment that the Defendant's Form Lease is a contract of adhesion.
- G. The Court enter a declaratory judgment establishing that Defendant may not collect, or assert any right to collect, damages related to delinquent payment of rent unless awarded by a court of law;
- H. The Court enter judgment in favor of Plaintiff and Class Member and against Defendant in the amount of all sums paid by Plaintiff and Class Members toward the Challenged Fees;
- I. The Court award pre-judgment interest and post-judgment interest against Defendant on all sums awarded to Plaintiff and Class Members;
- J. The Court award to Plaintiff and Class Members reasonable attorneys' fees and the costs of these proceedings against Defendant; and
- K. The Court order such other and further relief as the nature of this case may require.

Dated: April 27, 2022.

ALEXANDER KOCH

By: /s/ Steven L. Woodrow  
One of his attorneys  
Steven L. Woodrow  
swoodrow@woodrowpeluso.com  
Woodrow & Peluso, LLC  
3900 East Mexico Ave., Suite 300  
Denver, Colorado 80210

By: /s/ Jason Legg  
Jason Legg (#42946)  
CADIZ LAW, LLC  
501 S. Cherry St., Ste. 1100  
Denver, CO 80246  
jason@cadizlawfirm.com



**CERTIFICATE OF SERVICE**

I hereby certify that on this 27th day of April 2022, a true and correct copy of the foregoing document was served on the following via ICCES, the Integrated Colorado Courts E-filing System, as follows:

Jonathan G. Pray, #36576  
Matthew C. Arentsen, #45021  
Bridget C. DuPey, #53958  
BROWNSTEIN HYATT FARBER SCHRECK, LLP  
410 Seventeenth Street, Suite 2200  
Denver, CO 80202-4432

s/ Jason Legg  
Jason Legg, Attorney for Plaintiff