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DISTRICT COURT,  
Larimer County, State of Colorado  
201 La Porte Ave. Suite 100  
Ft. Collins, CO 80521

PLAINTIFF: **ELIZABETH AGUILAR,**

v.

DEFENDANTS: **HARMONY ROAD, LLC and RHP  
PROPERTIES, INC.**

▲ COURT USE ONLY ▲

Attorneys for Plaintiff Elizabeth Aguilar:

Steven L. Woodrow  
swoodrow@woodrowpeluso.com  
Woodrow & Peluso, LLC  
3900 East Mexico Ave., Suite 300  
Denver, Colorado 80210

Jason Legg (#42946)  
Cadiz Law, LLC  
501 S. Cherry St., Suite 1100  
Denver CO 80246  
720-330-2800  
[jason@cadizlawfirm.com](mailto:jason@cadizlawfirm.com)  
[scott@cadizlawfirm.com](mailto:scott@cadizlawfirm.com)

Cameron Netherland (#55864)  
Netherland Law, LLC  
501 S. Cherry St., Suite 1100  
Denver CO 80246  
720-515-4767  
[cnetherlandlaw@gmail.com](mailto:cnetherlandlaw@gmail.com)

Case No:

Division:

**CLASS ACTION COMPLAINT AND JURY DEMAND**

Plaintiff, Elizabeth Aguilar (“Plaintiff”), individually and on behalf of all others similarly situated, by and through her undersigned counsel, files this class action complaint in accordance with C.R.C.P. 23(a) and (b)(1), (b)(2), and (b)(3) against Defendant Harmony Road, LLC (“Harmony”), a mobile home park operator, and RHP Properties, Inc. (“RHP”), a real estate investment company (collectively referred to as “Defendants”). In short, Defendants unlawfully

cause vehicles to be towed for expired tags or registration. Plaintiff, who had a vehicle towed, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

## **PARTIES**

1. Plaintiff is a tenant with a lease agreement for a manufactured home lot at the real property commonly known as Harmony Village, a manufactured home community, also more commonly known as a mobile home park, in Fort Collins, Colorado, which is owned and managed by the Defendants. Defendants caused Plaintiff's vehicle to be towed, and Plaintiff suffered damages as a result.

2. Defendant Harmony Road, LLC is a foreign limited liability company with a principal office address listed with the Colorado Secretary of State as 31200 Northwestern Highway, Farmington Hills, MI 48334. Harmony Road, LLC owns and manages a mobile home park located at 2500 Harmony Road, Fort Collins, CO 80528 which contains 480 lots for mobile homes.

3. Defendant RHP Properties, Inc. is a foreign limited liability company with a principal office address listed with the Michigan Department of Licensing and Regulatory Affairs as 31200 Northwestern Highway, Farmington Hills, MI 48334. Defendant RHP is the manager and owner of Defendant Harmony.

## **JURISDICTION AND VENUE**

4. This Court has jurisdiction over Defendant pursuant to C.R.S. § 13-1-124(1)(a) and (c) because Defendants transact business and own, use, or possess real property situated in this state.

5. Venue is proper in Larimer County because the residential lease between Plaintiff and the Defendants was entered into, performed in, and concerns real property located in Larimer County.

## **COMMON FACTUAL ALLEGATIONS**

6. At all relevant times, the Defendants have acted as the owner and manager of a mobile home park known variously as Harmony Village Manufactured Home Community, Harmony Road Manufactured Home Community, and Harmony Village Mobile Home Park (the "Park" or the "Subject Property"), where Plaintiff resides as a lessee.

7. On information and belief, Defendant RHP owns and operates thirty mobile home parks throughout the state, including the Park.

8. On information and belief, RHP's thirty parks contain approximately 8,215 lot spaces, 7,790 of which (or so) are occupied with tenant owners such as Plaintiff, 113 are occupied

and owned by the park/RHP, 136 are vacant lots, 27 have vacant mobile homes, and 149 are occupied by non-mobile home residences, such as RVs and campers.

9. Defendant RHP, through its C.E.O. Ross H. Partrich, signed a Deed of Trust on Defendant Harmony's behalf in its capacity as "Managing Member" on December 6, 2012 to facilitate Defendants' financing of the purchase of the Property. The Deed of Trust was recorded in Larimer County on December 14, 2012 at instrument number 20120090355.

10. The Park is registered with the Colorado Department of Local Affairs Mobile Home Park Oversight Program as owned by Joel Brown, the listed owner of all RHP mobile home parks in the State, with the Owner Parent Company Name registered as RHP Properties. On information and belief, Joel Brown is the President of Defendant RHP.

11. On information and belief, Defendant Harmony Road, LLC is a single-purpose entity formed, owned, and fully controlled by Defendant RHP for the purpose of holding title to the Property. That is to say, Harmony Road, LLC is a mere instrumentality of RHP and RHP is the true owner and manager of the Park.

12. On information and belief, the Defendants have and continue to utilize leases, park rules and regulations, and standard policies, practices, and procedures requiring mobile home lot tenants within Colorado to maintain their personal vehicles in an operable, insured, and currently registered status and purporting to allow the Defendants to cause any lot tenant vehicles that are not in compliance with those requirements to be towed at the lot tenant's expense.

13. The Defendants' lease and rules and regulations with Aguilar and the other Class Members includes the following, representative "restrictions and conditions of use of the Premises":

"h. Automobiles. Resident agrees that all vehicles, either owned by, leased to or in the custodial care of the Resident, shall be duly registered, licensed, insured, and operable at all times. Resident further agrees that the vehicle(s) will be maintained in a neat and undamaged condition. Vehicles in excess of a ¾ ton designation are not allowed in the Community unless authorized by the Owner.

i. Parking. Any vehicle, **regardless of its parking location**, that does not meet the conditions of the preceding paragraph will be deemed to be parked illegally on private property. Subject to local ordinances, **these vehicles may be towed without notice**. The disposition of the towed vehicles is the sole responsibility of the registered vehicle owner. Neither the Community manager nor the Owner shall be held responsible for the disposition of or damage to a towed vehicle. If any vehicle of Resident's is parked in another resident's space, Resident is subject to being asked to move the vehicle to an appropriate space. Failure to move upon verbal or written request may result in the vehicle being towed. The terms and conditions of this paragraph shall also apply to non motorized vehicles such as personal trailers, removable truck-mounted campers and bicycles, as well as objects and/or structures placed in parking spaces. The Resident shall only park automobiles and/or

motorcycles in Resident parking spaces. Anything other than these vehicles (e.g. boats, jet-skis, snowmobiles, etc.) will be deemed to be parked illegally and, subject to local ordinances, may be towed without notice.”

**Exhibit 1, ¶ 6.h-i.** (“Aguilar Lease”) (emphasis added).

14. The Defendants maintain a uniform practice of causing their residents’ vehicles to be towed if they have expired vehicle registration tags and/or are in an inoperable condition regardless of and indifferent to whether or not the vehicle impedes traffic, interferes with the mobile home spaces of other residents within the Park or the Park common areas, presents any safety concerns, or otherwise interferes with any persons access to or use and enjoyment of the Park. The representative “restrictions and conditions of use of Premises” provisions in Paragraph 6 of Aguilar’s Lease, and the Defendants’ policies, procedures, and practices in enforcing such provisions, are referred to as the “Challenged Rules and Enforcement Practices”.

15. The Defendants’ leases with its residents provide Defendants with discretion as to the enforcement of the Challenged Rules and Enforcement Practices under the

16. Colorado’s Mobile Home Park Act requires mobile home park management or ownership to “adequately disclose the terms and conditions of a tenancy in writing in a rental agreement” and that such disclosures “must include..[t]he rules and regulations of the park then in effect.” C.R.S. § 38-12-213(1)(f).

17. On information and belief, the Defendants allot two parking spaces per residence at the Park, typically in the form of a driveway on the resident’s leased mobile home space.

18. On information and belief, the Defendants contract with Defender Towing, LLC d/b/a BusyBee Towing Company (“BusyBee Towing”) for the removal of vehicles from the Park and with different towing vendors at the other mobile home parks owned and managed by Defendant RHP throughout Colorado.

19. On information and belief, the Defendants did not and do not have to pay BusyBee Towing directly out of pocket for its services; rather, BusyBee Towing is compensated by towing fees paid by residents of the Park who they tow.

20. On information and belief, the Defendants routinely direct their towing contractors to tow, remove, and impound their mobile home park lot tenants’ vehicles, including Plaintiff’s vehicle, because they violate the Defendants’ unlawful, Challenged Rules and Enforcement Practices requiring vehicles within the Park to have current vehicle registration tags, insurance and/or be in an operable condition.

21. On information and belief, the Defendants’ leases with lot tenants include a one-way attorney fee shifting clause that provides that lot tenants are liable to the Defendants for any attorneys’ fees, costs, and reasonable expenses that Defendants incur as a result of lot tenants’ default under the lease.

## **FACTS SPECIFIC TO PLAINTIFF AGUILAR**

22. Plaintiff Aguilar leases a mobile home space within the Park from the Defendants and her lease and park rules and regulations include the Challenged Rules and Enforcement Practices. Plaintiff Aguilar signed a lease to rent lot number 398 at Harmony Village on or about November 5, 2004, and that lease governs her tenancy with the Defendants through the present.

23. Plaintiff Aguilar's mobile home is situated on the mobile home space she leases from the Defendants, and the home and space serve as her and her family's primary residence.

24. Plaintiff Aguilar is the owner of two vehicles. As of October 2021, both vehicles were parked in Plaintiff Aguilar's allotted spaces in the driveway situated on her mobile home space within the Park.

25. One of Plaintiff Aguilar's vehicles was properly registered and tagged. The other was in need of repairs and an emissions test and did not have an up-to-date registration and license plates. This vehicle was not being used by Plaintiff Aguilar.

26. Neither of Plaintiff Aguilar's vehicles impeded traffic, interfered with the mobile home spaces of other residents within the Park or the common areas, or otherwise caused safety concerns.

27. Plaintiff Aguilar did not expect the Defendants to utilize their discretion to enforce the Challenged Rules and Enforcement Practices in a manner that did not regard and was indifferent to whether or not a vehicle impedes traffic, interferes with the mobile home spaces of other residents within the Park or the Park common areas, presents any safety concerns, or otherwise interferes with any persons access to or use and enjoyment of the Park.

28. On or about October 25, 2021, the Defendants caused a sticker to be placed on Plaintiff Aguilar's not-in-use vehicle, warning that the vehicle would be towed or booted on October 28, 2021, stating as cause: "Expired temp and inoperable." **Exhibit 2** – Towing Sticker.

29. On or about Friday, November 8, 2021, Harmony caused BusyBee Towing to tow one of Plaintiff Aguilar's vehicles, purportedly pursuant to the Defendants' Challenged Rules and Enforcement Practices.

30. On or about November 8, 2021, Plaintiff Aguilar called the Defendants' on-site office at the Park questioning why her vehicle had been towed and seeking to recover it. Plaintiff was informed by the Defendants' agents that the vehicle could not be returned until Monday, November 11, 2021, because of the weekend.

31. On or about November 11, 2021, Plaintiff Aguilar recovered her vehicle from BusyBee Towing after paying approximately \$600 in towing and storage fees.

### **CLASS ACTION ALLEGATIONS**

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

**Class:** All persons in the State of Colorado who (1) from the date three years prior to the filing of this Complaint through the date notice is sent to the Class; (2) leased a lot from the Defendants; and (3) were towed for allegedly violating the Defendants' Challenged Rules and Enforcement Practices.

33. The following people are excluded from the Class: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' principals, subsidiaries, parents, successors, predecessors, contractors, and any entity in which the Defendants or their 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) Defendants' counsel and Plaintiff's counsel; and (6) the legal representatives, successors, and assignees of any such excluded persons.

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

35. **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 RHP leases 7,903 mobile home lots in parks across the state, including 480 contained in the Park. The number of Class Members and class membership can be identified through objective criteria, including Defendants' business records and resident records of payment related to towing.

36. **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 subject to the same unlawful and illegitimate rules and enforcement practices of Defendants and sustained the same legal injuries and damages arising out of Defendants' uniform wrongful conduct. If Plaintiff has an entitlement to relief, so do the rest of the Class Members.

37. **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 standardized provisions and enforcement policies contained in form contracts and lease agreements. Neither Plaintiff nor her counsel has any interest in conflict with or antagonistic to those of the Class, and Defendants have no defenses unique to Plaintiff.

38. **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 Defendants' Challenged Rules and Enforcement Practices are unlawful under Colorado's Mobile Home Park Act;
- (b) Whether Defendants' Challenged Rules and Enforcement Practices are unconscionable or void as against public policy;

- (c) Whether Defendants' exercise of discretion in enforcing the Challenged Rules violate the implied covenant of good faith and fair dealing;
- (e) Whether the Class is entitled to injunctive and declaratory relief; and
- (f) Whether the Class is entitled to damages.

39. **Conduct Similar Towards All Class Members:** By committing the acts set forth in this pleading, Defendants have 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 Rules. On information and belief, Defendants enforced the Challenged Rules against the Class, resulting in economic loss.

40. **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 Defendants' actions. It would be virtually impossible for the individual members of the Class to obtain effective relief from Defendants' 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 Defendants for the same conduct.

**FIRST CLAIM FOR RELIEF**  
**(Declaratory and Injunctive Relief)**  
**On Behalf of Class**

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

42. Plaintiff seeks a declaration individually and on behalf of the class that the Defendants' Challenged Rules and Enforcement Practices violate Colorado's Mobile Home Park Act because 1) their purpose isn't to promote the safety or welfare of the home owners, to protect and preserve the premises from abuse, or to make a fair distribution of services and facilities held out for the home owners generally; 2) they are not reasonably related to a legitimate purpose, for which they are adopted; 3) they are arbitrary, capricious, unreasonable, retaliatory, or discriminatory in nature; and 4) they are not sufficiently explicit in prohibition, direction, or limitation of each home owner's conduct to fairly inform each home owner of what the home owner must do or not do to comply as required by C.R.S. § 38-12-214(1).

43. Alternatively, Plaintiff seeks a declaration individually and on behalf of the class that the Defendants' Challenged Rules and Enforcement Practices breach the implied covenant of good faith and fair dealing as provided in *Amoco Oil Co. v. Ervin*, 908 P.2d 493 (Colo. 1995), are procedurally and substantively unconscionable, and are void against public policy.

44. Plaintiff seeks a declaration individually and on behalf of the class that the Defendants are not allowed to mandate specific care or registration, nor to tow vehicles, where no safety or other legitimate concern exists pursuant to C.R.S. § 38-12-214.

45. The Defendants' Challenged Rules and Enforcement Practices should be declared unlawful and unenforceable and should be stricken with respect to Plaintiff and the Class.

46. Defendants should be enjoined from attempting to enforce the Challenged Rules.

**SECOND CLAIM FOR RELIEF**  
**(Violation of C.R.S. § 38-12-214(1))**  
**On Behalf of the Class**

47. Plaintiff realleges and incorporates by reference the allegations set forth above as if set forth fully herein.

48. Under Colorado law, landlords of mobile/manufactured home parks shall adopt rules and regulations only if: "(a) Their purpose is to promote the safety or welfare of the home owners, protect and preserve the premises from abuse, or make a fair distribution of services and facilities held out for the home owners generally; (b) They are reasonably related to a legitimate purpose, for which they are adopted; (c) They are not arbitrary, capricious, unreasonable, retaliatory, or discriminatory in nature; (d) They are sufficiently explicit in prohibition, direction, or limitation of each home owner's conduct to fairly inform each home owner of what the home owner must do or not do to comply; and (e) They are established in the rental agreement at the inception of the tenancy, amended subsequently with the consent of the home owner, or, except as described in subsection (2) of this section, amended subsequently without the consent of the home owner after the management has provided written notice of the amendments to the home owner at least sixty days before the amendments become effective, and, if applicable, enforced in compliance with subsection (3) of this section." C.R.S. § 38-12-214(1).

49. Any violation by a landlord of Section 12 of Title 38 creates independent grounds for a private right of action, in which tenants are entitled to actual economic damages and attorney fees and costs if successful. C.R.S. § 38-12-220.

50. Defendants' Challenged Rules and Enforcement Practices are unlawful under Colorado's Mobile Home Park Act. Defendants' Challenged Rules are not reasonably related to a legitimate purpose, they are arbitrary and unreasonable in nature, and their purpose is not to promote the safety or welfare of the home owners or to protect them from abuse. Just the opposite is true: towing for supposedly expired tags is abusive.



51. Plaintiff and Class Members have suffered economic damages in the form of unnecessary expenses to maintain vehicles, remove vehicles from impound, and the value of lost vehicles as a result of Defendants' violation of C.R.S. 38-12-214.

52. Plaintiff and Class Members seek to recover the value of all actual damages, economic damages, and other sums allowed resulting from Defendants' violation of C.R.S. 38-12-214 as well as their attorney fees and costs.

**THIRD CLAIM FOR RELIEF**  
**(Breach of Contract)**  
**On Behalf of the Class**

53. Plaintiff realleges and incorporates by reference the allegations set forth above:

54. Plaintiff and the Class Members were parties to the Form Lease, which is a contract, with the Defendants.

55. Plaintiff and Class Members substantially performed valid provisions of the Form Lease in tendering lot rent to Defendants and complying with valid park rules and regulations.

56. Defendants breached the lease contracts with Plaintiff and, upon information and belief, breached the lease contracts with Class Members by threatening to tow and causing towing of vehicles for reasons unrelated to the legitimate purposes of park rules and regulations established in C.R.S. 38-12-214(1).

57. Plaintiff and Class Members seek to recover all actual damages, economic damages necessary to restore Plaintiff and Class Members for the costs of Defendants' breach, and all other sums allowed by law in amounts to be proven at trial.

**FOURTH CLAIM FOR RELIEF**  
**(Breach of Implied Covenant of Good Faith)**  
**Against Defendant**

58. Plaintiff realleges and incorporates by reference the allegations set forth above.

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

60. Defendants 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.

61. Defendants' conduct in using discretion to enforce the Challenged Rules by having the Plaintiff's and Class Members' vehicles towed, in violation of Colorado law, constitutes a breach of the implied covenant of good faith and fair dealing.

62. Defendants' breach of the implied covenant of good faith and fair dealing caused Plaintiff and the Class Members losses, actual damages, and all consequential damages in amounts to be proven at trial.

### **PRAYER FOR RELIEF**

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 Ms. Aguilar as Class Representative, and appoint her counsel as Class Counsel;
- B. The Court enter a declaratory judgment establishing that Defendants' requirements that vehicles be registered, licensed, insured, operable at all times, and/or maintained in a neat and undamaged condition are unreasonable, arbitrary, and capricious, and do not advance the safety and welfare of park residents;
- C. The Court enter a judgment enjoining Defendants from causing vehicles to be towed or from threatening to tow vehicles pursuant to the Challenged Rules and Enforcement Practices where no safety or welfare concerns exists;
- D. The Court enter an order granting Plaintiff and Class Members a preliminary and permanent injunction prohibiting Defendants from towing or threatening to tow vehicles not in compliance with the Challenged Rules and Enforcement Practices;
- E. The Court enter judgment in favor of Plaintiff and Class Members and against Defendants in the amount of all sums paid by Plaintiff and Class Members toward unnecessary vehicle repairs or appointments made to avoid towing to be paid into a common fund for the benefit of the Class;
- F. The Court enter judgment in favor of Plaintiff and Class Members and against Defendants in the amount of all sums paid by Plaintiff and Class Members toward releasing vehicles from impoundment as a result of Defendant's towing practices, and all fees associated therewith, or for the fair market value of vehicles Class Members relinquished to the towing company to be paid into a common fund for the benefit of the Class;
- G. The Court award pre-judgment interest and post-judgment interest against Defendants on all sums awarded to Plaintiff and Class Members;
- H. The Court award to Plaintiff and Class Members reasonable attorneys' fees and the costs of these proceedings against Defendants; and
- I. The Court order such other and further relief as the nature of this case may require.

Dated: July 26, 2022

Elizabeth Aguilar

By: /s/ Steven L. Woodrow  
One of her 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

By: /s/ Cameron Netherland  
Cameron Netherland (#55864)  
Netherland Law, LLC  
501 S. Cherry St., Ste. 1100  
Denver, CO 80246  
cnetherlandlaw@gmail.com