

| | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| DISTRICT COURT, LARIMER COUNTY, STATE OF COLORADO 201 LaPorte Ave., Suite 100 Ft. Collins, CO 80521 | DATE FILED September 22, 2022 4:24 PM FILING ID: B7A25A796D05B CASE NUMBER: 2022CV30492 |
| ELIZABETH AGUILAR Plaintiff, vs. HARMONY ROAD, LLC, and RHP PROPERTIES, INC. Defendants. | ▲ COURT USE ONLY ▲ |
| <i>Attorneys for Defendants Harmony Road, LLC and RHP Properties, Inc.</i> Deanne McClung, #27451 Aaron W. Chaet, #55597 Hall & Evans, LLC 1001 Seventeenth St, Suite 300 Denver, CO 80202 (303) 628-3300 Tele (303) 628-3368 Fax mcclungd@hallevans.com chaeta@hallevans.com | Case No.: 2022CV030492 Division: 3B |
| <p style="text-align: center;">HARMONY ROAD, LLC’S ANSWER AND AFFIRMATIVE DEFENSES WITH JURY DEMAND TO CLASS ACTION COMPLAINT</p> | |

Defendant Harmony Road, LLC (“Defendant”), by and through its attorneys, Hall & Evans, LLC, hereby submits its Answer and Affirmative Defenses to Plaintiff Elizabeth Aguilar’s Complaint as follows:

Defendant states that the first paragraph of Plaintiff’s Complaint contains introductory and conclusory allegations to which no response is required. To the extent a response is required, Defendant denies that it unlawfully caused vehicles to be towed for expired tags or registration.

ANSWER TO PARTIES, JURISDICTION, AND VENUE

1. Defendant admits that 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 located in Fort Collins, Colorado. Defendant denies the remaining allegations in paragraph 1 of the Complaint.

2. Defendant admits it 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. Defendant admits that it owns and manages a mobile home park located at 2500 Harmony Road, Fort Collins, CO 80528 which contains at least 400 lots for mobile homes.

3. Defendant denies that RHP Properties, Inc. (“RHP”) is the manager and owner of Defendant Harmony. Defendant admits the remaining allegations in paragraph 3 of the Complaint.

4. Defendant does not contest jurisdiction or venue as alleged in paragraphs 4-5 of Plaintiff’s Complaint.

5. With respect to the remaining averments of paragraphs 1-5 of Plaintiff’s Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO COMMON FACTUAL ALLEGATIONS

6. Defendant incorporates its responses to paragraphs 1-5 of Plaintiff’s Complaint as set forth above as if fully restated herein.

7. Defendant admits that it owns Harmony Village Manufactured Home Community (“Harmony Village”) where Plaintiff is a lessee. Defendant denies the remaining allegations of paragraph 6 of the Complaint.

8. Defendant denies that Defendant RHP owns and/or operates Harmony Village. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 7 of the Complaint and therefore denies the same.

9. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 8 of the Complaint and therefore denies the same.

10. In response to the allegations of paragraph 9 of the Complaint, Defendant admits only that Ross H. Partrich signed a Deed of Trust which was recorded in Larimer County on December 14, 2012 at instrument number 20120090355. Defendant denies the remaining allegations of paragraph 9 of the Complaint.

11. Defendant admits that it is registered with the Colorado Department of Local Affairs Mobile Home Park Oversight Program. Defendant further admits that Joel Brown is the President of Defendant RHP. Defendant denies the remaining allegations of paragraph 10 of the Complaint.

12. Defendant denies the allegations contained in paragraph 11 of the Complaint.

13. Defendant admits that it established lawful rules and regulations, policies, practices, and procedures relating to mobile home lot tenants’ automobiles within Harmony Village. Defendant admits that that a tenant’s failure to comply may have resulted in towing at the tenant’s expense. Defendant lacks knowledge or information sufficient to form a belief as to the

truth of the remaining allegations contained in paragraph 12 of the Complaint, and therefore denies same.

14. Defendant admits that Exhibit 1 to the Complaint appears to be a copy of its lease with Plaintiff (the “Lease”). The Lease speaks for itself and no further response is required. To the extent a response is required, Defendant denies all additional allegations contained in paragraph 13 of the Complaint that conflict or misrepresent the terms of the Lease.

15. Defendant admits that it established lawful rules and regulations, policies, practices, and procedures relating to mobile home lot tenants’ automobiles within Harmony Village, and that tenants’ failure to comply may have resulted in towing at the tenants’ expense. Defendant denies the remaining allegations in paragraph 14 of the Complaint.

16. Paragraph 15 of the Complaint is incomplete and therefore Defendant cannot admit the partial allegations contained therein. However, Defendant asserts that the Lease speaks for itself.

17. The allegations contained in paragraph 16 of the Complaint cite an incomplete portion of the Colorado Mobile Home Park Act (the “Act”). The Act speaks for itself and no further response is required. To the extent a response is required, Defendant denies that it violated the Act.

18. Defendant admits that it typically allotted two parking spaces per residence at Harmony Village, typically in the form of a driveway on the resident’s leased mobile home space. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 17 of the Complaint, and on that basis, denies the same.

19. Defendant admits that Defender Towing, LLC d/b/a BusyBee Towing Company (“BusyBee Towing”) performs the towing of vehicles at Harmony Village. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 18 of the Complaint, and therefore denies same.

20. Defendant admits that it does not have to pay BusyBee Towing directly “out of its pocket” to tow vehicles in violation of Defendant’s lawful policies. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 19 of the Complaint, and on that basis, denies the same.

21. Defendant denies the allegations contained in paragraph 20 of the Complaint.

22. This Lease speaks for itself and no further response is required. To the extent a response is required, Defendant denies all additional allegations of paragraph 21 of the Complaint that conflict or misrepresent the terms of the Lease.

23. With respect to the remaining averments of paragraphs 6-21 of Plaintiff’s Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO FACTS SPECIFIC TO PLAINTIFF AGUILAR

24. Defendant incorporates its responses to paragraphs 1-21 of Plaintiff’s Complaint as set forth above as if fully restated herein.

25. Defendant admits that, beginning in or around May 2004, Plaintiff Aguilar leased a mobile home with lot number 398 at Harmony Village, and that the Lease as well as the community guidelines, as updated, govern tenancy. Defendant denies the remaining allegations of paragraph 22 of the Complaint.

26. Defendant admits that the mobile home, purported to be Plaintiff Aguilar's, is situated on the mobile home space she leases from Defendant. Defendant denies that Defendant RHP leases the space to Plaintiff Aguilar. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 23 of the Complaint and therefore denies the same.

27. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 24 of the Complaint and therefore denies same.

28. Defendant admits that one of Plaintiff Aguilar's vehicles did not have an up-to-date registration and license plates. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 25 of the Complaint and therefore denies same.

29. Defendant denies the allegations contained in paragraph 26 of the Complaint.

30. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations regarding Plaintiff Aguilar's expectations and therefore denies same. Defendant denies the remaining allegations contained in paragraph 27 of the Complaint.

31. Defendant admits that it caused a sticker to be placed on Plaintiff's not-in-use vehicle that contained a warning that the vehicle would be towed or booted on October 28, 2021, stating as cause: "Expired temp and inoperable." Defendant denies the remaining allegations contained in paragraph 28 of the Complaint.

32. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of the Complaint and therefore denies same.

33. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 30 of the Complaint and therefore denies same.

34. Defendant lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 31 of the Complaint and therefore denies same.

35. With respect to the remaining averments of paragraphs 22-31 of Plaintiff's Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO CLASS ACTION ALLEGATIONS

36. Defendant incorporates its responses to paragraphs 1-31 of Plaintiff's Complaint as set forth above as if fully restated herein.

37. Although Plaintiff has not yet moved for class certification, Defendant denies that facts of this case meet the requirements for certification of a class and therefore denies the averments of paragraphs 32-40 of Plaintiff's Complaint. Defendant expects that upon Plaintiff's Motion, it will file briefing on the issue and will seek oral arguments before the Court.

38. With respect to the remaining averments of paragraphs 32-40 of Plaintiff's Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO FIRST CLAIM FOR RELIEF

39. Defendant incorporates its responses to paragraphs 1-40 of Plaintiff's Complaint as set forth above as if fully restated herein.

40. Contemporaneously herewith, Defendant has filed a Motion to Dismiss Plaintiff's First Claim for Relief. Defendant incorporates the facts and arguments contained in the Motion to

Dismiss as if fully restated herein. To the extent that any additional response is required, Defendant specifically denies that it violated the Colorado Mobile Home Park Act.

41. With respect to the remaining averments of paragraphs 41-46 of Plaintiff's Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO SECOND CLAIM FOR RELIEF

42. Defendant incorporates its responses to paragraphs 1-46 of Plaintiff's Complaint as set forth above as if fully restated herein.

43. The allegations of paragraphs 48-49 of the Complaint include cites to the Act. The Act speaks for itself and no further response is required. To the extent a response is required, Defendant denies that it violated the Act.

44. Defendant denies the allegations contained in paragraph 50 of the Complaint.

45. Defendant denies the allegations contained in paragraph 51 of the Complaint.

46. Defendant denies that Plaintiff or any potential Class Members suffered damages. Defendant further denies that Plaintiff or any potential Class Members are entitled to relief beyond what the Act provides. Defendant denies the remaining allegations contained in paragraph 52 of the Complaint.

47. With respect to the remaining averments of paragraphs 47-52 of Plaintiff's Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO THIRD CLAIM FOR RELIEF

48. Defendant incorporates its responses to paragraphs 1-52 of Plaintiff's Complaint as set forth above as if fully restated herein.

49. Defendant admits only that it and Plaintiff Elizabeth Aguilar were parties to the Lease. Defendant denies the remaining allegations in paragraph 54 of the Complaint.

50. Defendant denies the allegations contained in paragraph 55 of the Complaint.

51. Defendant denies the allegations contained in paragraph 56 of the Complaint.

52. Defendant denies that Plaintiff or any potential Class Members suffered damages, that Defendant is responsible for any damages Plaintiff or any potential Class Members seek in this lawsuit, or that they are entitled to relief beyond what the Act provides. Defendant denies the remaining allegations in paragraph 57 of the Complaint.

53. With respect to the remaining averments of paragraphs 47-52 of Plaintiff's Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO FOURTH CLAIM FOR RELIEF

54. Defendant incorporates its responses to the allegations in paragraphs 1-57 of Plaintiff's Complaint as if fully restated herein.

55. The allegations of paragraph 59-60 of the Complaint are legal conclusions for which no response is required. To the extent a response is required, Defendant admits to only those duties imposed by Colorado law.

56. Defendant denies the allegations contained in paragraph 61 of the Complaint.

57. Defendant denies that Plaintiff or any potential Class Members suffered damages, that Defendant is responsible for any damages Plaintiff or any potential Class Members seek in this lawsuit, or that they are entitled to relief beyond what the Act provides. Defendant denies the remaining allegations contained in paragraph 62 of the Complaint.

58. With respect to the remaining averments of paragraphs 58-62 of Plaintiff's Complaint, except as explicitly stated above, Defendant denies same, either affirmatively or for lack of information sufficient to form a belief as to the truth thereof.

ANSWER TO PRAYER FOR RELIEF

59. Defendant incorporates its responses to the allegations in paragraphs 1-62 of Plaintiff's Complaint as if fully restated herein.

60. The remainder of the Complaint constitutes Plaintiff's prayer for relief, to which no response is required. To the extent a response is required, Defendant denies that Plaintiff or any potential Class Members are entitled to any of the requested relief against Defendant.

GENERAL STATEMENT REGARDING DEFENSES

The Rules of Civil Procedure require every defendant to plead potential defenses at the time the Answer is filed, or risk a determination the potential defenses are waived, even though no disclosures have been exchanged, and no right of discovery exists, at the time the Answer is filed. Therefore, the defenses are necessarily pled based only on information and belief. Defendant reserves the right to seek leave to amend its Answer or to add, withdraw, and/or modify its defenses once disclosures are exchanged, discovery is received, or other information is obtained.

GENERAL DENIAL

1. Defendant denies each allegation not specifically admitted herein.

DEFENSES AND AFFIRMATIVE DEFENSES

1. Plaintiff has failed to state a claim upon which relief may be granted as evidenced by Defendant's Partial Motion to Dismiss, RHP Properties, Inc.'s Motion to Dismiss, and these defenses and affirmative defenses.

2. Plaintiff's claims are barred by the doctrines of unclean hands, accord and satisfaction, acceptance, and ratification, estoppel, and/or laches.

3. Plaintiff's claims are barred, reduced or limited by the express terms and conditions of the Lease, and Harmony Village community guidelines, rules, regulations, or other applicable documents which purport to define the parties' rights, duties and obligations vis-à-vis each other, or other non-parties, which documents speak for themselves.

4. Plaintiff's claims are barred, reduced or limited by her breach of the Lease and Harmony Village community guidelines, rules, regulations, or other applicable documents which purport to define the parties' rights, duties and obligations vis-à-vis each other, or other non-parties, which documents speak for themselves.

5. Plaintiff's damages, if any, in whole or in part, were caused by her own acts or omissions.

6. Plaintiff's alleged damages, if any, were not caused by any act or omissions by Defendant.

7. Defendant's Lease complied with all applicable state and local codes, rules, regulations, industry standards, and contracts.

8. As a mobile home park operator, Defendant is entitled to all rights, privileges, limitations of damages and protections of the Mobile Home Park Act, C.R.S. § 38-12-200.1 *et seq.*

9. Plaintiff's claims and/or damages may be limited or barred by the Mobile Home Park Act, C.R.S. § 38-12-200 et seq.

10. Plaintiff's damages, if any, are speculative, remote, and based upon guesses or mere estimates, which cannot serve as the legal basis for recovery. *See Roberts v. Holland & Hart*, 857 P.2d 492, 497 (Colo. App. 1993) (citing *U.S. v. Griffith, Gornall & Carman, Inc.*, 210 F.2d 11 (10th Cir. 1954)).

11. Plaintiff's damages, if any, are limited pursuant to C.R.S. §38-12-200.1 et seq.

12. Plaintiff's damages, if any, are limited by the economic loss rule.

13. Defendant reserves the right to plead additional affirmative defenses and other matters in avoidance that may become known through subsequent investigation and discovery.

**DEFENDANT DEMANDS THIS CASE
BE TRIED TO A JURY OF SIX (6) PERSONS**

WHEREFORE, Defendant Harmony Road, LLC, respectfully requests that Plaintiff's Complaint be dismissed with prejudice, that judgment be entered in Defendant's favor, and that the Court award costs, reasonable attorney fees, and such other relief as this Court deems proper under the circumstances.

DATED this 22nd day of September 2022

Respectfully submitted,
HALL & EVANS, LLC

/s/Aaron W. Chaet

Deanne McClung, #27451

Aaron W. Chaet, #55597

*Attorneys for Defendants Harmony Road, LLC and
RHP Properties, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of September 2022, a true and correct copy of the foregoing **HARMONY ROAD, LLC'S ANSWER AND AFFIRMATIVE DEFENSES WITH JURY DEMAND TO CLASS ACTION COMPLAINT** was filed with the Court and served on all parties of record via e-file with the Colorado Courts E-filing System.

Steven L. Woodrow #43140
WOODROW & PELUSO, LLC
3900 East Mexico, Ave. Suite 300
Denver, CO 80210
Telephone: (720) 213-0675
Facsimile: (303) 927-0809
swoodrow@woodrowpeluso.com

Jason Legg #42946
CADIZ LAW, LLC
501 S. Cherry St., Ste. 1100
Denver, CO 80246
720.330.2800
jason@cadizlawfirm.com

Cameron Netherland #55864
NETHERLAND LAW, LLC
501 S. Cherry St., Suite 1100
Denver CO 80246
720-515-4767
cnetherlandlaw@gmail.com

*Original Duly Signed and on file
at the offices of Hall & Evans, LLC*

s/Susan Ramsey
Susan Ramsey, Legal Assistant