

<p>COUNTY COURT, ARAPAHOE COUNTY, COLORADO</p> <p>1790 W. Littleton Blvd. Littleton, CO 80120</p> <p>PLAINTIFF/COUNTERDEFENDANT: ECHELON PROPERTY GROUP, LLC, a Colorado limited liability company</p> <p>v.</p> <p>DEFENDANT/COUNTERPLAINTIFF: BOBBY SALANDY</p> <p>Attorneys for Defendant:</p> <p>Steven L. Woodrow #43140 WOODROW & PELUSO, LLC 3900 East Mexico, Ave. Suite 300 Denver, CO 80210 Telephone: (720) 213-0675 Facsimile: (303) 927-0809</p> <p>Jason Legg #42946 CADIZ LAW, LLC 501 S. Cherry St., Ste. 1100 Denver, CO 80246 720.330.2800 jason@cadizlawfirm.com</p>	<p>▲ COURT USE ONLY ▲</p> <p>Case Number: 2019C37058</p> <p>Ctrm.: A2</p>
<p><u>AMENDED ANSWER, CLASS ACTION COUNTERCLAIMS, AND JURY DEMAND</u></p>	

Defendant/Counterplaintiff, Bobby Salandy (“Defendant” or “Salandy”), by and through its undersigned counsel, individually and on behalf of all others similarly situated, brings this Amended Answer, Class Action Counterclaims and Demand for Jury Trial (“Amended Counterclaim”) against Plaintiff Echelon Property Group, LLC (“Plaintiff” or “EPG”) to: (1) stop Plaintiff’s practice of charging unlawful late fees, penalties, liquidated damages, and/or

usurious sums to tenants like Defendant and others who've been grossly overcharged on their rental agreements—all under the improper threat of eviction, (2) to obtain damages and other redress for all persons injured by Defendant's conduct, and (3) to transfer this matter to the District Court of Arapahoe County. Defendant, for his Answer and Counterclaim, answers and 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.

ANSWER

1. Defendant admits that Plaintiff is the owner/manager/agent of the Premises, that Defendant resides at that location pursuant to a "Lease Agreement" (a true and accurate copy of which is attached hereto as Exhibit A), and that Defendant is not a minor, incompetent, in the military service, nor an office, agency, or instrumentality of the State of Colorado. Defendant does not consent to a Magistrate presiding at all hearings. Defendant denies that the amount sought in this action does not exceed \$15,000.

2. Defendant admits that the Premises is located in Arapahoe County and that Defendant had entered into a lease contract with the Plaintiff. Defendant denies that it is in default under the lease, owes the money Plaintiff alleges is owed, and no longer has the right to occupy the premises. Defendant admits that it was served the documents referenced by Plaintiff.

3. Defendant denies that it has breached the lease by failing to make payments owed or otherwise. The rest of Paragraph 3 of Plaintiff's Complaint constitutes statements or conclusions of law to which no answer is required. To the extent an answer is required, the allegations are denied.

4. Denied.

5. Defendant denies that Plaintiff is entitled to the relief sought in Paragraph 5 of its Complaint.

6. Defendant demands a trial by jury.

AFFIRMATIVE DEFENSES

7. Plaintiff's right to relief, if any, is barred in whole or in part by the doctrines of unclean hands and in *pari delecto*.

8. Plaintiff's claims and damages, if any, are barred because the contract, or certain terms therein, is unlawful, unconscionable and unenforceable.

9. Plaintiff's claims and damages, if any, are barred or limited by the doctrine of payment and performance.

10. Plaintiff's claims and damages, if any, are barred by the doctrines of estoppel including, without limitation, equitable estoppel and promissory estoppel.

11. Plaintiff's claims and damages, if any, are barred by considerations of public policy.

RESERVATION OF RIGHTS

12. Defendant hereby expressly reserves its right to set forth additional affirmative defenses as they become known during discovery or otherwise during the course of litigation.

13. Defendant further expressly reserves its right to assert any additional claims and defenses as may be revealed by discovery and/or evidence presented in this action.

CLASS ACTION COUNTERCLAIMS

Defendant, by and through its undersigned counsel, brings his counterclaims as a class action, pursuant to C.R.C.P. 23(a) and (b)(1), (b)(2), and (b)(3), on behalf of a class consisting of itself and all similarly situated parties, averring and alleging as follows:

BACKGROUND

1. EPG is a property manager and landlord who has systematically charged and collected from Defendant and other tenants substantial amounts of improper fees related to the late payment of rent.

2. Plaintiff adds these improper and inflated fees to the rent it charges Defendant and other Class Members and requires tenants to pay these inflated fees in order to continue living in their apartments.

3. Plaintiff's late fees shock the conscience. If the Defendant and Class Members do not pay their monthly rent in full by the end of the third day of each month, the Defendant charges an array of fees which, in Defendant's case, can and has equaled up to \$660.00 in additional charges in a single month (on a unit that rents for \$924 a month).

4. Specifically, EPG charges:

- a. A \$75.00 late charge on the fourth day of the month;
- b. A \$20.00 service fee around the fourth day of the month purporting to be related to the Defendant serving "a legal notice demanding the rent;

- c. \$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;
- d. A \$295.00 attorney's filing fee around the ninth day of the month.

5. These fees are assessed and collected under the threat of eviction. That is, if the fees go unpaid, EPG files an eviction proceeding such as the present action demanding both the payment of rent and the fees to avoid eviction, and EPG requires payment in full of both the rent and the improper fees in order to prevent eviction.

6. Plaintiff commences the eviction process not with the primary aim of evicting a tenant but instead to stack up and churn these improper fees in addition to the rent it collects.

7. The assessment and collection of these improper fees - because they amount to a substantial fraction of a month's rent - operate to put Plaintiff's tenants behind in their ability to pay rent in a timely fashion, thereby allowing the Plaintiff to perpetually charge and collect such fees under the threat of eviction in subsequent months.

8. This creates a near endless hole from which tenants cannot easily climb out—all while Plaintiff retains unlawfully inflated sums.

PARTIES

9. Defendant Salandy is a tenant with a lease agreement that commenced August 8, 2018, for an apartment unit in the apartment complex commonly known as "Park Place at Expo" apartments in Aurora, Colorado. (See "Lease Agreement," Ex. A.)

10. Plaintiff EPG is a Colorado limited liability company maintaining its principal office at 7600 E. Orchard Rd., Suite 200N, Greenwood Village, CO 80111. EPG is a managing agent at approximately 50 multi-family properties managing more than 10,000 apartment units in Colorado alone. EPG manages Park Place at Expo on behalf of the property owner.

JURISDICTION, REQUEST FOR TRANSFER, AND VENUE

11. Defendant's Class Action Counterclaims are beyond the jurisdiction of the County Court, and Defendant requests that this matter be immediately transferred to the District Court of Arapahoe County (and that all proceedings in this matter before the County Court be discontinued immediately, for the following reasons:

- a. C.R.S. § 13-40-109 limits the jurisdiction of this Court to enter judgment for rent, or damages, or both and to render judgment on a counterclaim in forcible entry and detainer to a total of twenty-five thousand dollars in favor of either party, exclusive of costs and attorney fees. Defendant's Class Action

Counterclaims, however, seek damages for the putative class in excess of twenty-five thousand dollars, exclusive of costs and attorney fees;

b. C.R.S. § 13-6-105(1)(f) provides that the county court has no jurisdiction over proceedings for the issuance of injunctions (with exceptions inapplicable here). Defendant's Answer and Class Action Counterclaims seek injunctive relief; and

c. C. R.C.P 23 and C.R.S. § 12-20-901, by lacking any counterpart or reference to the county courts in providing for the administration of class actions, indicate that the county courts lack jurisdiction over Class Action proceedings. Defendant's Counterclaims seek relief on behalf of Defendant and an alleged Class.

12. C.R.C.P. 313(b)(2) requires the discontinuance of all county court proceedings and the transfer of the case to the district court upon the request of a Defendant who asserts a counterclaim in its answer beyond the jurisdiction of the county court.

13. Defendant requests this Court discontinue its proceedings and transfer this case to the District Court in accordance with C.R.C.P. 313(b)(2).

14. Venue is proper in Arapahoe County because Plaintiff EPG maintains its principal office in Arapahoe County. C.R.C.P. 98(c). The apartment complex at issue is also located in Arapahoe County.

COMMON FACTUAL ALLEGATIONS

15. At all relevant times, EPG has acted as landlord and property manager of the Park Place at Expo Apartments where Defendant resides.

16. On information and belief, EPG uses a standardized form lease at all of the properties it manages in Colorado, including the Park Place at Expo apartments owned by Park Place.

17. This standard form lease includes substantially the same provisions regarding Rent, Payment of Rent, and Late, Returned Check, Eviction, and Other Fees and Charges.

18. Such terms are non-negotiable and are presented by Plaintiff as "take it or leave it".

19. Defendant's lease at issue in this case is an example of Plaintiff's form lease.

20. Plaintiff's form lease with Salandy and its other tenants all include the following provisions (with different amounts inputted for the base rent):

6. RENT Resident agrees to pay Agent periodic total monthly rent of \$924.00 per month commencing on August 8, 2018 ("the commencement date"), or on the 1st day of the month after the commencement date if the commencement date is not the first date of the month. The total monthly rent is the sum of the base monthly rent of \$924.00 and the options monthly rent of \$0.00. Resident agrees to pay monthly option rent in the following amounts for the following options: \$0.00 Parking Rent, \$0.00 Pet Rent, \$0.00 Storage Rent, \$0.00 Appliance Rent, and \$0.00 Other Rent. Other Rent consists of N/A.

...

8. PAYMENT OF RENT Resident shall pay base monthly rent on or before the first day of each month without demand or notice by Agent. Resident shall pay all sums under this Lease when due and Agent, although not required, may demand any sum due under this Park Place 1 Lease on the date it is due. Resident shall make all rent payments and other sums due to Agent at the on-site management office, or at such other place Agent may designate in writing from time to time. Resident shall pay base monthly rent and any other sums due under this Lease by check or cashier's check...

9. LATE, RETURNED CHECK, EVICTION AND OTHER FEES AND CHARGES If Agent has not received the total monthly rent from Resident for any given month on or before the 3rd day of the month in which such rent is due, Resident shall pay a late charge of \$75.00 on 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. Agent agrees that the \$10.00 per day daily late charge will not exceed the number of actual days in a given month that the amount of rent has not been paid. If Resident's rent is late, Agent will serve a legal notice demanding the rent, and Resident shall pay Agent a \$20.00 service of notice fee. Dishonored check(s) are any checks that are dishonored or not paid upon presentment for any reason, or any electronic payments not paid or credited for any reason. Resident agrees to pay Agent \$20.00 for each dishonored check, in addition to any applicable late fees. Resident must immediately replace any such check upon notice or demand with cashier's check. If two or more of Resident's checks tendered to and received by agent are not paid upon presentment for any reason, Resident shall without notice, demand, or request make all further payments to Agent in cashier's check. Any and all amounts owed by Resident for any charge or fee under this paragraph shall be considered additional rent, and Agent shall have the same remedies as non-payment of monthly rental installments. If Resident makes any payment in response to an eviction notice or demand for rent or possession, Resident shall make such payment in cashier's check, and not by electronic payment method. If Resident makes any payment in response to an eviction notice or demand for rent or possession after the three day demand period has expired, Resident shall pay Agent, in addition to any other amounts due, \$295.00 for eviction administrative fees and attorneys' fees. The

administrative charge is not a late fee or penalty but rather is an addition to any charges set forth in the lease. Resident agrees to pay all Sheriff's fees if Agent evicts Resident and incurs Sheriff's fees. Resident acknowledges that Agent may elect not to accept any monthly rent payment or other amounts due after its due date if all fees and charges do not accompany such payment owed by Resident through the date Resident offers payment. Such fees and costs include but may not be limited to late fees, check charges, eviction administrative fees, and attorneys' fees.

(See Ex. A).

21. The \$20 service fee charged by the Plaintiff relates to the preparation and posting of a "Demand for Rent or Possession" on a tenant's door by the Plaintiff's on-site staff.

22. The posting of these demands is included in the day-to-day job responsibilities of the Plaintiff's staff and does not cause the Plaintiff to incur any additional expense.

23. As a regular practice, Plaintiff threatens to evict tenants (including Salandy) in communications with the tenants and by filing eviction actions against tenants when the tenants fail to pay the improper fees in addition to rent in full, even in cases where tenants offer to pay their monthly rent.

24. Tenants are forced to pay these charges under threat of eviction and attendant damage to credit.

25. As an actual and proximate result of such charges, EPG has collected unlawful late fees, penalties, liquidated damages, and/or usurious sums from its tenants.

FACTS SPECIFIC TO DEFENDANT SALANDY

26. Defendant Salandy was assessed unlawful late fees and penalties by EPG.

27. EPG charged and collected from Salandy the following sums in addition to his monthly rent of \$924:

- a. \$155 in late fees for September of 2018; \$275 in late fees for October of 2018; \$295 in late fees for November of 2018; \$345 in late fees for December of 2018; \$115 in late fees for January 2019; \$245 in late fees for February 2019; and \$185 in late fees for March 2019;
- b. \$20 in service fees each month from September of 2018 through December of 2018 as well as in February 2019 and March 2019;
- c. \$295 in attorney filing fees for October and November of 2018, and \$360 for December of 2018.

28. The total amount of improper fees charged to and paid by Mr. Salandy equaled 19% of his rent in September of 2018, 64% of his rent in October of 2018, 66% of his rent in

November of 2018, 78% of his rent in December of 2018 12% of his rent in January of 2019, 29% of his rent in February of 2019, and 22% of his rent in March of 2019.

29. The improper fees paid by Salandy for these months total \$2,685, greatly exceeding the amount asserted as owing by the Plaintiff for the month of April 2019.

30. EPG has assessed the following sums to Salandy in addition to his rent of \$924 for the month of April, 2019:

- a. \$255 in late fees;
- b. A \$20 service fee; and
- c. \$295 in attorney filing fees.

31. These fees represent a shocking mark up on Salandy's rent for these months.

32. Salandy has paid all of the fees EPG charged him under threat of eviction solely in order to stay in his home and avoid eviction and the resulting homelessness and damage to his credit.

33. The payment of these substantial improper fees left Mr. Salandy, like other class members, with insufficient funds to tender rent for subsequent months in a timely fashion and thereby allowed EPG to assess and collect additional fees in the following months.

34. To redress these injuries, Defendant, on behalf of himself and a class of similarly situated individuals, brings this suit under Colorado law which prohibits the charging and collection of unlawful liquidated damages, penalties, or other unlawful, unconscionable, and/or usurious amounts.

35. On behalf of the Class, Defendant seeks a declaration that the charging and collections of the late fees described herein constitutes the charging and collection of unlawful liquidated damages or penalties, or other unlawful, unconscionable, and/or usurious amounts, and that the collection of such sums, or such sums in excess of amounts authorized under law, is void, unlawful, and in breach of the Parties' agreement.

36. On behalf of the Class, Defendant also seeks an injunction requiring Plaintiff to cease charging and collecting unlawful liquidated damages, penalties, other unlawful and unconscionable amounts, usurious late fees, and an award of damages to the class members, together with costs, pre- and post-judgment interest, and reasonable attorneys' fees.

CLASS ACTION ALLEGATIONS

37. Defendant 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 three years prior to the

filing of this Complaint through the date notice is sent to the Class; (2) leased an apartment from Plaintiff using Plaintiff's form lease; (3) who Plaintiff caused to be charged an initial late fee of \$75 plus additional late fees of \$10 per day, a \$20 service fee, and/or legal fees in addition to such late fees or service fees.

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

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

40. **Numerosity:** The exact number of Class Members is unknown and not available to Defendant at this time, but individual joinder is impracticable. On information and belief, Plaintiff has charged inflated and improper late fees, service fees, and legal 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 Plaintiff's business records and tenant payment ledgers.

41. **Typicality:** Defendant's claims are typical of the claims of other members of the Class in that Defendant and the members of the Class were assessed the same allegedly unlawful charges and sustained the same legal injuries and damages arising out of Plaintiff's uniform wrongful conduct. If Defendant has an entitlement to relief, so do the rest of the Class Members.

42. **Adequate Representation:** Defendant will fairly and adequately represent and protect the interests of the Classes 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 Defendant nor his counsel has any interest in conflict with or antagonistic to those of the Class, and Plaintiff has no defenses unique to Defendant.

43. **Commonality and Predominance:** There are questions of law and fact common to the claims of Defendant 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 Plaintiff's late fees constitute unlawful penalties, liquidated damages, or are otherwise unconscionable or void as against public policy, or, if deemed

default interest, excessive or usurious interest to the extent they exceed the lawful interest rate;

- (b) Whether Plaintiff's \$20 service fee was unearned;
- (c) Whether Plaintiff's charging of legal fees constitute unlawful penalties, liquidated damages, or are otherwise unconscionable or unenforceable;
- (d) Whether the Class is entitled to injunctive and declaratory relief; and
- (e) Whether the Class is entitled to damages.

44. **Conduct Similar Towards All Class Members:** By committing the acts set forth in this pleading, Plaintiff 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).

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

FIRST CLAIM FOR RELIEF (Declaration of Rights Under Lease Agreement)

46. Defendant re-alleges and incorporates by reference the allegations set forth above.

47. Defendant is a party to a Lease Agreement, which is a contract, with Plaintiff.

The Late Fees are Unlawful

48. Defendant seeks a declaration of the Parties' respective rights under the lease agreement including, inter alia, that Defendant's individually and on behalf of the class that the \$75 late fee plus an additional \$10 per day late fee constitute unenforceable liquidated damages under Colorado law as provided in *Perino v. Jarvis*, 135 Colo. 393, 312 P.2d 108 (1957). The damages to Plaintiff were not uncertain or difficult to prove, the parties did not intend to liquidate them in advance, and the amount stated is grossly unreasonable and greatly

disproportionate to the presumable loss or injury.

49. Defendant additionally seeks a declaration individually and on behalf of the class that the late fees are penalties and void as against public policy and therefore unenforceable. *See e.g. Butler v. Lembeck*, 182 P.3d 1185 (Colo. App. 2007). The late fees are grossly excessive and are assessed to keep Defendant and other tenants locked in a state of perpetual indebtedness, as any excess monthly funds go towards paying late fees and attorneys' fees. The fees also exceed any amounts that may lawfully be charged.

50. Defendant additionally seeks a declaration individually and on behalf of the class that the late fees are void because they are procedurally and substantively unconscionable. The terms are presented in a form contract of adhesion, and these specific terms are presented on a take it or leave it basis (there is no negotiating them). The fees shock the conscience because they represent a substantial percentage of the monthly rent and bear little to no resemblance to Plaintiff's actual costs or damages resulting from the late payments. The fees are so large they effectively keep tenants perpetually behind—and thereby owing even more in late fees and penalties. Coupled with other one-sided provisions of the Lease Agreement, it is undoubtedly substantively unconscionable.

51. Alternatively, Defendant seeks a declaration individually and on behalf of the Class that the late fees are usurious and disallowed under Colorado law.

52. Under Colorado law, landlords may charge statutory interest at a rate of 8%, which is allowed to creditors where an interest rate is not otherwise set forth in a contract. C.R.S. § 5-12-102(2).

53. Otherwise, the maximum interest rate allowed by Colorado law is 45% based on the monthly rent amount alleged to be delinquent and the actual interest received. C.R.S. § 5-12-103(1); *Concord Realty v. Continental Funding*, 776 P.2d 1114, 11120 (1989) (“When examining a consumer transaction for usury, the transaction may be looked at retrospectively to determine whether a lender has actually received an interest rate above that which is allowed”).

54. No interest rate is stated in the contract, so the maximum interest rate should be 8% annualized. Yet even at the 45% rate Plaintiff has exceeded its authority under the statute.

55. In September 2018, for example, the maximum interest allowed to be charged, assuming a 45% annualized rate of interest, was \$1.14 (1 day at 45% annualized interest) + \$4.68 (8 days of per diem interest equal to \$0.59) = \$5.82. The actual late fees were \$75.00 and \$80.00, or a total of \$155.00—\$149.18 more than allowed by law. Obviously 8% would be even less.

56. Defendant additionally paid excess interest in the following months:

Month	Excess Payment above 45% per annum
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October 2018	\$251.08
November 2018	\$266.52
December 2018	\$302.85
January 2019	\$109.30
February 2019	\$232.35
March 2019	\$174.94

57. Defendant seeks a declaration individually and on behalf of the class that the late fees charged by the Plaintiff constitute default interest for the late payment of rent subject to Colorado laws concerning interest charges. *See Dikeou v. Dikeou*, 928 P.2d 1286 (1996).

58. If found to be default interest, Defendant seeks a declaration individually and on behalf of the class that Plaintiff is not entitled to charge any late fees in excess of a per diem amount of interest based on the 8% annualized interest allowed by statute where no interest is stated or, alternatively the 45% annualized interest allowed by statute where the contract sets forth an improper rate of interest.

The Service Fee is Unlawful

59. In addition to the late fees, the \$20 service fee for posting a notice on a tenant's door similarly should be declared to constitute unenforceable liquidated damages, penalties void as against public policy, and unconscionable.

60. The \$20 service fee is mandatory and bears no relationship to the costs Plaintiff incurs when posting the notice. The fee is simply a method of profit generation.

61. The \$20 service fee renders it ever more difficult for tenants to catch up on the back rent.

The Attorneys' Fees are Also Unlawful

62. In addition to the late fees and the \$20 service fee for posting a notice on a tenant's door, the attorneys' fees similarly should be declared to constitute unenforceable liquidated damages, penalties or other sums that are void as against public policy, and unconscionable.

63. Attorneys' fees are sometimes assessed prior to the filing of any legal action and almost always before a Court has awarded them.

64. Such fees keep tenants perpetually stuck behind on their rent.

65. The attorneys' fees are assessed and collected for work expended seeking the recovery of unlawful and usurious amounts.

SECOND CLAIM FOR RELIEF (Breach of Contract)

66. Defendant re-alleges and incorporates by reference the allegations set forth above.

67. To the extent the late fees, service fee, and/or attorneys' fees are declared unlawful liquidated damages, penalties, amounts void as against public policy or otherwise unconscionable, or usurious, Plaintiff breached the contract by charging and collecting such amounts.

68. Plaintiff's breach caused Defendant and the Class Members to suffer damages in the form of overpaid late fees, service fees, and attorneys' fees.

69. Defendant and Class Members seek to recover damages equal to the amount of all overpayments made due to the unlawful late fees, service fee, and attorneys' fees.

THIRD CLAIM FOR RELIEF (Unjust Enrichment)

70. Defendant re-alleges and incorporates by reference the allegations set forth above.

71. Alternatively, by paying monies to satisfy Plaintiff's demand for these impermissible, unlawful, unconscionable, and usurious fees demanded by Plaintiff, Defendant and Class Members conferred benefits on Plaintiff that would be unjust for Plaintiff to retain.

72. Plaintiff accepted the benefits conferred upon it by Defendant and Class Members when it accepted the monies paid to satisfy the illegally assessed fees and costs.

73. Plaintiff was aware of, and had knowledge of, the benefits conferred on it, as it had demanded those benefits.

74. Plaintiff's collection, acceptance, and retention of unlawful fees when it was not entitled to collect such charges is, was, and continues to be unjust and inequitable.

75. Allowing Plaintiff to retain the benefits of the unlawful fees, and to permit Plaintiff to continue withholding such monies, is and would be unjust.

76. Plaintiff should be disgorged of any and all unlawful and unjust gains from its assessment and collection of unlawful late fees, service fees, and attorneys' fees.

FOURTH CLAIM FOR RELIEF

(Preliminary and Permanent Injunctive Relief)

77. Defendant re-alleges and incorporates by reference the allegations set forth above.

78. Defendant should be permitted to remain in possession of the rental unit during the pendency of these proceedings, with the monthly rent, less what Defendant has already prepaid in the form of unlawful fees and charges, to be paid to Plaintiff.

79. The damage to Defendant of not maintaining the status quo outweighs the harm to Plaintiff of upsetting the status quo and of dispossessing Defendant of the rental unit while this case is progressing. When balancing the harms, it is clear the status quo should be maintained during the pendency of this lawsuit.

80. Damages are an inadequate remedy at law here and tenants may suffer irreparable harm because tenants may be wrongfully evicted on account of the unlawful late fees, service fees, and attorneys' fees described herein.

81. Real estate, including an interest in a leasehold, is unique, and evicted tenants may permanently lose their leases and face dispossession.

82. Tenants who face eviction also suffer from emotional distress, dispossession, homelessness, and damage to their credit scores and profiles that can take years to repair.

83. To the extent damages fail to present an adequate remedy at law, Defendant and the class seek preliminary and permanent injunctive relief prohibiting Plaintiff from charging or collecting such unlawful late fees, service fees, and attorneys' fees.

84. The harm to Defendant and the Class of not granting preliminary and permanent injunctive relief far outweighs the harm to Plaintiff of enjoining its collection of unlawful fees or wrongfully evicting the Defendant.

85. Defendant has a reasonable likelihood of success on the merits. Plaintiff's fees are unlawful.

* * * * *

WHEREFORE, Defendant prays for an Order of Judgment:

A. Discontinuing all proceedings in the county court and transferring the case to the District Court as requested;

B. Certifying the Class as set forth above, appointing Salandy as Class Representative, and appointing his counsel as Class Counsel;

C. Declaring that the late fees constitute unlawful liquidated damages and unlawful penalties, are void against public policy, are procedurally and substantively unconscionable, and/or are usurious;

D. Declaring that Plaintiff's service fees and attorneys' fees constitute unlawful liquidated damages and unlawful penalties, are void against public policy, and are procedurally and substantively unconscionable;

E. Awarding damages, in an amount to be proven at trial, for Plaintiff's breaches of contract to be paid into a common fund for the benefit of the Class Members;

F. Requiring that Plaintiff be disgorged of all ill-gotten gains and other sums that have led to Plaintiff's unjust enrichment, in amounts to be proven at trial, for Plaintiff's charging of improper and unlawful late fees, service fees and attorneys' fees

G. Entering a preliminary and permanent injunction prohibiting Plaintiff from attempting to collect any unconscionable, unlawful, and/or usurious late fees, service fees, or attorneys' fees;

H. Awarding pre-judgment interest and post-judgment interest against Plaintiff, on all sums awarded to Defendant and Class Members;

I. Awarding Defendant and Class Members their reasonable attorneys' fees and expenses, to be paid from the common fund prayed for above; and

J. For such other and further relief as the Court deems reasonable, necessary, and just.

Dated: April 30, 2019

BOBBY SALANDY

By: /s/ Jason Legg
One of his attorneys

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April 2019, a true and correct copy of the foregoing document was served on the following via U.S. mail or Colorado Courts E-Filing:

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s/ Jason Legg
Jason Legg, Attorney for Defendant