

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA
Civil Action No. 1:18-CV-00886-NCT-JEP

DEMETRA RUSH,)
)
Plaintiff,)
)
v.)
)
THE NRP GROUP, LLC,)
NRP MANAGEMENT, LLC,)
NRP NORTH CAROLINA, LLC,)
NRP PARTNERS, LLC, NRP)
ALSTON VILLAGE, LLC d/b/a)
FALLS POINTE AT THE PARK,)
and NRP ALSTON)
MANAGEMENT, LLC,)

**FIRST AMENDED CLASS
ACTION COMPLAINT**

Defendants.

Plaintiff Demetra Rush (hereafter “Plaintiff”), on behalf of herself and the proposed Class, files this Amended Complaint against Defendants The NRP Group, LLC, NRP Management, LLC, NRP North Carolina, LLC, NRP Alston Village, LLC d/b/a Falls Pointe at the Park, and NRP Alston Management, LLC, (hereinafter “Defendants”) and states:

NATURE OF THE ACTION

1. This is an action brought by Plaintiff and others similarly situated due to unlawful and unfair debt collection practices engaged in by Defendants in their attempts to collect upon fees, penalties, and other improper charges, when such costs, fees, charges, and amounts are not owed and expressly prohibited.

2. This case arises under the Residential Rental Agreements Act, N.C.G.S. § 42-38 *et seq.*, the Uniform Commercial Code - Negotiable Instruments, N.C.G.S. § 25-3-506, the North Carolina Debt Collection Act, N.C.G.S. § 75-50 *et seq.*, the North Carolina common

law of contracts, and the Uniform Declaratory Judgment Act, N.C.G.S. § 1-253, *et seq.*

3. This is a class action on behalf of all tenants of any North Carolina apartment complex in which Defendants provide property management services, including but not limited to tenants of the apartment complex owned or managed by Defendants who during the relevant time period (a) received one or more communications from Defendants that violate North Carolina law as further set forth herein, and/or (b) have paid amounts in excess of those allowed by North Carolina law.

JURISDICTION AND VENUE

4. The foregoing allegations are incorporated by reference and realleged herein.

5. This Court has jurisdiction over the parties and this action pursuant to 28 U.S.C. §§ 1332 (d) and 1441 because the amount in controversy exceeds \$5 million, and there is minimal diversity as Plaintiff is a citizen of a state different from Defendants.

6. Venue is proper under 28 U.S.C. §§ 1441(a) and 1446(a) in that Defendants maintain a place of business in this jurisdiction, and have regularly engaged in business in this jurisdiction.

PARTIES

7. The foregoing allegations are incorporated by reference and realleged herein.

8. Plaintiff Demetra Rush is a citizen and resident of Durham County, North Carolina who at all relevant times, leased an apartment from Defendants at Falls Pointe.

9. Plaintiff is a "tenant" subject to the protections of N.C.G.S. § 42-46.

10. Plaintiff is a "consumer" as defined by N.C.G.S. § 75-50.

11. Defendant The NRP Group, LLC ("NRP") is, upon information and belief, a limited liability company organized under the laws of the state of Ohio that maintains a

business in Durham County, North Carolina, and has regularly engaged in business in Durham County, North Carolina.

12. Defendant NRP Management, LLC is, upon information and belief, a limited liability company organized under the laws of the state of Ohio that maintains a business in Durham County, North Carolina, and has regularly engaged in business in Durham County, North Carolina.

13. Defendant NRP North Carolina, LLC is, upon information and belief, a limited liability company organized under the laws of the state of North Carolina that maintains a place of business in Durham County, North Carolina, and has regularly engaged in business in Durham County, North Carolina.

14. Defendant NRP Management, LLC (“NRP Management”) is, upon information and belief, a limited liability company under the laws of the state of Ohio that maintains a place of business in Durham County, North Carolina, and has regularly engaged in business in Durham County, North Carolina.

15. NRP Alston Village, LLC d/b/a Falls Pointe at the Park is, upon information and belief, a limited liability company organized under the laws of the state of North Carolina that maintains a place of business in Durham County, North Carolina, and has regularly engaged in business in Durham County, North Carolina.

16. NRP Alston Management, LLC is, upon information and belief, a limited liability company organized under the laws of the state of North Carolina that maintains a place of business in Durham County and has regularly engaged in business in Durham County, North Carolina.

17. Upon information and belief, Defendant NRP or NRP Management employs the persons and other entities to manage or operate the properties in North Carolina, including the Falls Pointe apartments.

18. Upon information and belief, NRP or NRP Management, are the only property management company engaged in the work and business of the Falls Pointe apartments and other North Carolina properties.

19. Upon information and belief, the Defendants are so closely related in ownership and management, and that each works closely in concert with the other, such that each has become the *alter ego* of the other.

20. With respect to all actions and decisions to this action, the Defendants have operated as a single entity.

21. Under the "instrumentality rule," a corporation will be held liable for the torts of another corporation over which it "exercises actual control . . . operating the latter as a mere instrumentality or tool." *Glenn v. Wagner*, 313 N.C. 450, 329 S.E. 2d 326, 330 (N.C. 1985).

22. NRP, NRP Management, NRP Alston Village, LLC d/b/a Falls Pointe at the Park, and NRP Alston Management all maintain the following offices as detailed on the North Carolina Secretary of State's website: a regular office at 160 Mine Lake Court, Suite 200, Raleigh, North Carolina 27615 and principal office/ mailing address at 5309 Transportation Boulevard, Cleveland, Ohio 44125.

23. NRP North Carolina, LLC maintains a regular office at 160 Mine Lake Court, Suite 200, Raleigh, North Carolina 27615 and a mailing address is 5309 Transportation Boulevard, Cleveland, Ohio 44125, however its principal office is located at 4700 New Bern

Avenue, Raleigh, North Carolina 27615.

24. All named Defendants have the same principal office and mailing address as described above.

25. Upon information and belief, the named Defendants are so intertwined that the same managers have domination and control over all Defendants.

26. This is evidenced by the Defendants' managers as detailed on the North Carolina Secretary of State's website:

- a. NRP is managed by NRP Partners, LLC.
- b. NRP Management is managed by the following: 1) NRP Partners, LLC, 2) CEO- J. David Heller, 3) President- Erick Waller, 4) Vice-President-Andrew Tanner, and 5) Secretary- Noam Magence.
- c. NRP North Carolina, LLC is managed by J. David Heller, T. Richard Bailey, and Alan F. Scott.
- d. NRP Partners, LLC is managed by The NRP Group, LLC and NRP Management, LLC.
- e. NRP Alston Village, LLC d/b/a Falls Pointe at the Park is managed by J. David Heller and T. Richard Bailey.
- f. NRP Alston Management, LLC is managed by J. David Heller and T. Richard Bailey.

27. Upon information and belief, the Defendants, NRP, NRP Management, NRP North Carolina, LLC, NRP Partners, LLC, and NRP Alston Management, LLC all had control in regard to the allegations contained within this Amended Complaint.

28. Upon information and belief, NRP, NRP Management, NRP North Carolina, LLC, NRP Partners, LLC, and NRP Alston Management, LLC had complete domination over NRP Alston Village, LLC d/b/a Falls Pointe at the Park's finances, policy making, and business practices.

29. Upon information and belief, Defendants are a single enterprise that are excessively fragmented into multiple companies to shield them from liability and such fragmentation does not serve a legitimate business purpose.

30. Upon information and belief, the Defendants all operate under the name "the NRP group" as evidenced by its website: <https://www.nrpgroup.com>.

31. The NRP group's website lists Falls Pointe at the Park as one of the many commercial communities it has available for rent: <https://www.nrpgroup.com/Home/Community?id=0ae73303-dac1-4ad6-9856-8a2b12487406>.

32. Defendants are each "landlords" as defined by N.C.G.S. §42-40(3).

33. At all times relevant to this action, Defendants, in the ordinary course of business as the lessors of residential real property, engaged in acts or practices affecting commerce within the meaning of N.C.G.S. §75-1.1.

34. Defendants are each "debt collectors" as defined by N.C.G.S. § 75-50.

GENERAL BACKGROUND

35. The foregoing allegations are incorporated by reference and realleged herein.

36. Upon information and belief, at all times relevant to the allegations contained herein, Defendants entered into lease agreements with all North Carolina tenants that state in Paragraph 31 "[i]n the event we file a summary ejectment lawsuit against you, we may also recover from you the highest of *one* of the following fees (which shall be in addition to late

fees, attorney's fees, and applicable court costs)" See attached **Exhibit 1** (emphasis in original).

37. Paragraph 31 of the lease agreements then identify and describe three fees: a Complaint Filing Fee, a Court Appearance Fee, and a Second Trial Fee.

38. The Complaint Filing Fee, Court Appearance Fee, and Second Trial Fee are the same fees described in N.C.G.S. § 42-46 (e) through (g).

39. The lease agreements claim that Defendants may collect the above "fees (which shall be in addition to late fees, attorney's fees, and any applicable court costs)" upon a default.

40. The "reasonable attorney's fees and court costs" are separate and apart from the Complaint Filing Fee, Court Appearance Fee, and Second Trial Fee.

41. Upon information and belief, at all times relevant to the allegations contained herein, Defendants have maintained a uniform, statewide policy of requiring any North Carolina tenant who fails to make a full and complete rental payment, or maintains a balance on their account ledger in excess of \$0.00 on or about the 10th day of any given month to pay filing fees ("Filing Fees"), sheriff service fees ("Service Fees"), and attorneys' fees ("Attorneys' Fees") (collectively the Filing Fees, Service Fees, and Attorneys' Fees are referred to as the "Eviction Fees") (herein described as the ("Collection Policy")).

42. The "reasonable attorney's fees and court costs" described in the Lease are the same as Eviction Fees.

43. Eviction Fees are additional fees separate and apart from the ones expressly authorized by N.C.G.S. § 42-46.¹

¹ In direct response to the Honorable A. Graham Shirley, Wake County Superior Court Judge, holding that the claiming of Eviction Fees was unlawful [**See Exhibit 5**], landlords petitioned and successfully altered the law. On June 25, 2018, S.L. 2018-50, entitled "An Act to Allow Landlords to Recover Out-of-Pocket Expenses in Summary Ejectment Cases" was enacted to

44. Instead, Eviction Fees constitute the “reasonable attorneys’ fees, and any applicable court costs” described in the lease.

45. Eviction Fees are fees set by the North Carolina Legislature for filing a complaint in summary ejectment and for service of process by a sheriff, and Defendants’ attorneys’ fees for filing an eviction.

46. Upon information and belief, Defendants entered into a legal services agreement with a law firm that charges a flat fee per eviction.

47. Upon information and belief, this legal services agreement limits the scope of the law firm’s representation to only seeking possession of the apartment premises on behalf of Defendants and not any money owed.

48. Throughout the Relevant Time Period, the Filing Fees were \$96.00 and the Service Fees were \$30.00.

49. Upon information and belief, when a tenant fails to make a full and complete rental payment, or maintains a rental balance on their account ledger in excess of \$0.00 after the 5th day of any given month, Defendants cause written letters or emails to be delivered to the tenant stating that Defendants will file a summary ejectment (eviction) lawsuit if he or she fails to make a complete rental payment and that once the eviction lawsuit is filed, the tenant will be charged with Eviction Fees (hereinafter “Initial Collection Letter”).

50. Upon information and belief, pursuant to the Collection Policy, tenants owe, and are required to pay Eviction Fees even if: (a) the complaint in summary ejectment had not yet even been filed; (b) the complaint in summary ejectment is dismissed; or (c) a North Carolina

amend N.C.G.S. § 42-46 (“the Act”). [See attached **Exhibit 6**]. The Act confirms that Defendant was not previously allowed to automatically charge tenants the Eviction Fees.

Magistrate Judge orders the Eviction Fees to be assessed against Defendants.

51. Upon information and belief, each and every tenant of a property owned or managed by Defendants, or either of them, is subject to the Collection Policy.

52. Upon information and belief, the Collection Policy is uniformly applied to each and every tenant that resides at any of the apartments owned or managed by Defendants.

53. Upon information and belief, the Collection Policy is mandatory throughout Defendants' properties; individual managers, employees, associates, or other agents of Defendants have no discretion as to the implementation of the Collection Policy.

54. Upon information and belief, pursuant to the Collection Policy, when a tenant fails to make a full and complete rental payment, or maintains a balance on their account ledger in excess of \$0.00 on or around the 10th day of any given month, Defendants file legal action to evict the tenant.

55. Immediately before filing legal action to evict a tenant, or shortly thereafter, Defendants post to the tenant's account ledger all Eviction Fees as immediately due and owing.

56. All the Eviction Fees are posted to a tenant's account ledger are in addition to, and separate from, the late fees and the fees specifically authorized by N.C.G.S. § 42-46(e)-(g), including the "Complaint-Filing Fee."

57. Upon information and belief, pursuant to the Collection Policy, Eviction Fees are entered into a tenant's account ledger prior to a North Carolina court awarding such amounts to Defendants, and sometimes before a complaint in summary ejectment is even filed.

58. At the time the Eviction Fees are entered into the account ledger as immediately due and owing, there is no guarantee that Defendants would ever be awarded such fees by a North Carolina court.

59. Upon information and belief, entering the Eviction Fees on a tenant's account ledger as immediately due and owing is mandatory throughout Defendants' North Carolina properties; individual managers, employees, associates, or other agents of Defendants have no discretion as to the implementation of the Collection Policy.

60. Upon information and belief, after causing the Eviction to be assessed against the tenant's account ledger, and with no guarantee such amounts will ever be awarded by a North Carolina court, Defendants immediately begin attempting to collect upon the balance contained on the account ledger pursuant to its Collection Policy.

61. Upon information and belief, after the Eviction Fees are entered onto an individual's account ledger, there are no occasions in which Defendants will review and reconsider whether such Eviction Fees were improperly assessed.

62. Upon information and belief, even if a complaint in summary ejection filed against a tenant is dismissed or not awarded, there are no occasions in which Defendants will review and reconsider whether such Eviction Fees were improperly assessed.

63. Upon information and belief, after the Eviction Fees are entered onto a tenant's account ledger, there are no occasions in which Defendants will remove such Eviction Fees from an individual tenant's account ledger.

64. Upon information and belief, during the relevant time period, in addition to a 5% late charge that is assessed to a tenant on or about the 6th of each month to tenants who have not paid their rent in full, Defendants automatically assess an additional fee of \$201 on or about the 10th of the month to tenants who have not fully paid their rent.

65. Upon information and belief, this \$201 is the Eviction Fees which is comprised of an Attorneys' Fees, Sheriff Service Fees, and Complaint Filing Fee.

66. Based upon the declaration of Brandon Underdahl, from June 25, 2014 to June 25, 2018, Defendants “imposed the \$201 fee” . . . “approximately 1,457 times to approximately 556 different tenants in apartment complexes in North Carolina.” [See DE 1-4 ¶ 10].

RUSH’S FACTS

67. Rush entered into a lease with Defendants for an apartment at Falls Pointe located at 300 Cascade Falls Lane # 207, Durham, North Carolina 27713 (“Rush’s Apartment”) for a period from November 1, 2017 through October 31, 2018.

68. A true and accurate copy of Rush’s lease is attached hereto as **Exhibit 1**.

69. The Lease states that “[i]n the event we file a summary ejectment lawsuit against You . . . You shall be liable to Us for the highest **ONE** of” the Complaint-Filing Fee, Court Appearance Fee, and Second Trial Fee which “shall be in addition to late fees, attorney’s fees, and any applicable court costs.”

70. Pursuant to the lease, Rush’s total monthly rent for her Apartment is \$870.00.

71. Upon information and belief, on or March 2017, Rush received an Initial Collection Letter.

72. Upon information and belief, Rush was charged a late fee of \$43.50 pursuant to N.C.G.S. § 42-46(a).

73. Upon information and belief, all other tenants of Defendants received an Initial Collection Letter substantially identical to the one sent to Rush.

74. Upon information and belief, the Initial Collection Letter threatened to charge Eviction Fees if Rush did not make a complete rental payment.

75. Defendants were not entitled to receive Eviction Fees when it sent the Initial Collection Letter to Rush.

76. In or about March 2017, Eviction Fees in the amount of \$201.00 were placed on Rush's account ledger.

77. At the time the Eviction Fees were placed on Rush's ledger, no hearing had been held and no attorney had appeared in Court to evict Rush and/or seek the award of Eviction Fees.

78. At the time the Eviction Fees were placed on Rush's ledger, no attorney had been hired by Defendants to collect any debt.

79. Defendants filed a Complaint in Summary Ejectment in the Small Claims Division of Durham County General Court of Justice on March 27, 2017, alleging Rush owed past due rent.

80. In the Complaint in Summary Ejectment action filed against Rush, Defendants wrote that they "hereby omit[] any claim for rents or damages and is seeking possession of the premises only. [Defendants] reserve[] the right to seek any monetary damages in a separate civil action."

81. Attached as **Exhibit 2** is a true and accurate copy of the Complaint for Summary Ejectment filed by Defendants against Rush.

82. Upon information and belief, the Eviction Fees were placed on Rush's ledger before the Complaint in Summary Ejectment action was served on March 29, 2017.

83. Attached as **Exhibit 3** is a true and accurate copy of the Summons Rush received on March 29, 2017.

84. On or about April 5, 2017, Defendants obtained a judgment against Plaintiff.

85. The magistrate judge ordered Plaintiff to be removed from the apartment and that Defendants be put in possession of it.

86. Attached as **Exhibit 4** is a true and accurate copy of the order entered on April 5, 2017.

87. The court did not tax the costs of the action against Rush.

88. Even though the court did not tax the costs of the action against Rush, Defendants still required that Rush pay the Eviction Fees.

89. Rush paid the Eviction Fees when they were not owed or awarded by any court.

90. Rush did not settle any claim against Defendants or give up any legal rights by paying the Eviction Fees.

COMMON CLASS ALLEGATIONS

91. The foregoing allegations are hereby reincorporated by reference as if fully restated herein.

92. Pursuant to Rule 23 of the Rules of Civil Procedure, Plaintiff brings this action individually and on behalf of the two classes:

The Initial Collection Letter Class (represented by Plaintiff):

All tenants of Defendants' Apartments in North Carolina who (a) at any point within the four (4) year period preceding the filing of Plaintiff's Complaint through June 25, 2018 (b) resided in one of the apartments owned or managed by Defendants' in North Carolina (c) were sent the Initial Collection Letter that (d) threatened to charge Eviction Fees in order to dismiss the eviction action.

The Fee Class (represented by Plaintiff):

All tenants of Defendants' Apartments in North Carolina who (a) at any point within the four (4) year period preceding the filing of Plaintiff's Complaint through June 25, 2018 (b) resided in one of the apartments owned or managed by Defendants' in North Carolina (c) were charged and (d) actually paid Eviction Fees prior to a North Carolina court awarding such Eviction Fees to Defendants.

93. Excluded from the classes are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Defendants and any entity in which Defendants has a controlling interest in Defendants and its legal representatives, assigns and successors; and (c) all persons and entities who properly execute and file a timely request for exclusion from the classes.

94. *Commonality*: All questions concerning Defendants' Collection Policy and Defendants' sending the Initial Collection Letter are common.

95. Whether Defendants may lawfully charge Eviction Fees separate from and in addition to what is authorized by N.C.G.S. § 42-46 is a question that is common for all members of the classes.

96. Each and every member of the proposed Class is subject to Defendants' policies and procedures.

97. Further, the answer to this question will drive other answers in the litigation, including whether the Initial Collection Letter is lawful and whether any portion of Defendants' lease is void and unenforceable.

98. *Predominance*: Common questions of law and fact predominate over any individual issues that may be presented, because Defendants have a pattern, practice and policy of charging tenants Eviction Fees after the 10th day of the month as described herein. These questions include, but are not limited to:

- a. Whether Defendants' pattern, practice, and policy of collecting and/or attempting to collect debt violated N.C.G.S. §§ 42-46 and 75-50 et seq. in that Defendant represented that a specific amount of debt may be increased by Eviction Fees prior to the award of such amounts by a North Carolina court;

- b. Whether Defendants' pattern, practice, and policy of utilizing the Initial Collection Letters violated N.C.G.S. §§ 42-46 and 75-50 et seq. by falsely representing Defendant's ability to collect Eviction Fees;
- c. Whether Defendants' pattern, practice, and policy of utilizing the Post-Filing Collection Letters violated N.C.G.S. §§ 42-46 and 75-50 et seq. by falsely representing Defendant's ability to collect Eviction Fees;
- d. Whether Defendants' pattern, practice, and policy of collecting and/or attempting to collect Eviction Fees was illegal under N.C.G.S. §§ 42-46 and 75-50 et seq.;
- e. Whether Defendants' pattern, practice, and policy of collecting and/or attempting to collect Eviction Fees violated N.C.G.S. § 75-1.1 et seq.;
- f. Whether Defendants' pattern, practice, and policy of collecting and/or attempting to collect debt violated N.C.G.S. § 75-1.1 et seq. in that Defendant refused to refund Eviction Fees after a Court taxed the cost of the action against Defendant.
- g. Whether Defendants' pattern, practice, and policy of collecting and/or attempting to collect Attorneys' Fees was in violation of N.C.G.S. §§ 6-21.2, 42-46, and 75-50 et seq. in that Defendants' attorneys were not collecting upon any debt;
- h. Whether Defendants' pattern, practice, and policy of collecting and/or attempting to collect Eviction Fees constituted a violation of N.C.G.S. § 75-1.1 et seq. in that Defendant unlawfully claimed Attorneys' Fees were due and owing despite the absence of any statutory authority granting such fees.

i. Whether any portion of Defendants' lease was void and unenforceable because it contains a fee for filing a complaint for summary ejectment and/or money owed other than the fees expressly authorized by N.C.G.S. § 42-46 (e) through (g).

99. *Numerosity*: The Class members are so numerous that joinder of all is impractical.

100. The names and addresses of the Class members are readily identifiable through the business records maintained by Defendants, and may be notified of the pendency of this action by published and/or mailed notice.

101. Members of the classes include hundreds of present and former tenants of Defendants' Apartments who have either already been charged or will be charged with Eviction Fees in the future unless the illegal policy, practice and procedure is enjoined.

102. Indeed, based upon the declaration of Brandon Underdahl, from June 25, 2014 to June 25, 2018, Defendants "imposed the \$201 fee" . . . "approximately 1,457 times to approximately 556 different tenants in apartment complexes in North Carolina." [See DE 1-4 ¶ 10].

103. *Typicality*: Plaintiff's claims are typical of the claims of the proposed classes and all are based on the same facts and legal theories, as all such claims arise out of Defendants' conduct in that Defendants have a specific policy of attempting to unlawfully collect debt from each member of the proposed classes Eviction Fees following the expiration of the 10th day of the month.

104. *Adequate Representation*: Plaintiff is an adequate representative of the class in that the Plaintiff does not have antagonistic or conflicting claims with other members of the

class.

105. Plaintiff has also retained counsel experienced in the prosecution of complex class actions and consumer litigation.

106. Neither Plaintiff nor her counsel have any interests that might cause them not to vigorously pursue this action.

107. Plaintiff is aware of her responsibilities to the putative class and has accepted such responsibilities.

108. *Superiority*: A class action is superior to all other available methods for fair and efficient adjudication of this controversy.

109. Plaintiff anticipates no difficulty in managing and maintaining this action as a class action. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

110. Further, Defendants have acted and refused to act on grounds generally applicable to the proposed class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

FIRST CAUSE OF ACTION:
Violation of the North Carolina Residential Rental Agreements Act
N.C.G.S. § 42-46
(on behalf of all classes)

111. All paragraphs of this complaint are incorporated herein as if fully restated.

112. Defendants' conduct as described above is subject to N.C.G.S. § 42-46 of the Residential Rental Agreements Act.

113. N.C.G.S. § 42-46(e)-(h) specifically limits the amounts that can be charged to a

tenant for evictions.

114. Any amounts charged in excess of this limitation is against North Carolina's public policy and therefore void and unenforceable.

115. The Eviction Fees charged by Defendants to Plaintiff and members of the Class were separate from and in excess of the amount allowed under N.C.G.S. § 42-46 and constitute a violation of North Carolina law.

116. The amount of Eviction Fees charged by Defendants to Plaintiff and other members of the Class are in excess of the amounts allowed under N.C.G.S. § 42-46.

117. As a proximate result of Defendants' conduct, Plaintiff and all members of the Class were damaged and are entitled to recover all amounts of Eviction Fees paid to Defendants in violation of N.C.G.S. § 42-46.

SECOND CAUSE OF ACTION
Violation of North Carolina Debt Collection Act
N.C.G.S. § 75-50, *et seq.*
(on behalf of all classes)

118. All paragraphs of this complaint are incorporated herein as if fully restated.

119. Plaintiff and each member of the Classes are a "consumer," as that term is defined by N.C.G.S. § 75-50.

120. The amount purportedly owed to Defendants by Plaintiff and each member of the Proposed Class is a "debt," as that term is defined by N.C.G.S. § 75-50.

121. At all times relevant to this action, Defendants, in the ordinary course of business as lessors and managers of residential rental property, engaged in acts or practices affecting commerce within the meaning of N.C.G.S. § 75-1.1.

122. Defendants, in seeking to recover past due rent, fees, and other charges, are "debt collectors" as defined by the North Carolina Debt Collection Act ("NCDCA"), N.C.G.S. § 75-

50.

123. Defendants' actions described above constitute the collection of a "debt" under N.C.G.S. § 75-50.

124. Defendants are subject to the requirements of N.C.G.S. § 75-50 *et seq.*, that prohibits certain activities by debt collectors.

125. Defendants violated N.C.G.S. § 75-51 by collecting or attempting to collect debt by means of unfair threats, coercions, or attempts to coerce, including by collecting or attempting to collect debt by threatening and taking action not permitted by law.

126. Defendants violated N.C.G.S. § 75-51(8) by threatening to take and taking actions not permitted by law, including, *inter alia*, threatening to assess and collect Eviction Fees without a legal justification.

127. Defendants violated N.C.G.S. § 75-54 by collecting or attempting to collect a debt by means of fraudulent, deceptive, and/or misleading representations, including, *inter alia*, threatening to assess and collect Eviction Fees without a legal justification.

128. Defendants violated N.C.G.S. § 75-54 by collecting or attempting to collect a debt by means of fraudulent, deceptive, and/or misleading representations, including, *inter alia*, assessing Eviction Fees on a tenant's ledger before any amounts had been awarded by a court and without a legal justification.

129. In addition, Defendants' communications to Plaintiff and members of the Class constituted "communications attempting to collect a debt" subject to the disclosure requirement of N.C.G.S. § 75-54(2).

130. Defendants' violated N.C.G.S. § 75-55 by collecting or attempting to collect debt by using unconscionable means.

131. A violation of N.C.G.S § 42-46 constitutes an unfair debt collection attempt under N.C.G.S. § 75-50 *et seq.*

132. Defendants collected or attempted to collect from Plaintiff and members of the class a charge, fee or expense incidental to the principal debt of the monthly rent owed, that was legally prohibited under N.C.G.S. 42-46, in violation of N.C.G.S. § 75-51(8), N.C.G.S. § 75-54, and N.C.G.S. §75-55 (2).

133. In addition, Defendants collected or attempted to collect from Plaintiff and members of the class a charge, fee or expense incidental to the principal debt of the monthly rent owed, that was legally prohibited as being assessable or recoverable costs set forth in N.C. G.S. 7A-305, N.C.G.S. § 6-20 or N.C.G.S. 42-46, in violation of N.C.G.S. § 75-51(8), N.C.G.S. § 75-54, and N.C.G.S. §75-55 (2).

134. Defendants actions in violation of North Carolina's Unfair Debt Collection Act were willful.

135. Plaintiff and each member of the Class were injured by Defendants' actions and are entitled to damages to be established at trial as well as statutory damages per violation in an amount ranging from \$500.00 to \$4,000.00 per violation resulting from each of Defendants' unfair debt collection practices pursuant to N.C.G.S. §75-56.

136. Plaintiff and each member of the Class were injured and sustained damages by Defendants' actions and are entitled to actual damages to be established at trial as well as statutory damages for each violation in the maximum amount allowed by law, as well as reasonable attorneys' fees for an amount in excess of \$25,000.00.

137. Plaintiff and each member of the Class are also entitled to recover treble damages pursuant to this claim.

THIRD CAUSE OF ACTION
Violation of the North Carolina Unfair and Deceptive Trade Practices Act
N.C.G.S. § 75-1.1, *et seq.*
(on behalf of all classes)

138. All paragraphs of this complaint are incorporated herein as if fully restated.

139. At all times relevant herein, Defendants were engaged in commerce in the State of North Carolina.

140. The conduct of Defendants as set forth herein is against the established public policy of the State of North Carolina; is unethical, oppressive, unscrupulous, and substantially injurious to the consumers of North Carolina; and has the capacity and tendency to deceive the average consumer.

141. Defendants' violations of the UDTPA include, but are not limited to, (a) misrepresenting the character, amount, or legal status of the obligation alleged to be owed by Plaintiff and each member of the class; (b) employing a system, policies, and procedures for the collection of debt which is unfair, deceptive, and misleading, and not permitted by both the public policy of North Carolina and the express statutory provisions of N.C.G.S. § 42-46; N.C.G.S. 7A-305 or N.C.G.S. § 6-20; (c) utilizing false representations and deceptive measures to collect or attempt to collect Eviction Fees which are unlawful; (d) undertaking actions which Defendants knew, or should have known, offends well-established public policy, state law, and was otherwise unlawful, unfair, deceptive, misleading, coercive, and substantially injurious to consumers, such as Plaintiff; and (e) employing and otherwise undertaking the aforementioned procedures, policies, actions, and methods with the explicit knowledge that such conduct was in violation of applicable North Carolina law.

142. The matters alleged herein were done willfully, or with the conscious disregard of the rights of Plaintiff and each member of the Class.

143. Plaintiff and members of the Class suffered actual injury as a result of Defendants' unfair actions. Such injury consists of, but is not limited to emotional distress damages and money damages resulting from Defendants' demanding and obtaining fees and costs in excess of amounts allowed pursuant to North Carolina law from Plaintiff and each member of the Class.

144. Defendants' actions were in or affecting commerce and constitute unfair and deceptive trade practices, which are proscribed by Chapter 75 of the North Carolina General Statutes.

145. Plaintiff and each member of the Class have been damaged and are entitled to recover treble damages and attorneys' fees incurred in this action.

FOURTH CAUSE OF ACTION
Petition for Declaratory Judgment N.C.G.S. § 1-253, *et seq.*
(on behalf of all classes)

146. All paragraphs of this complaint are incorporated herein as if fully restated.

147. Plaintiff and the members of the classes file this Petition for a Declaratory Judgment under N.C.G.S. Chapter 1, Article 25, and the Court has jurisdiction of this matter under such statute.

148. Plaintiff and the members of the classes have an actual controversy with Defendants regarding the validity and enforceability of a portion of the Lease.

149. The Lease states that, if Defendants file a summary ejectment lawsuit against a tenant, they may recover one of the three fees identified in N.C.G.S. § 42-46 (e) through (g) in addition to the Eviction Fees. Upon information and belief, every lease during the Relevant Time Period, including Plaintiff's Lease, contains this same provision.

150. However, N.C.G.S. § 42-46(h)(3) stated (prior to the enactment of the Act) that

“[i]t is contrary to public policy for a landlord to put in a lease or claim any fee for filing a complaint for summary ejectment and/or money owed other than the ones expressly authorized by subsections (e) through (g) of this section, and a reasonable attorney's fee as allowed by law.”

151. The Eviction Fees, described in the Lease, constitute a “fee for filing a complaint for summary ejectment” and are separate from and in addition to “the ones expressly authorized by subsections (e) through (g).”

152. Under N.C.G.S. § 42-46(h)(4), “[a]ny provision of a residential rental agreement contrary to the provisions of this section is against the public policy of this State and therefore void and unenforceable.” Therefore, because Defendants’ lease contains a provision that was void and unenforceable, Plaintiff and the members of the proposed Classes seek an order declaring Defendants’ North Carolina leases to be void and unenforceable insofar as such leases provide for a fee other than the ones expressly authorized by N.C.G.S. § 42-46 (e) through (g).

153. Plaintiff and the members of the proposed Classes have an actual controversy with Defendants resulting from Defendants’ erroneous interpretation of the applicable law.

154. It is established law in North Carolina that N.G.S.S. § 42-33 is “remedial in nature and will apply only where the parties’ lease does not cover the issue of forfeiture of the lease term upon nonpayment of rent. Where the contracting parties have considered the issue, negotiated a response, and memorialized their response within the lease, the trial court appropriately should decline to apply these statutory provisions.” *Charlotte Office Tower Associates v. Carolina SNS Corp.*, 89 N.C. App. 697, 701 (N.C. App. 1998).

155. Defendants entered into written leases that cover the issue of forfeiture of the lease term upon nonpayment of rent with Plaintiff and the members of the proposed Classes.

156. Therefore, because the parties have considered the issue, negotiated a response,

and memorialized the response within a written lease, Plaintiff and the members of the proposed Classes seek an order declaring that N.C.G.S. § 42-33 is not applicable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff and members of the proposed Classes respectfully request that this Court:

1. Assume jurisdiction over this action;
2. Certify the Classes and appointing Plaintiff and their counsel to represent the classes;
3. Issue a declaratory judgment that Defendants' actions as set forth herein violated the rights of Plaintiff and each member of the Proposed Class pursuant to N.C.G.S. § 75-50 *et seq.*, or in the alternative N.C.G.S. § 75-1.1;
4. Issue a declaratory judgment that Defendants' Lease and any substantially similar residential lease agreement used by Defendants is contrary to N.C.G.S. § 42-46 and therefore void and unenforceable as against public policy;
5. Award Plaintiff and each member of the Proposed Class compensatory damages in an amount to be determined at trial;
6. Award Plaintiff and each class member a statutory penalty in the amount of no more than \$4,000 for each violation of N.C.G.S. § 75-50 *et seq.*;
7. Award Plaintiff and each class member damages calculated pursuant to N.C.G.S. § 75-8 for each week that Defendants' illegal conduct occurred;
8. Award Plaintiff all statutory and actual damages to which she are entitled separate and apart from the Proposed Class in an amount in excess of \$25,000.00;
9. Treble all damages resulting from a violation of N.C.G.S. § 42-46 in accordance

with N.C.G.S. § 75-1.1;

10. Treble all damages in accordance with N.C.G.S. §§ 75-1.1 and 75-50;
11. Award attorneys' fees to Plaintiff and members of the Proposed Class pursuant to N.C.G.S. § 75-16.1;
12. Tax the costs of this action to Defendants, or any of them;
13. Allow a trial by jury on all issues so triable; and
14. Grant Plaintiff and the members of the Proposed Class such other and further relief as the Court deems just and proper.

Respectfully submitted on this 9th day of January, 2019.

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CERTIFICATE OF SERVICE

I hereby certify that on January 9, 2019, I electronically filed the foregoing FIRST AMENDED CLASS ACTION COMPLAINT with the Clerk of Court using the CM/ECF system, which will send notification of the filing to the following:

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