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**By: Elizabeth Maldonado, Deputy Clerk**

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7 Attorneys for Defendants  
8 JRK RESIDENTIAL GROUP, INC.  
9 JRK PROPERTY HOLDINGS, INC.

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
11 **COUNTY OF SONOMA**

12 SHARON FELKER; HERMAN GRISHAVER;  
13 EDGAR CRUZ SORIANO; and JEANACE  
14 ZETINO, on behalf of themselves and all others  
similarly situated,

15 Plaintiffs,

16 v.

17 JRK RESIDENTIAL GROUP, INC.; JRK  
18 PROPERTY HOLDINGS, INC.; and DOES 1-  
100, inclusive,

19 Defendants.

Case No. SCV-267587

**CLASS ACTION**

**DEFENDANTS JRK RESIDENTIAL  
GROUP, INC.'S AND JRK PROPERTY  
HOLDINGS, INC.'S ANSWER TO  
PLAINTIFFS' SECOND AMENDED  
COMPLAINT**

Assigned to: Hon. Patrick Broderick  
Courtroom: #16

Complaint Filed: December 22, 2020  
FAC Filed: June 1, 2021  
SAC Filed: May 10, 2024

1 Defendants JRK Residential Group, Inc. and JRK Property Holdings, Inc. (collectively  
2 “JRK”) hereby submit an answer to the second amended complaint (“SAC”) filed by Plaintiffs  
3 Sharon Felker, Herman Grishaver, Edgar Cruz Soriano, and Jeanace Zetino (collectively,  
4 “Plaintiffs”).

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure section 431.30(d), JRK generally and  
7 specifically denies each and every allegation in the SAC and further denies that Plaintiffs have  
8 been damaged in the amount alleged, or in any other sum, or at all, by reason of any act, omission  
9 to act, conduct or liability on the part of JRK, or on the part of any of JRK’s agents, servants,  
10 employees, representatives or any other person for whose acts JRK is responsible.

11 **DEFENSES**

12 By alleging the defenses set forth below, JRK does not intend to alter the burden of proof  
13 and/or burden of going forward with evidence which otherwise exists with respect to any particular  
14 issue at law or in equity. Many of the “defenses” listed below are not defenses, but necessary  
15 elements of Plaintiffs’ prima facie case. They are listed here solely in an abundance of caution.

16 Furthermore, all such defenses are pleaded in the alternative, and do not in any way  
17 constitute an admission of liability or an admission that Plaintiff is entitled to any relief whatsoever.  
18 JRK has not knowingly or intentionally waived any applicable defenses and reserves the right to  
19 raise additional defenses.

20 **FIRST SEPARATE AND ADDITIONAL DEFENSE**

21 **(As to All Causes of Action)**

22 *Failure to State a Claim*

23 Plaintiffs fail to state facts sufficient to state a claim or any cause of action for all the  
24 reasons detailed in JRK’s demurrer and motion to strike, which include but are not limited to:  
25 Plaintiffs waiving their claims against JRK, Plaintiffs’ failure to name the necessary parties to this  
26 action; the Consumer Legal Remedies Act does not apply to residential leases; Penal Code  
27 § 396(b) does not apply to residential rent increases; Penal Code § 396(e) does not apply  
28 retroactively; Plaintiffs do not have standing to pursue claims on behalf of other purported class

1 members based on other leases at other properties and/or in other counties; Plaintiffs are not  
2 entitled to actual, statutory or punitive damages; and each of Plaintiffs' claims is insufficiently  
3 pleaded.

4 **SECOND SEPARATE AND ADDITIONAL DEFENSE**

5 **(As to All Causes of Action)**

6 *Failure to Join Indispensable Parties*

7 Plaintiffs fail to join necessary and indispensable parties to this action, including all  
8 owners of all properties affected by their putative class action claims. While JRK does not assert  
9 in any manner that the owners are in any way liable, owners of the properties are parties to the  
10 lease agreements containing the allegedly improper rent increases and late fee provisions. The  
11 owners of the properties are the entities who receive and retain the late fees.

12 **THIRD SEPARATE AND ADDITIONAL DEFENSE**

13 **(As to All Causes of Action)**

14 *Unconstitutional / Due Process*

15 Plaintiffs' claims fail as to unnamed property owners who have the right to defend  
16 themselves in this action, especially since Plaintiffs are seeking to invalidate certain terms within  
17 contracts to which the unnamed owners are parties. Moreover, Plaintiffs' claims based on Penal  
18 Code § 396, and the language of the statute prior to 2019 generally, are unconstitutionally vague  
19 as to apprise JRK of its rights and obligations under a criminal statute.

20 **FOURTH SEPARATE AND ADDITIONAL DEFENSE**

21 **(As to All Causes of Action)**

22 *Standing*

23 Plaintiffs and/or the putative class members lack standing to recover as they have not  
24 suffered an injury-in-fact, in part because JRK did not violate any statutes relating to price  
25 increases and fees, and in part because Plaintiffs and certain putative class members contractually  
26 agreed to pay the rents and fees they now complain of. Plaintiffs also lack standing to represent  
27 putative class members who did not reside at the same property as Plaintiffs and who were subject  
28 to different leases, at different properties, in different counties, and different emergency orders.

1 **FIFTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(As to All Causes of Action)**

3 *Arbitration/Class Action Waiver*

4 JRK has not had the opportunity to review each individual lease (or leases) for each  
5 putative class member, so it retains its right to assert that Plaintiffs’ claims and/or the claims of  
6 some or all of the putative class members may be subject to an enforceable arbitration provision  
7 and class action waiver. Discovery to date establishes at least two of the named Plaintiffs signed  
8 class action waivers. In pertinent part, these waivers state:

9 You agree that you hereby waive your ability to participate either as a class  
10 representative or member of any class action claim(s) against us or our agents.  
11 While you are not waiving any right(s) to pursue claims against us related to your  
12 tenancy, you hereby agree to file any claim(s) against us in your individual  
13 capacity, and you may not be a class action plaintiff, class representative, or  
14 member in any purported class action lawsuit (“Class Action”). Accordingly, you  
15 expressly waive any right and/or ability to bring, represent, join, or otherwise  
16 maintain a Class Action or similar proceeding against us or our agents in any  
17 forum.

18 Furthermore, beginning in May 2021, JRK’s California leases included an  
19 “Arbitration/Class Action Waiver Addendum,” providing that “any and all claims” including those  
20 based on a “statute” “shall be subject to binding arbitration under the Federal Arbitration Act.”  
21 Tenants could “opt-out” of the arbitration and class-action waiver provision by providing written  
22 notice. Putative class members in each of the proposed classes entered into leases containing these  
23 arbitration agreements. Indeed, of a sample of 27 primary tenants selected by Plaintiffs, at least 6  
24 of those tenants are subject to the arbitration agreement. (3/27/2024 JRK’s Opposition to  
25 Plaintiffs’ Motion for Class Certification, p. 22.)<sup>1</sup> Importantly, while two of the named Plaintiffs  
26 signed class action waivers, not one of the named Plaintiffs entered into a lease with an arbitration  
27 provision, and thus not one has standing to challenge it.

28 <sup>1</sup> While the putative class members have yet to be identified—and JRK does not concede that these tenants are part of any of the putative classes—JRK understands that Plaintiffs contend that these individuals are putative class members.

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**SIXTH SEPARATE AND ADDITIONAL DEFENSE**

**(As to All Causes of Action)**

*Compliance with the Law*

For all the reasons detailed above—and in JRK’s demurrer and motion to strike, the motion for summary adjudication and determination of no merit, and opposition to Plaintiffs’ motion for class certification—JRK’s conduct was prescribed by law and JRK complied with that law (to the extent such law applied, as many of the statutes Plaintiffs claim JRK violated do not apply to residential leases, including Penal Code § 396(b) and the CLRA). JRK complied with statutes relating to increasing rents and charging various fees. Moreover, increases in rent were due to a number of factors, including additional costs associated with labor, insurance, repairs, and other work at the subject property/properties, and a myriad of costs associated with responding to the COVID-19 pandemic. Accordingly, JRK is shielded from liability.

**SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

**(As to All Causes of Action)**

*Validity*

The rents and fees charged at the subject property/properties are valid as a matter of law. Rent increases are supported by increased costs at the property/properties and by tenants choosing certain lease terms/conditions associated with various rental options. Also, at the time of contracting (i.e., a tenant signing a lease), it is impracticable and/or extremely difficult to estimate the actual damages associated with late payment of rent or a tenant’s failure to obtain insurance. The late fees and insurance non-compliance fees JRK assessed and collected on behalf of owners reflected reasonable estimates of the actual damages. In fact, when a tenant is late in paying rent, JRK and/or the owners typically incur more in labor costs than what is collected in late fees. Similarly, repairs and other costs associated with an uninsured tenant’s damage to an apartment (and/or to other apartments) also typically cost more than what JRK collects in insurance non-compliance fees.

1 **EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

2 **(As to All Causes of Action)**

3 *Estoppel*

4 The doctrine of estoppel bars Plaintiffs from recovering. Plaintiffs and certain putative  
5 class members contractually agreed, and/or proactively sought, to pay the amounts they paid and  
6 cannot disclaim that contractual obligation now. Specifically, with respect to Plaintiffs' various  
7 claims related to the percentage increase of their leases, Plaintiffs were provided options for  
8 renewing their leases and opted for leases with particular terms, including the rent amount.  
9 Moreover, some Plaintiffs and putative class members agreed to certain rental price increases prior  
10 to the declaration of any of the relevant emergencies. For example, Plaintiff Edgar Soriano Cruz  
11 cannot prove a Penal Code § 396 violation because, before the emergency declaration, he agreed  
12 to rent increases that could exceed 10% in circumstances that ultimately came to fruition.  
13 (3/27/2024 JRK's Motion for Summary Adjudication and Determination of No Merit, p. 21.) The  
14 same is true for Plaintiff Felker. (*Id.* at pp. 24–25.) Plaintiffs and certain putative class members  
15 thereby independently chose each and every rental price increase.

16 **NINTH SEPARATE AND ADDITIONAL DEFENSE**

17 **(As to All Causes of Action)**

18 *Unclean Hands*

19 The doctrine of unclean hands bars Plaintiffs and certain putative class members from  
20 recovering. Specifically, Plaintiffs' causes of action are barred, in whole or in part, by their own  
21 inequitable or wrongful conduct, including but not limited to the numerous breaches of their  
22 leases, which may include intentionally choosing lease terms or breaching lease terms to  
23 manufacture a lawsuit against JRK. Discovery is ongoing.

24 **TENTH SEPARATE AND ADDITIONAL DEFENSE**

25 **(As to All Causes of Action)**

26 *Laches*

27 Plaintiffs' unreasonable delay bars Plaintiffs from recovering under the doctrine of laches.  
28 Specifically, Plaintiffs repeatedly renewed their leases over several years but did not seek to

1 challenge JRK’s alleged improper rental increases or the contract provisions in their lease (e.g.,  
2 late fees and liability insurance non-compliance fees) until December 2020. This is especially  
3 relevant to Plaintiffs’ and putative class members’ rent increase claims, as it leads to the  
4 nonsensical result of Plaintiffs contending that JRK is in violation of a criminal statute as a result  
5 of increasing rents by more than 10% as compared to rents dating back over six years.

6 **ELEVENTH SEPARATE AND ADDITIONAL DEFENSE**

7 **(As to All Causes of Action)**

8 *Waiver, Generally*

9 The doctrine of waiver bars Plaintiffs and certain putative class members from recovering,  
10 because of, among other reasons, Plaintiffs’ express waiver of personal liability as to any  
11 “employee, agent, or management company” pursuant to Section 32 of Plaintiffs’ leases, as well  
12 as any other applicable waiver in Plaintiffs’ and/or putative class members’ leases.

13 **TWELFTH SEPARATE AND ADDITIONAL DEFENSE**

14 **(As to All Causes of Action)**

15 *Voluntary Payment*

16 The voluntary payment doctrine bars Plaintiffs and the putative class members from  
17 recovering. Specifically, Plaintiffs cannot recover money which they have voluntarily paid with  
18 full knowledge of the material facts. For example, Plaintiffs and putative class members chose to  
19 pay late fees to cure their breach of the lease, i.e., their failure to timely pay rent. Plaintiffs and  
20 putative class members made a similar choice regarding insurance non-compliance fees. And  
21 Plaintiffs and putative class members were provided options for renewing their leases and opted  
22 for leases with particular terms, including the rent amount. Plaintiffs thereby independently chose  
23 each and every rental price increase.

24 **THIRTEENTH SEPARATE AND ADDITIONAL DEFENSE**

25 **(As to All Causes of Action)**

26 *Contributory Negligence/Partial Fault of Plaintiffs*

27 If Plaintiffs and putative class members have sustained any injury or are entitled to any  
28 damages under the circumstances alleged in the SAC, or in any other respect, the intentional acts,

1 negligence, carelessness, lack of due care, fault, and/or unreasonable conduct of Plaintiffs  
2 contributed in whole or in part to such damages. For example, Plaintiffs chose certain rents that  
3 corresponded to atypical lease terms (i.e., terms less than or more than 12 months). Also, if  
4 Plaintiffs were charged a late fee, it was due to their breach of their lease (i.e., not paying rent on  
5 time). If they were charged an insurance non-compliance fee, it was due to their breach of their  
6 lease (i.e., failing to secure renter's liability insurance, as agreed). Plaintiffs and/or putative class  
7 members may have failed to notify JRK of insurance coverage; whereas, if they had, no fee would  
8 have been charged (or fees would have been refunded). Plaintiffs are therefore wholly, or  
9 partially, responsible for any damages caused thereby.

10 **FOURTEENTH SEPARATE AND ADDITIONAL DEFENSE**

11 **(As to All Causes of Action)**

12 *Failure to Mitigate/Doctrine of Avoidable Consequences*

13 Plaintiffs and putative class members failed to mitigate their damages and their claims are  
14 barred, or their recovery should be reduced, pursuant to the doctrine of avoidable consequences.  
15 For example, Plaintiffs and putative class members could have avoided a late fee by paying their  
16 rent on time and they could have avoided paying an insurance non-compliance fee by securing and  
17 notifying JRK of compliant liability insurance, as they contractually agreed to do. Plaintiffs and  
18 putative class members also could have avoided certain rental increases by choosing different  
19 rental terms.

20 **FIFTEENTH SEPARATE AND ADDITIONAL DEFENSE**

21 **(As to All Causes of Action)**

22 *Consent*

23 Plaintiffs and putative class members consented to the actions of which they now  
24 complain. For example, with respect to Plaintiffs' Civil Code § 1671 claims, Plaintiffs expressly  
25 acknowledged and "agree[d] that it would be impracticable or extremely difficult to fix the actual  
26 damage" related to a late payment of rent "and that the late charge is a reasonable estimate of the  
27 actual damages that the parties reasonably believe would occur as a result of late payment."  
28 Plaintiffs thereby consented to the amount and the assessment of a late fee in the event that they

1 breached their lease by failing to timely pay rent. Further, with respect to Plaintiffs' various  
2 claims related to the percentage increase of their leases, Plaintiffs were provided options for  
3 renewing their leases and opted for leases with particular terms, including the rent amount.  
4 Plaintiffs thereby consented to each and every rental price increase.

5 **SIXTEENTH SEPARATE AND ADDITIONAL DEFENSE**

6 **(As to All Causes of Action)**

7 *Privilege*

8 JRK's actions were privileged, and thus shielded from liability. Specifically, there is no  
9 law that states that late fees are illegal. So long as fees comply with Civil Code § 1671—and the  
10 fees in Plaintiffs' leases do comply with Civil Code § 1671—JRK was permitted to charge the  
11 fees which Plaintiffs agreed to pay in the event of a breach of the leases. Moreover, Plaintiffs  
12 chose the rental increases that went in to effect for each lease renewal and certain rent increases  
13 were caused by increased costs (associated with increases in labor costs, improvement, insurance  
14 premiums, COVID-19, etc.). Accordingly, JRK was permitted to charge those rents.

15 **SEVENTEENTH SEPARATE AND ADDITIONAL DEFENSE**

16 **(As to All Causes of Action)**

17 *Justification*

18 JRK's actions were justified, and thus shielded from liability. Specifically, there is no law  
19 that states that late fees are *per se* illegal. So long as fees comply with Civil Code § 1671—and  
20 the fees in Plaintiffs' leases comply with Civil Code § 1671—JRK was permitted to charge the  
21 fees which Plaintiffs agreed to pay in the event of certain specified breaches of the leases.  
22 Notably, increases in rent were due to a number of factors, including additional costs associated  
23 with labor and materials used to provide the services, additional costs imposed by suppliers, and  
24 additional costs for repairs and additions beyond normal maintenance. Indeed, statutes such as  
25 Penal Code § 396(b) and (e) allow for rental increases in light of such costs, making JRK's rental  
26 increases justified. Similarly, the late fees and insurance non-compliance fees JRK charged  
27 reflected reasonable estimates of the actual damages associated with the related breaches. In fact,  
28 when a tenant is late in paying rent, JRK and/or the owners typically incur more in labor costs than

1 what is collected in late fees. JRK also typically incurs more in repair and other costs than it  
2 collects in insurance non-compliance fees. Finally, Plaintiffs chose the rental increases that went  
3 into effect for each lease renewal; therefore, JRK was permitted to charge those rents.

4 **EIGHTEENTH SEPARATE AND ADDITIONAL DEFENSE**

5 **(As to the First, Third, Fifth, and Eighth Causes of Action)**

6 *Not “Unfair” Under Section 17200*

7 JRK’s actions were not “unfair” within the meaning of Section 17200 *et seq.* of the  
8 California Business and Professions Code, in that, among other things, JRK did not provide any  
9 false or misleading information to tenants regarding its practices, did not treat residents unfairly,  
10 and did not violate any statutes, laws, or regulations in how it managed the subject  
11 property/properties.

12 **NINETEENTH SEPARATE AND ADDITIONAL DEFENSE**

13 **(As to the First, Third, Fifth, and Eighth Causes of Action)**

14 *Not “Deceptive” Under Section 17200*

15 JRK’s actions were not “deceptive” or “fraudulent” within the meaning of Section 17200  
16 *et seq.* of the California Business and Professions Code, in that, among other things, JRK did not  
17 provide any false or misleading information to tenants regarding its practices. JRK transacted  
18 with tenants fairly and according to the terms of the tenant’s lease(s), which were fully disclosed,  
19 and to which tenants agreed. Moreover, Plaintiffs admit they are not alleging that JRK’s alleged  
20 actions are “deceptive” or “fraudulent.” (See 9/20/2022 Plaintiffs’ Reply in Support of Demurrer  
21 to JRK’s First Amended Answer, p. 6.)

22 **TWENTIETH SEPARATE AND ADDITIONAL DEFENSE**

23 **(As to the First, Third, Fifth, and Eighth Causes of Action)**

24 *Not “Unlawful” Under Section 17200*

25 JRK’s actions were not “unlawful” within the meaning of Section 17200 *et seq.* of the  
26 California Business and Professions Code, in that JRK did not violate any statutes, laws, or  
27 regulations in how it managed the subject property/properties.

28

1                                    **TWENTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

2                                    **(As to All Causes of Action)**

3                                    *No Unjust Enrichment / No Restitution*

4                    Because Plaintiffs have not suffered any losses and JRK has not been unjustly enriched,  
5 Plaintiffs are not entitled to any disgorgement or restitution. Increases in rent were justified by  
6 higher costs at the subject property/properties and JRK typically incurs more costs associated with  
7 tenants failing to pay their rent on time and failing to obtain insurance than it recoups in late fees  
8 and insurance non-compliance fees. Even assuming Plaintiffs did suffer losses (they did not), they  
9 cannot obtain complete restitution from JRK because Plaintiffs failed to sue in this action the  
10 entities that actually retained the rents and fees complained of—e.g., the various entities that have  
11 ownership interests in the subject property/properties.

12                                   **TWENTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

13                                   **(As to All Causes of Action)**

14                                   *No Class Action*

15                    Class treatment is inappropriate due to lack of ascertainability, commonality, typicality,  
16 adequacy, predominance, and because a class action is not otherwise a superior method of  
17 adjudicating Plaintiffs’ dispute. Specifically, (i) Plaintiffs cannot prove liability on a class-wide  
18 basis and common issues of fact and law do not predominate; (ii) the arbitration provisions in  
19 some putative class member’s leases preclude certification of any proposed class; (iii) the  
20 proposed Penal Code § 396 and Tenant Protection Act classes are not ascertainable; (iv) Plaintiffs  
21 are not typical or adequate representatives of the classes; and (v) Plaintiffs cannot show that  
22 proceeding as a class action would be superior to individual litigation. JRK hereby incorporates  
23 by reference its Opposition to Plaintiffs’ Motion for Class Certification, which more provides a  
24 fuller discussion of why Plaintiffs’ claims are not suitable for class treatment.



1 were to run afoul of Civil Code § 1671 (which JRK maintains did not occur), the amount of the  
2 fee may be reduced, or offset, by the amount of any actual costs JRK can prove were suffered as a  
3 result of the tenant’s late payment of rent or as a result of a tenant failing to obtain insurance, as he  
4 or she contractually agreed. (E.g., *Munguia-Brown v. Equity Residential* (N.D.Cal. Aug. 12,  
5 2019) 2019 WL 3779523, at p. \*3 [“A landlord may offset or reduce the amount it is to return to  
6 the tenants by the amount of actual damages it succeeds in proving were proximately caused by  
7 the tenants’ late payment of rent”].) Similarly, under Penal Code § 396 a rental price increase of  
8 more than 10% is not unlawful if the amount over 10% reflects costs that have been permissibly  
9 passed to renters. (Pen. Code, § 396, subd. (e) (2021); *id.*, subd. (b) (2017).)

10 **TWENTY-SIXTH SEPARATE AND ADDITIONAL DEFENSE**

11 **(As to All Causes of Action)**

12 *Superseding Cause*

13 The damages sustained by Plaintiffs and putative class members, if any, were the result of  
14 actions of Plaintiffs or third parties constituting an intervening or superseding cause precluding  
15 any liability on the part of JRK. Plaintiffs may have actively sought the type of terms and  
16 payments of which they now complain. Plaintiffs may have failed to notify JRK of an intent to  
17 transfer from a term lease to a month-to-month lease. Plaintiffs may have failed to notify JRK of  
18 compliance with renter’s liability insurance coverage. Plaintiffs also failed to name the owners of  
19 all properties affected by their class action claims. While JRK does not assert in any manner that  
20 the owners are in any way liable, it is the owners of the properties that are parties to the lease  
21 agreements containing the allegedly improper rent increases and late fee provisions. The owners  
22 of the properties are also the entities who receive and retain rents and fees.

23 **TWENTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

24 **(As to All Causes of Action)**

25 *Ratification*

26 Plaintiffs’ and certain putative class members’ claims are barred because Plaintiffs ratified  
27 the conduct complained of in their SAC. Specifically, Plaintiffs ratified the terms of their leases  
28 by opting to pay applicable fees to cure their original breach of the lease. Further, with respect to

1 Plaintiffs’ various claims related to the percentage increase of their leases, Plaintiffs were provided  
2 options for renewing their leases and independently opted for leases with particular terms,  
3 including the rent amount. Plaintiffs thereby ratified each and every rental price increase.

4 **TWENTY-EIGHTH SEPARATE AND ADDITIONAL DEFENSE**

5 **(As to All Causes of Action)**

6 *Reasonableness and Good Faith of Defendant*

7 Plaintiffs’ and putative class members’ claims are barred by the fact that JRK acted  
8 reasonably and in good faith at all times material herein, based on the relevant facts and  
9 circumstances known by JRK at the time JRK so acted. Indeed, JRK Residential managed  
10 properties pursuant to the terms in written lease agreements, which the Plaintiffs signed.  
11 Moreover, certain subsections of Penal Code § 396, especially the pre-2019 version of the statute,  
12 are unconstitutionally vague and failed to apprise JRK of whether it was running afoul of a  
13 criminal statute. Additionally, because Penal Code § 396 is a criminal statute, any ambiguity in  
14 the statute should be resolved in the way that is most favorable to the defendant—even in civil  
15 proceedings. (*Harrott v. County of Kings* (2001) 25 Cal.4th 1138, 1154.) There are also no  
16 specific laws detailing what constitutes an unreasonable or unlawful late fee or insurance non-  
17 compliance fee, and there are treatises, laws in other contexts, and laws in other states, which all  
18 suggest the fees charged in leases managed by JRK were reasonable. Moreover, such fees are  
19 reasonable in light of the costs associated with late payment of rent and a tenant’s failure to obtain  
20 renter’s liability insurance or notify JRK of compliance, as agreed.

21 **TWENTY-NINTH SEPARATE AND ADDITIONAL DEFENSE**

22 **(As to All Causes of Action)**

23 *No Liability for Agent Acting on Behalf of Principal*

24 As an agent, JRK cannot be held individually liable because it acted within the scope of a  
25 principal-agent relationship. In certain instances, JRK Residential acted on behalf of unnamed  
26 property owners, and Plaintiffs signed leases with the owners, not with JRK Residential. Plaintiffs  
27 now complain of the terms within those written agreements with the owners, i.e. their landlords.

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**THIRTIETH SEPARATE AND ADDITIONAL DEFENSE**

**(As to All Causes of Action)**

*Statute of Limitations*

An action upon a statute for a penalty must be brought within one year. Code Civ. Proc. § 340(a). To the extent Plaintiffs or any member of the proposed class base their claims on violations of a statute for a penalty, their claims are potentially limited to one year prior to filing the instant complaint, i.e. since December 22, 2019. Moreover, any action upon a liability created by statute (not for penalty) or brought under the CLRA shall be commenced not more than three years from the date of the alleged violation. (Code Civ. Proc., § 338(a); Civ. Code, § 1783.) To the extent Plaintiffs or any member of the proposed class base their claims on statutory liability (not for penalty) and/or violations of the CLRA, their claims are limited to the three years prior to filing the instant complaint, i.e. since December 22, 2017. Additionally, any action brought under the UCL shall be commenced within four years after the cause of action accrued. (Bus. & Prof. Code, § 17208.) To the extent Plaintiffs or any member of the proposed classes base their claims on violations of the UCL, their claims are limited to the four years prior to filing the instant complaint, i.e., since December 22, 2016. JRK reserves its right to assert any other applicable statute of limitations.

**THIRTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

**(As to the First and Second Causes of Action)**

*Unconstitutional / Ex Post Facto*

To the extent Plaintiffs attempt to interpret and/or enforce the 2017 version of Penal Code § 396 according to the amended version of the statute in 2019, that constitutes an improper retroactive application of penal code legislation.

**THIRTY-SECOND SEPARATE AND ADDITIONAL DEFENSE**

**(As to the First and Second Causes of Action)**

*Increase Over 10% Attributable to Permissible Costs*

A rental price increase of more than 10% is not unlawful if the amount over 10% reflects costs that have been permissibly passed to renters. (Pen. Code, § 396, subd. (e) (2021); *id.*, subd.

1 (b) (2017).) Since 2017, an increase in excess of 10% is not “unlawful if [a defendant] can prove  
2 that the increase in price was directly attributable to additional costs” either “imposed on it by the  
3 supplier of the goods, or directly attributable to additional costs for labor or materials used to  
4 provide the services.” (Pen. Code, § 396, subd. (b) (2017).) Since 2019, Penal Code § 396(e) has  
5 also provided that a rental price increase of more than 10% “is not unlawful if [a defendant] can  
6 prove that the increase is directly attributable to additional costs for repairs or additions beyond  
7 normal maintenance that were amortized over the rental term.” (*Id.*, subd. (e) (2021).) Under both  
8 versions, JRK could lawfully increase rental prices by more than 10% if the increases were  
9 attributable to costs it incurred in improving the at-issue property through renovations or upgrades.  
10 As a result, many of Plaintiffs’ and putative class members’ claimed Penal Code § 396 violations  
11 are not violations at all, because JRK permissibly passed on costs to renters.

12 **THIRTY-THIRD SEPARATE AND ADDITIONAL DEFENSE**

13 **(As to the First and Second Causes of Action)**

14 *Increase Over 10% Attributable to Contractual Agreement Prior to Emergency Declaration*

15 California courts have found that parties can contract around statutes absent a lack of  
16 fundamental fairness, which the party challenging the agreement bears a “heavy burden” to prove.  
17 (See *Carnival Cruise Lines, Inc. v. Shute* (1991) 499 U.S. 585; *Furda v. Super. Ct.* (1984) 161  
18 Cal.App.3d 418; see also *City of Santa Barbara v. Super. Ct.* (2007) 41 Cal.4th 747, 777, fn. 53;  
19 *VL Sys., Inc. v. Unisen, Inc.* (2007) 152 Cal.App.4th 708, 713 [“Freedom of contract is an  
20 important principle, and courts should not blithely apply public policy reasons to void contract  
21 provisions”].) Here, Penal Code § 396 expressly provides that a rental price increase of more than  
22 10% is “not unlawful” if a defendant “can prove that the increase . . . was contractually agreed to  
23 by the tenant prior to the proclamation or declaration.” (Pen. Code, § 396, subd. (e) (2021).) This  
24 defense also applies to Penal Code § 396 claims raised under subdivision (b), which does not  
25 contain any language precluding this defense.

26  
27  
28



1 must show harm to recover damages. (Judicial Council of Cal. Civ. Jury Instructions (CACI) No.  
2 4700.) Harm cannot be shown where the tenant has not actually paid the allegedly unlawful fee.  
3 Additionally, Plaintiffs' claim and the claims of the putative class members for restitution under  
4 the consumer protection laws of California, including California Business & Professions Code  
5 § 17200 et seq., fail to the extent that they did not pay money directly to Defendants, and/or they  
6 seek a return of monies not in Defendants' possession.

7 **THIRTY-SEVENTH SEPARATE AND ADDITIONAL DEFENSE**

8 **(As to the First and Second Causes of Action)**

9 *No Rental Price Increase of More than 10%*

10 Certain Plaintiffs and putative class members did not experience rent increases of more  
11 than 10%. To determine whether a tenant's rent increased by more than 10%, the Court must first  
12 determine the relevant starting rental price, which can vary based on a number of factors,  
13 including which version of the statute that was in effect at the time of the increase and whether the  
14 unit was occupied or not at the time of the emergency declaration. For example, Plaintiff Herman  
15 Grishaver moved into his unit after during a period when the starting rental price should be the  
16 price offered by the landlord for that type of apartment. Using this starting rental price to do the  
17 calculations, none of Grishaver's first three leases represented an increase of more than 10%.

18 **THIRTY-FIRST SEPARATE AND ADDITIONAL DEFENSE**

19 **(As to the First and Second Causes of Action)**

20 *No Penal Code § 396 Restrictions in Place at Time of Increase*

21 Penal Code § 396 applies only if there was a proclamation or declaration of "emergency."  
22 And the statute contains specific language, which cannot be unilaterally disregarded via executive  
23 orders issued by the governor, concerning the length for which its protections apply after the  
24 emergency proclamation or declaration and any extension. In light of these limits on extending  
25 Penal Code § 396 protections, there were significant stretches during the proposed class periods  
26 when protections were not in place in Sonoma, Ventura, and Los Angeles. Plaintiffs and putative  
27 class members have no claim based on a violation of Penal Code § 396 if the relevant rental price  
28 increase occurred during one of the "gaps" in protections.



1 182–183 [“To forestall an action under the unfair competition law, another provision must actually  
2 . . . clearly permit the conduct].)

3 **RESERVATION OF RIGHT TO FURTHER AMEND**

4 JRK presently has insufficient knowledge or information upon which to form a belief as to  
5 whether it may have additional, as yet unstated, defenses. JRK reserves the right to further amend  
6 its answer to incorporate additional defenses or further factual support at a later time.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, JRK prays for relief as follows:

- 9 1. That Plaintiffs and the putative class members of the punitive class take nothing by  
10 this action;
- 11 2. That judgment be entered in JRK’s favor and against Plaintiffs and the proposed  
12 members of the putative classes;
- 13 3. That JRK be awarded its reasonable costs and, if applicable, fees; and
- 14 4. That JRK be awarded such other and further relief as this Court deems just and  
15 proper.

1 Dated: June 6, 2024

2 By: \_\_\_\_\_



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