DATE FILED: November 29, 2022 11:28 PM
FILING ID: 3481F3B599987
CASE NUMBER: 2021CV33357

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street, Denver, CO 80202	
PLAINTIFF: **BRANDON SMITH, KENDRA RAYLENE KEELY, LYNETTE RHODES, AND SHIVANI MOHAN** v. DEFENDANTS: **CARDINAL GROUP MANAGEMENT & ADVISORY, LLC d/b/a CARDINAL GROUP MANAGEMENT; GLENDALE PROPERTIES I, LLC d/b/a MINT URBAN INFINITY; GLENDALE PROPERTIES II, LLC d/b/a/ MINT URBAN INFINITY**	▲**COURT USE ONLY**▲ **Case Number: 21CV33357** **Div: 275**
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SECOND AMENDED CLASS ACTION COMPLAINT

Prefatory Statement

This case challenges abusive practices by landlords who refused to maintain their property in a livable condition. Specifically, Defendants refused to make necessary repairs, including with respect to critical, featured amenities like elevators and air conditioning, as required by Colorado

law and/or their form Lease Agreements. Indeed, despite knowing about the need for such repairs for *years* Defendants refused to authorize and perform them, choosing instead to continue to falsely advertise to tenants prospective and current alike that such amenities were fully functioning and available.

As such, Plaintiffs Brandon Smith ("Smith"), Kendra Raylene Keely ("Keely"), Lynette Rhodes ("Rhodes"), and Shivani Mohan ("Mohan") (collectively the "Plaintiffs") individually and on behalf of all others similarly situated, by and through their attorneys, file this Class Action Complaint ("Complaint") against Defendants Cardinal Group Management & Advisory, LLC d/b/a Cardinal Group Management "Cardinal"), Glendale Properties I, LLC d/b/a Mint Urban Infinity ("GP1"), and Glendale Properties II, LLC d/b/a Mint Urban Infinity ("GP2") (GP1 and GP2 are together referred to as "Mint Urban Infinity" or "Mint Urban", and Cardinal and Mint Urban Infinity are collectively referred to as "Defendants") seeking a judgment: (1) finding that Defendants have operated the Mint Urban Infinity apartment complex in a dilapidated and uninhabitable condition in violation of Colorado law and their contractual obligations, (2) declaring that Defendant Cardinal's Move-Out Fee is an unlawful penalty under Colorado law, (3) finding that Defendants have willfully and wrongfully withheld portions from their tenants' security deposits to collect the unlawful Move-Out Fee in violation of Colorado law regulating the retention of security deposits, (4) declaring that Defendant Cardinal's Administrative Fee violates Colorado's Rental Application Fairness Act and awarding treble damages per violation, (5) awarding damages to Smith and a class of all others similarly situated, and (6) awarding all other available relief for all persons similarly injured by Defendants' conduct, including without limitation all actual, consequential, and special damages, pre- and post-judgment interest, costs and attorneys' fees.

Plaintiffs, for their Second Amended Complaint, allege as follows upon personal knowledge as to themselves and their own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by their attorneys.

BACKGROUND

1. At all times relevant to this Second Amended Complaint, Plaintiffs were tenants in a nine-building, 561-unit, residential apartment complex (the "Property" or "Subject Property") located in the City and County of Denver at 1225 S. Bellaire St. and 1235 S. Birch St., Denver CO 80246.

2. The Property is owned by Mint Urban Infinity and operated under the same name. At all all times relevant to this Second Amended Complaint, Mint Urban Infinity had authorized and appointed co-Defendant Cardinal to act as its general agent to manage and act as landlord for the Property. On information and belief, Mint Urban Infinity and Cardinal declined to renew or otherwise terminated their management agreement respect to the property in or around 2022.

3. The Defendants solicit tenants such as the Plaintiffs and other alleged Class Members who, before they move in, are often unable to personally visit the Property and are routinely shown "model" apartments when they do, with marketing materials that describe the Property as featuring, "newly renovated apartments … newly renovated resort-style pools, state-of-the-art fitness centers …" where "every apartment has been remodeled top to bottom" and features air conditioning, elevators, on-site maintenance, and laundry facilities. *See* Ex. A ("Mint Urban Infinity Website"); *see also* Ex. B ("Mint Urban Infinity Website Amenities"); Ex. C ("Lease").

4. Defendants' representations concerning the Property are designed to inform the reasonable expectations and influence the decision-making of the Plaintiffs and the other alleged Class Members concerning the Property, the terms of the Lease, Defendants' performance under the Lease (particularly with respect to the condition, maintenance, and upkeep of the Subject Property), and to induce prospective tenants to lease Rental Units from the Defendants.

5. Despite their representations, Defendants systematically and pervasively fail to ensure and maintain the condition of the Property's common areas, facilities, and residential apartments as required by applicable law and their contractual obligations to their tenants.

6. Indeed, Defendants have known for years that substantial repairs were required with respect to the air conditioning systems in several of the buildings. Despite this knowledge, they dragged their feet for years before actually ordering the repairs.

7. And it goes beyond air conditioning. Defendants' failure to perform in good faith harms tenants immediately when they move-in: tenants are routinely met with missing, malfunctioning, and/or insecure building doors, inoperative building elevators, "resort-style pools" that are actually scum ponds, neglected out-of-service laundry facilities, apartments that have not been cleaned or otherwise prepared before a tenant's move-in date, cockroach infestations, and worse.

8. Defendants' failure to honor their duties under the form Lease Agreements and failure to perform in good faith continues throughout the tenants' lease terms. Defendants regularly close tenant maintenance requests without resolving the reported maintenance issues, and sometimes without having acted upon the request at all. Other times, Defendants respond superficially in a way that they know is insufficient to remedy the issue (e.g., providing tenants with buckets to catch water dripping from ceiling and walls, for example) or by scapegoating their own vendors (telling tenants that perpetually inoperable laundry facilities are "out of their hands"). Defendants' lack of good faith includes assessing their tenants with a $2.00 per month "Pest Control Service" charge (the "Pest Control Charge") for regularly scheduled, preventative pest control services despite not providing any such service.

9. Defendants' failure to repair these defects persists even after tenants, governmental authorities, and others repeatedly notify Defendants of the maintenance issues. *See* Ex. D (Representative Denver Department of Public Health Notice of Violations, Final Notice of Violations, and Last Notice of Violations). As a result of Defendants' widespread, long-term dereliction of their duties, the Subject Property is best characterized as an uninhabitable and dilapidated slum—in a condition that violates Colorado law, contradicts Defendants' marketing materials, and breaches Defendants' express and implied obligations under the form lease.

10. Defendants compound these indignities by threatening tenants who seek to terminate their leases either prior to the end of their lease terms or at the end of their lease term but without having first provided sixty days advance written notice of their intent to do so with an early "Move-Out Fee", also sometimes referred to as a "Buy Out Fee" or "Insufficient Notice Fee" (collectively referred to as the "Move-Out Fee"), equal to two months' rent to exert pressure against tenants to either stay and continue paying rent, pay the Move-Out Fee, or, best case scenario, sign a non-disclosure/waiver agreement that helps the Defendants conceal their shady business practices.

11. As such, the Defendants maintain and operate the Property in a condition that materially

interferes with the life, health, and safety of the Property's tenants and renders the residences within the Property unfit for the purpose for which they were leased – human habitation. The Plaintiffs and the Class Members have suffered damages as a result.

12. Plaintiffs filed this action with the Court on October 22, 2021. In its Case Management Order, issued March 11, 2022, the Court set a May 10, 2022, deadline for amending the pleadings. This deadline was extended to May 31, 2022 by an Order of the Court entered on May 11, 2022.

13. On July 1, 2022 Plaintiffs learned for the first time that the property owner, Defendant Mint Urban, had knowledge of the allegedly defective conditions at the Subject Property going back to 2019 and thus dragged its feet for years with respect to repairing essential items like the air conditioning (or providing a rent abatement).

14. In bringing this action, Plaintiffs seek, on their own behalf and that of the Class Members, to enjoin Defendants from: 1) assessing, threatening to assess, collecting, or retaining the Move-Out Fee, or pursuing other damages or recourse, related to tenants having terminated or subsequently terminating their lease prior to their lease end date; 2) continuing to maintain the Property in a decrepit, unsafe, unsanitary, bad faith manner, and/or uninhabitable condition in violation of their duties under law and contract; 3) demanding and collecting full price rent until such time as the Defendants comply with their legal and contractual obligations or retaining such rents for periods when the Property wasn't maintained in compliance with Defendants' legal and contractual obligations; 4) marketing or leasing apartments at the Property to new tenants until such time as the Property complies with Defendants' legal and contractual obligations; 5) assessing, collecting, or retaining the Pest Control Charge for periods of time when no pest control services were provided; 6) assessing, collecting, or retaining the Administrative Fee; and 7) wrongfully withholding any portion of their tenants' security deposits to satisfy assessments of the unlawful Move-Out Fee.

15. As detailed further below, Plaintiffs and the Class Members seek an award of damages against Defendants for their numerous breaches of their legal and contractual duties (including without limitation damages from the charging of the Pest Control Charge and failure to maintain the premises); the assessment and collection of unlawful penalties, the Move-Out Fee; the wrongful retention of any portion of their tenants' security deposits to satisfy Move-Out Fee assessments; and the assessment and collection of the Administrative Fee in violation of the Colorado Rental Application Fairness Act; as well as reasonable attorneys' fees and costs, pre- and post-judgment interest, and such other additional relief that is necessary and just.

PARTIES

16. At all times relevant, Plaintiffs were residents of the City and County of Denver, Colorado, who occupied and leased apartment units at the Subject Property, Mint Urban Infinity, from the Defendants. Plaintiffs paid all amounts alleged to be owed under the lease contract and did so to preserve their leasehold interests under the threat of eviction and related filings and proceedings. Plaintiffs have been subjected to Defendants' practice of leasing dilapidated apartments that fall far short of Defendants' shared duty to maintain the Property in compliance with their obligations under the law and form lease agreements.

17. Plaintiff Smith resided in the Property and paid all amounts alleged owed under the Lease

in full through the end of his lease term on April 29, 2022, under the threat of being assessed the Move-Out Fee, having eviction proceedings filed against him, and to preserve his interest in the property and was charged and paid the Administrative Fee and Pest Control Charge. The remainder of the named Plaintiffs moved out of the Property and were assessed the Move-Out Fee and the Pest Control Charge. Plaintiff Rhodes also paid the Administrative Fee.

18. Defendant Cardinal Group Management & Advisory, LLC ("Cardinal") is a Colorado limited liability company with its principal office at 4100 E. Mississippi Ave., 15th Floor, Denver, CO 80246, and does business under the trade name Cardinal Group Management. Cardinal is a multifamily real estate investment company headquartered in Denver, Colorado that owns and manages more than 35,000 residential dwelling units in thirty-seven states, including a large concentration in Colorado numbering well into the thousands. Plaintiffs signed leases with Cardinal – Cardinal's Form Lease – between February 2019 and March 2021.

19. Defendant Glendale Properties I, LLC ("GP1") is a foreign limited liability company with a principal office address listed with the Colorado Secretary of State as 1065 6th Ave FL 28, 5 Bryant Park, New York, NY 10018, and does business under the trade name Mint Urban Infinity. GP1 is the owner of the portion of the Mint Urban Infinity Property located at 1235 S. Birch St., Denver CO 80246. On information and belief, GP1 is a passive, single purpose real estate holding company owned by MapleTree Investments that has engaged Cardinal to act as its general agent in managing the Property.

20. Defendant Glendale Properties II, LLC ("GP2") is a foreign limited liability company with its principal office listed with the Colorado Secretary of State as 1065 6th Ave FL 28, 5 Bryant Park, New York, NY 10018, and does business under the identical trade name as GP1, Mint Urban Infinity. GP2 is the owner of the portion of the Mint Urban Infinity Property located at 1225 S. Bellaire St., Denver CO 80246. Upon information and belief, GP2 is a passive, single purpose real estate holding company owned by MapleTree Investments that has engaged Cardinal to act as its general agent in managing the Property.

JURISDICTION AND VENUE

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

22. Venue is proper in the City and County of Denver because the residential lease between Plaintiffs and Defendants was entered into, set to be performed in, and concerns real property located within the City and County of Denver.

COMMON FACTUAL ALLEGATIONS

23. At all times relevant, Defendant Cardinal has acted as the general agent, property manager, and landlord of the Property (where Plaintiffs resided as tenants) on Defendant Mint Urban Infinity's behalf. On information and belief, the contract or other agreement between Mint Urban and Cardinal terminated or otherwise ended sometime in 2022.

24. All actions taken by Cardinal set forth herein were on behalf of and for the benefit of itself and as agent for its principal, Mint Urban, the property owner.

25. Defendants employed a standardized, uniform lease together with form addenda (referred to herein as the "Lease" or "Form Lease") that governed the Plaintiffs' lease agreements. On information and belief, Cardinal used substantially the same Form Lease at other properties it managed on behalf of Mint Urban.

26. Cardinal adopted common procedures and practices at the Subject Property, and at all the properties in Colorado under its management as it concerns allegations related to the unlawful Administrative Fee and the Move-Out Fee.

27. The Form Lease is an adhesion contract that includes virtually identical provisions and is presented on a take-it or leave it, non-negotiable basis to Plaintiffs and the Class Members after they have sunk costs and time into pursuing a tenancy with Cardinal. Plaintiffs and the Class Members further enter into the Form Lease under the influence of the Defendants' overwhelmingly disparate bargaining power and in reliance on Cardinal's representations concerning the condition of the properties it manages—including the Subject Property specifically—and the rental terms concerning a prospective tenancy such as monthly amounts owed.

28. The sunk costs that tenants incur prior to commencing a tenancy with Defendant Cardinal include an Administrative Fee that ranges in amount from $185.00 to $335.00. Defendants' standardized "Pre Move-In Charge Letter," which it provides to prospective tenants, specifically states that, "If application is canceled after 72 hours from the time of application, the administrative fee becomes non-refundable." *See* "Pre Move-In Charge Letter, a true and accurate copy of which is attached hereto as Ex. E, 1 ("Pre Move-In Charges"); *see also* Ex. C, ¶ 6; *see also* Ex. F, ¶ 6 ("Cardinal 2020 Form Lease, 2828 Zuni Property").

29. On information and belief, Defendant Cardinal decreased the amount it charged prospective tenants for an application fee following the enactment of Colorado's "Rental Application Fairness Act" ("RAFA") in 2019 because RAFA prohibits property managers from charging application fees in excess of actual costs.

30. On information and belief, Defendant Cardinal either began charging prospective tenants the "Administrative Fee" for the first time or increased the amount of the "Administrative Fee" to avoid RAFA so that it could continue profiting from fees assessed to prospective and/or new tenants.

31. For example, Defendant Cardinal's 2018 Form Lease to tenants at the Property did not include an upfront Administrative Fee. *See* Ex. G, ¶ 6 ("Cardinal's 2018 Form Lease").

32. Further, on information and belief, Cardinal does not assess the Administrative Fee to tenants who renew leases despite including the provision in their post-RAFA leases and attributing the Administrative Fee to costs that are independent of whether a tenant is renewing or is a new tenant.

33. For example, Cardinal tenant Chris Grenard has leased from Cardinal since 2018 at a property it manages located at 2828 Zuni St., Denver CO 80211. The Administrative Fee provision was added to the form lease he signed with Cardinal for the first time in 2020, but Cardinal did not assess the Administrative Fee to Mr. Grenard. See Ex. H, ¶ 6 ("Cardinal 2020 Form Lease, 2828 Zuni Property Renewal Version"), 8 ("SPECIAL PROVISIONS…The Lease and Maintenance Administration Fee…are charged at move-in. The fees…will not be charged on future Lease

Renewals.").

34. Defendant Cardinal's Form Lease with Plaintiffs and the other Class Members includes the following provisions:

a. Requiring that Plaintiffs and Class Members agree to pay the Administrative Fee as "a Lease and Maintenance Administration Fee … to offset our costs for administering this Lease Contract and associated maintenance requests during the Lease Contract term." Ex. C, ¶ 6.

b. Requiring that Plaintiffs and Class Members agree to pay the Move-Out Fee in an amount equal to two months' rent if they "move out without paying rent in full for the entire Lease Contract term…" or if they move out at the end of their lease term but without having first provided sixty days advance written notice of their intent to do so, and specifying that tenants "will not be released from liability on this Lease Contract for any reason whatsoever unless specifically released by us in writing." *Id.*, ¶ 3, 11, 45.

c. Stating that tenants "will be given an Inventory and Condition form on or before move-in." and that "everything will be in a clean, safe, and good working condition" unless noted on the Inventory and Condition form, without any regard for the actual condition of the Property. *Id.*, ¶ 26.

d. Stating that Defendants will "act with customary diligence" to:

i. "make repairs and reconnections." *Id.*, ¶ 27;

ii. "keep common areas reasonably clean," *Id.*, ¶ 32;

iii. "maintain fixtures, furniture, hot water, heating and A/C equipment;" *Id.*

iv. "comply with applicable federal, state, and local laws regarding safety, sanitation, and fair housing;" *Id.*

v. "make all reasonable repairs, subject to your obligation to pay for damages for which you are liable." *Id.*

e. Stating that a tenant's failure to pay any and all rent or other amounts due is an event of default for which Defendants can pursue eviction and report to credit agencies. *Id.*, ¶ 33.

f. Providing that the prevailing party in litigation concerning the Form Lease is entitled to an award of attorney's fees and costs. *Id.*

g. Stating, in the negative, that it has no duty to mitigate damages if a tenant terminates its lease early, such as the Move-Out Fee. *Id.*

h. Stating that "All discretionary rights reserved for us within this Lease Contract or any accompanying addenda are at our sole and absolute discretion." *Id.*, ¶ 38.

i. Requiring tenants waive any right to a jury trial related to a dispute concerning the Form Lease. *Id*., ¶ 39.

j. Stating that Defendants may deduct "any sums due under this Lease Contract", such as the Move-Out Fee, from a tenant's security deposit. *Id*., ¶ 49.

k. Incorporating a "Utility and Services Addendum" into the Form Lease purportedly allowing Defendants to charge $2.00 per month for its provision of a regularly scheduled, preventative pest control service (the Pest Control Charge) and to charge $3.60, and up to $4.00, per month to the extent there are any "monthly administrative" fees. *Id*., 21, ¶¶ 1(j), 3.

l. Requiring tenants to agree that the Defendants have the right to enter and access their apartments "at all reasonable times for any legitimate or necessary purpose which we determine in our sole discretion, including but not limited to, inspecting, providing necessary services, making necessary repairs or improvements…We shall always have the right to reenter the Premises without notice, with your consent or request…Absent consent or request from you, we may reenter with notice when practical, and without notice when impractical". *Id*., 5, ¶ 29.

m. Purporting to disclaim the covenant of quiet enjoyment on behalf of the Defendants while requiring their tenants to adhere to it. *Compare Id*., 4, ¶ 20 *to Id*., 5, ¶ 26.

35. Defendants failed to act with customary diligence to make all reasonable repairs, make repairs and reconnections, keep common areas reasonably clean, maintain fixtures, furniture, hot water, heating and A/C equipment, or comply with applicable federal, state, and local laws regarding safety, sanitation, and fair housing.

36. Among other failures, Defendants systematically and pervasively failed to ensure and maintain the Property's common areas, facilities, and residential apartments in a habitable or functioning condition allowing tenants to quietly enjoy their homes. The conditions at the property of which Defendants were aware needed repair or reconnection, to be kept cleaned or maintained, or brought into compliance with federal, state, and local laws, but failed to act with customary diligence to do so include, but are not limited to, widespread, long-term and recurring 1) cockroach infestations; 2) nonfunctioning plumbing facilities necessary to provide adequate amounts of hot water; 3) nonfunctioning air conditioning; 4) nonfunctioning building doors and door locks; 5) nonfunctioning apartment doors and door locks; 6) leaky exterior roofs, walls, and plumbing causing interior flooding and water damage; 7) significant cracks and holes in interior walls, masonry, and ceilings; 8) nonfunctioning and unsafe elevators resulting in numerous elevator rescues and fires; 9) chronically overflowing and unsanitary common area dumpsters and trash receptacles; 10) dilapidated, unsafe, and unsanitary common area walkways and parking lots; 11) nonfunctioning or insufficient lighting in common areas and hallways; 12) failing to clean and/or perform necessary maintenance on apartments prior to tenants' move-in date; 13) unsanitary common areas; 14) nonfunctioning and unsafe laundry facilities; and 15) nonfunctioning

swimming pools. *See* Ex. I ("Tenant Affidavits and Declarations"), *See infra*[1].

37. Defendants routinely fail to disclose existing maintenance issues to prospective tenants (the Plaintiffs included) prior to leasing them apartments. Defendants recklessly overstate how quickly maintenance issues will be resolved when asked by tenants, including the Plaintiffs and Class Members. Tenants frequently learn that their apartments and the common areas and facilities at Mint Urban are not habitable, available, clean, functional, or otherwise move-in ready at the time of, or just prior to, their scheduled move-in date(s). To be clear, these tenants learn of the unsafe and unsanitary conditions after they've already packed up and transported their belongings to move-in, often at significant expense and inconvenience to themselves, friends and family, when they are without another residence, and after they have paid the non-refundable Administrative Fees.

38. On information and belief, the Defendants routinely leave maintenance requests submitted by tenants, including the Plaintiffs, through Defendants' online maintenance portal (the notice medium required by the Lease) and through other channels unaddressed for weeks, months, or altogether, and often mark such maintenance requests as resolved or closed when they haven't been addressed or resolved. When the Defendants do attend to maintenance requests, they frequently undertake superficial efforts that are insufficient to remedy the maintenance issue or blame third parties within their control for their inaction. Defendants have likewise failed to correct a litany of "Notices of Violations" concerning the Property issued by the Denver Department of Public Health and Environment ("DDPHE") and other governmental authorities in a timely manner, often resulting in repeated citations (yet uncompleted repairs). *See* Ex. C, ¶ 27; *See* Ex. D.

39. Defendants' practice of persistently leasing and operating rental units within the Property in a widespread, dilapidated condition, well after having been repeatedly notified of those conditions by tenants and governmental authorities, has materially interfered with the life, health, and safety of the Plaintiffs and Class Members. Defendants' tenants have been unable to sleep, bathe, eat, socialize, safely traverse to and from the Property, or gain respite or the quiet use and enjoyment of their own homes, have been unable to traverse the stairs, elevators, walkways, and parking lots of the Property unimpeded to go to and from work, or to bring belongings, groceries, laundry, their own persons, or guests to and from or into their homes.

40. Further, and despite charging tenants the Pest Control Charge for routine, preventative pest

[1] This environment and failings persisted for years despite having been well documented by Colorado's media: "Residents at Mint Urban Infinity Apartments haven't had air conditioning in weeks", June 17, 2021, https://www.thedenverchannel.com/news/contact-denver7/residents-at-mint-urban-infinity-apartments-havent-had-air-conditioning-in-weeks; "Majority of residents at the Mint Urban Infinity Apartment [sic] Still Living Without Air Conditioning", June 21, 2021, https://www.thedenverchannel.com/news/contact-denver7/majority-of-residents-at-the-mint-urban-infinity-apartment-still-living-without-air-conditioning; "Residents at Mint Urban Infinity Apartments Go More than a Week Without Hot Water", July 15, 2021, https://www.thedenverchannel.com/news/contact-denver7/residents-at-mint-urban-infinity-apartments-go-more-than-a-week-without-hot-water; "Mint Urban Infinity Tenants Ready to Fight Landlord in Court", August 4, 2021, https://www.westword.com/news/mint-urban-infinity-tenants-ready-to-fight-landlord-in-courrt-12298897.

control services, Defendants have not in fact provided such a service. No Pest Control Services were provided prior to the week of October 13, 2021. Rather, on October 13, 2021, the Defendants emailed their tenants at Mint Urban Infinity an admission that they have not provided this service in the past despite continuously charging fees for such services:

> "Dear Residents,
>
> We will be starting preventive pest control for your building this week. Our Pest Control will be going in to every unit to inspect and may be giving treatment if needed. We will be starting with the 1st and 2nd floor Thursday 10/14/2021 and for the rest of the floors we will keep you updated as soon as we have the schedule completed. Please keep in mind if you are already in a treatment plan pest control will continue to go into your unit to treat and you will receive a call from the office with a date. If you have any questions or concerns please do not hesitate to contact us!
>
> Kind regards,
>
> Mint Urban Team"

41. Plaintiffs and the Class Members have suffered damages as a result, including but not limited to the overpayment of rent, expenses and costs to address or mitigate the harm caused by these maintenance issues (such as, but not limited to, purchasing cockroach traps, dining out at restaurants, more frequently purchasing groceries and doing laundry to allow lighter loads that are manageable in stairways, missing work to deal with/attend to such issues, purchasing portable air conditioning units, fans, and space heaters, and obtaining health care treatment such as counseling for anxiety, lost wages, and emotional distress).

42. Defendant Cardinal, as the property manager that solicits tenants to rent apartments pursuant to the Form Lease assesses significant charges to its prospective tenants at the Property, and the other properties it manages, prior to prospective tenants having the opportunity to see their dwelling unit, the Property as a whole, or even the Form Lease. Saliently, the Lease includes and discloses additional mandatory monthly fees and charges beyond what Cardinal discloses in its "Pre-Move-In Charges" disclosure. Further, the pre-move-in charges include an unlawful, nonrefundable, supplemental application fee in the amount of $185.00 that Cardinal mislabels as an "Administrative Fee". *See* Ex. C, ¶ 6; *See* Ex. E; *See* Ex. F, ¶ 8; *See* Ex. G ("Move-In Checklist").

43. These pre-move-in costs, including the unlawful "Administrative Fee", have the effect of coercing reluctant new tenants to move into the Property and other properties managed by Cardinal despite reservations about the condition of their rental dwelling units, the residential premises and facilities, and/or the additional, mandatory fees and charges laid out in the Lease.

44. Following this bait and switch, Defendants intimidate their tenants to pay rent and all other charges unabated and in full for the entirety of their lease terms—typically a period equal to or greater than twelve months—by 1) threatening to pursue and/or pursuing eviction for the nonpayment of any amount due under the Lease in full and 2) threatening to assess, actually assessing, and collecting an early move-out fee (the "Move-Out Fee") that constitutes an unlawful penalty and is equal to two months' of a tenant's rent (typically amounting to thousands of dollars)

against any tenant who vacates the Property prior to the expiration of their lease term or without having provided sixty days advance notice before moving out at the expiration of their lease. *See* Ex. C, ¶¶ 3, 11, 33, 45, 46; *See* Ex. E, ¶¶ 5-7.

45. Defendants' Move-Out Fee is assessed for damages purportedly resulting from a tenant breaching the Lease by moving out early or without providing 60-days' notice. In reality it is a penalty. Defendants' damages resulting from such a breach are not and were not difficult to calculate at the time Defendants entered into lease contracts with their tenants but rather are the readily determinable costs associated with reletting an apartment and lost rent for the interim. There was no intention to liquidate such supposed damages. Also, the amount of the Move-Out Fee is not a reasonable estimate of Defendants' actual damages (also measured from the time the lease contracts were executed) as it takes the Defendants significantly less than two months to relet an apartment on average and reletting related costs and expenses are part of the day-to-day job responsibilities of the Defendants' regular staff or otherwise included in its on-going, regular business expenses. The Move-Out Fee also allows for the recoupment of actual damgaes like concessions and move-in discounts provided to the resident. The Move-Out Fee is a penalty and is assessed in addition to the rent assessed during the months at issue.

FACTS SPECIFIC TO PLAINTIFF SMITH

46. Plaintiff Smith leased a residential apartment at the Property from Defendants pursuant to Defendants' Form Lease that he electronically signed on March 30, 2021, with a lease term commencing March 30, 2021, and ending April 29, 2022, and has fulfilled all of his obligations under the Lease including by making the timely payment of rent. *See* Ex. C.

47. Plaintiff Smith moved directly from Pennsylvania to Colorado without having the opportunity to view the Property or his apartment prior to the commencement of his lease term. He relied on Defendants' representations about the condition of the Property in choosing to lease an apartment from the Defendants. Those representations included, but were not limited to, those made on the Mint Urban Infinity website and reflected, in part, in Plaintiff's Exhibits A and B. Defendants knew at the time that these representations were false and that defective conditions had persisted at the property dating back to 2019.

48. Plaintiff Smith has personally experienced many of the conditions listed s*upra* in Paragraph 36 as well as Defendants' failure to timely and adequately perform maintenance to address those conditions after he provided notice to the Defendants through their online portal as directed by the Lease. Defendants also marked some of Smith's maintenance notices as resolved or closed when they had in fact not been resolved or addressed. *See* Ex. I, 5-8.

49. Defendants' failure to provide and maintain functioning and safe elevators provides a compelling illustration of the impact these sustained maintenance failures have had on the Smith and other tenants. Prior to relocating to the Property from Pennsylvania, Smith underwent knee surgery. Smith relied on the representation that the buildings in the Property had two functioning elevators because it would be difficult and unsafe for him to use stairways, particularly to move all of his belongings into an apartment on the fourth floor of a six-story building. When Smith arrived at the Property, however, he learned that the elevators were not functioning and hadn't been for some time. One of the two elevators in Smith's building remained in an inoperable condition through the entirety of his tenancy and the other was seldom in working order.

50. Defendants' failure to provide and maintain functioning air conditioning through the summer months substantially disturbed Smith's tenancy and the purpose for which he leased his apartment as well. Smith sought, and had contracted for, an apartment that would be a refuge from the summer heat, which was important as he, like many potential tenants, would be working from home. Smith was instead unable to work, relax, socialize, or sleep as he otherwise would have, and as he intended when he leased his apartment, a result of the discomfort of internal temperatures frequently hovering around 90 degrees Fahrenheit. Smith also was forced to purchase a portable air conditioning unit to mitigate intolerable conditions in his apartment.

51. Smith would not have agreed to pay rent in the amount of $1,508.00 per month had Defendants not misrepresented the true condition of the Property or had he been made aware of Defendants' policy and practice of failing to maintain the property such that it remains in a perpetually dilapidated and uninhabitable condition.

52. Defendant Cardinal charged Smith the Administrative Fee prior to the commencement of his tenancy and communicated to him that the Administrative Fee was non-refundable, via the "Pre Move-In Charge Letter" attached and incorporated into this Complaint as Exhibit E, in a manner consistent with its policy and practice of providing the "Pre Move-In Charge Letter" assessing the Administrative Fee to its prospective tenants prior to the commencement of their lease terms at the properties it manages.

53. Smith paid the Administrative Fee as reflected in the "Move-In Checklist" prepared by the Defendants, Smith paid the Administrative on March 24, 2021, prior to the commencement of his tenancy at Mint Urban Infinity. *See* Ex. J ("Move-In Checklist").

54. On September 10, 2021, Smith requested, via an email to Defendant Cardinal, that the Administrative Fee that he paid be refunded to him within seven days to avoid him pursuing legal remedies. *See* Ex. K ("Administrative Fee Refund Request").

55. Cardinal refused to refund Smith, relying on the pretext that the Administrative Fee is supposedly not an application fee as defined by RAFA. *See Id*.

56. Defendants have charged Smith, and Smith has paid, the Pest Control Charge throughout his tenancy at Mint Urban Infinity despite no pest control services being provided until October 2021. Thus, for at least the months of April 2021 through September 2021, any $2 fee that Smith paid a $2 pest control fee was in exchange for nothing.

57. The threat of being assessed the Move-Out Fee served to deter Smith from terminating his lease with the Defendants early despite his desire to do so because of the condition of the Property and the Defendants' failure to perform their obligations under the Lease. Instead, Smith was stuck living in an unlivable unit.

58. To redress these injuries, Smith, on behalf of himself and a class of similarly situated individuals, brings this suit under Colorado law and the Form Lease Contract for (1) violations of the statutory warranty of habitability, the implied covenant of quiet enjoyment, the implied covenant of good faith and fair dealing, and express contractual covenants pertaining to maintenance; (2) threatening to assess, assessing, and collecting the Move-Out Fee because it constitutes an unlawful penalty, is void as against public policy, and is procedurally and substantively unconscionable; and (3) assessing, collecting, and retaining the Administrative Fee

in violation of Colorado's Rental Application Fairness Act, C.R.S. §§ 38-12-901 *et. seq*.

59. On behalf of the Class, Smith seeks an Order from this Court enjoining Defendants: (1) from operating an uninhabitable property and failing to correct unsafe and unsanitary conditions pursuant to and as described in Colorado's Warranty of Habitability statute, C.R.S. § 38-12-507(b) and to make repairs as required by the Form Lease; and (2) from charging, collecting, or retaining the Move-Out Fee, Pest Control Charge, or the Administrative Fee on the basis that such Fees constitute unlawful penalties under the Form Lease, are disallowed by statute or other law, are procedurally and substantively unconscionable, are void as against public policy, and/or are in breach of their lease contract including the covenant of good faith and fair dealing.

60. Smith further seeks an award of statutory and actual damages to the class members as allowed by law, together with costs, pre- and post-judgment interest, and reasonable attorneys' fees.

FACTS SPECIFIC TO PLAINTIFF KEELY

61. Plaintiff Keely leased a residential apartment at the Property from Defendants pursuant to Defendants' Form Lease that she electronically signed on February 2, 2019, with a lease term commencing February 2, 2019, and ending February 1, 2022. Keely fulfilled all of her obligations under the Lease including the timely payment of rent.

62. Plaintiff Keely has personally experienced many of the conditions listed s*upra* in paragraph 36 and elsewhere, and notified the Defendants of those conditions in writing via the online portal. For example, Keely was unable to utilize laundry facilities in her building, which have been generally inoperable from approximately April of 2020 onward and, when the laundry facilities were used by other tenants, their condition of disrepair resulted in malfunctions that triggered her building's fire alarms on at least two occasions. The Laundry rooms in her building were blocked by caution tape and warning signs instructing tenants not to use the machines were posted on entrances and on the machines themselves for most (if not all) of this period. Further, Keely has had continuous cockroach infestations in her unit, which Defendants failed to reasonably exterminate despite assurances in the lease and notifications of infestation by Keely, other tenants, and the Denver Department of Public Health and Environment ("DDPHE"). The exterior doors and their locking mechanisms to Keely's building were also non-functioning for near the entire duration of Keely's tenancy, despite repeated notices from both Keely and DDPHE. Likely as a result of the lack of secure building access, the resident storage units in her building were broken into in January of 2021. The locks on Keely's individual unit and many others were broken off and Keely lost several possessions to theft.

63. Keely would not have agreed to pay rent in the amount set forth in her lease had Defendants not misrepresented the true condition of the Property or had she been made aware of Defendants' policy and practice of failing to maintain the property such that it remains in a perpetually dilapidated and uninhabitable condition in violation of the lease terms.

64. On or about December 31, 2021, Keely provided notice to Defendants that she was terminating her lease and would leave the Property.

65. On or about January 31, 2022, Keely vacated the Property and surrendered her apartment to Defendants.

66. On or about February 19, 2022, the Defendants delivered to Plaintiff Keely a final statement asserting that Keely had an outstanding balance due of $1,220.04 including a charge for the Move-Out Fee (labeled "Insufficient Notice Fee") in the amount of $1,205.00, stating that the outstanding balance may be referred to a collection agency if left unpaid, and notifying Keely that her $200.00 security deposit had been retained and applied against the Move-Out Fee and other amounts the Defendants alleged she owed. *See* Exhibit L ("Keely Security Deposit Disposition Statement").

67. Through her Counsel, Keely provided notice to the Defendants that she disputed the retention of her security deposit and the validity of amounts alleged owed, including the Move-Out Fee, and that she intended to file legal proceedings to recover her security deposit in lieu of its return on May 3, 2022.

68. Defendants did not return Keely's security deposit within seven days of her May 3, 2022 notice and have not returned Keely's security deposit as of the date of this filing.

69. Defendants charged Keely, and Keely paid, the Pest Control Charge throughout her tenancy at Mint Urban Infinity despite the fact that pest control services were not provided for the entirety of her lease term (at most the months of October 2021-December 2021 despite moving in and paying $2 month for such "services" since April 2019).

70. To redress these injuries, Keely, on behalf of herself and a class of similarly situated individuals, brings this suit under Colorado law and the Form Lease Contract for (1) violations of the statutory warranty of habitability, the implied covenant of good faith and fair dealing, and express contractual covenants pertaining to maintenance of the premises and the Pest Control Fee; (2) threatening to assess, assessing, and collecting the Move-Out Fee because it constitutes an unlawful penalty, is void as against public policy, and is procedurally and substantively unconscionable; and (3) the wrongful retention of her security deposit in violation of C.R.S. 38-12-103(3)(a).

71. On behalf of the Class, Keely seeks an Order from this Court enjoining Cardinal: (1) from operating an uninhabitable property and failing to correct unsafe and unsanitary conditions pursuant to and as described in Colorado's Warranty of Habitability statute, C.R.S. § 38-12-507(b) and to make repairs as required by the Form Lease; and (2) from charging, collecting, or retaining the Move-Out Fee or Pest Control Charge on the basis that such Fees constitute unlawful penalties under the Form Lease, are disallowed by law, are procedurally and substantively unconscionable and void as against public policy, and/or are in breach of their lease contract including the covenant of good faith and fair dealing; and (3) from withholding any portion of their tenants' security deposits to satisfy Move-Out Fee assessments.

72. Keely further seeks an award of statutory and actual damages to the class members, together with all allowable costs, pre- and post-judgment interest, and reasonable attorneys' fees.

FACTS SPECIFIC TO PLAINTIFF RHODES

73. Plaintiff Rhodes leased a residential apartment at the Property from Defendants pursuant to Defendants' Form Lease that she electronically signed on or around October 28, 2020, with a 12-month lease term commencing December 1, 2020. Rhodes fulfilled all of her obligations under the Lease including the timely payment of rent and moved out of the Property on November 30,

2021.

74. The Defendants failed to have Rhodes's apartment ready for her to move-in on December 1, 2020 because of unfinished maintenance and repairs. As a result, Rhodes was forced to stay in an extended-stay hotel until December 14, 2020 when a comparable apartment at Mint Urban was available for her to move-in. Rhodes was notified of the unavailability of her unit on December 1, 2020 and incurred damages, including costs for a moving company that she had hired for her December 1, 2020 original move-in date as a result.

75. Plaintiff Rhodes personally experienced many of the conditions listed s*upra* in paragraph 36 and elsewhere. For example, her building's laundry facilities were faulty throughout her tenancy. Likewise, her building's elevators were in varying states of disrepair from March 2021 through the date she moved out. Rhodes additionally experienced nonfunctioning external locks to the building and resident mailboxes, out-of-order swimming pools, and overflowing dumpsters in the Mint Urban parking lot. Worst of all, Rhodes tenancy was substantially interfered with by a cockroach infestation that lasted nearly the entirety of her tenancy that the Defendants failed to resolve (despite falsely charging her monthly for pest control services). *See* Exhibit M ("Overflowing Dumpsters").

76. Defendants' failure to provide and maintain functioning air conditioning through the summer months of 2021 substantially disturbed Rhodes' tenancy and her ability to use and enjoy her apartment.

77. Rhodes provided written notice to the Defendants of the conditions described *supra*.

78. Rhodes would not have agreed to pay rent in the amount set forth in her lease had Defendants not misrepresented the true condition of the Property or had she been made aware of Defendants' policy and practice of failing to make repairs such that the property remains in a perpetually dilapidated and uninhabitable condition.

79. Upon information and belief, Defendant Cardinal charged Rhodes the Administrative Fee prior to the commencement of her tenancy and communicated to her that the Administrative Fee was non-refundable, via a "Pre Move-In Charge Letter" identical to that sent to Plaintiff Smith and attached and incorporated into this Complaint as Exhibit E, in a manner consistent with its policy and practice of providing the "Pre Move-In Charge Letter" assessing the Administrative Fee to its prospective tenants prior to the commencement of their lease terms at the properties it manages.

80. Rhodes paid the Administrative Fee.

81. Defendants charged Rhodes, and Rhodes paid, the Pest Control Charge throughout her tenancy at Mint Urban Infinity despite the fact that the pest control service was not provided for the entirety of her lease term (or, at the most, October 2021).

82. On or about November 9, 2021, Rhodes provided notice to Defendants that she was terminating her lease and would leave the Property on or before her December 1, 2021, lease termination date.

83. On or about November 30, 2021, Rhodes vacated the Property and surrendered her apartment to Defendants.

84. On or about December 21, 2021, an agent of the Defendants left Rhodes a voicemail notifying her that her former apartment had been relet to new tenants who were moving in the following day, December 22, 2021.

85. On or about December 30, 2021, the Defendants delivered to Plaintiff Rhodes a final statement asserting that Rhodes had an outstanding balance due of $2,313.70 including a charge for the Move-Out Fee (labeled a "Buy Out Fee") in the amount of $1,988.00, stating that the outstanding balance may be referred to a collection agency if left unpaid, and notifying Rhodes that her $200.00 security deposit had been retained and applied against the Move-Out Fee and other amounts the Defendants alleged she owed. *See* Exhibit N ("Rhodes Security Deposit Disposition Statement").

86. Through her Counsel, Rhodes provided notice to the Defendants that she disputed the retention of her security deposit and the validity of amounts alleged owed, including the Move-Out Fee, and that she intended to file legal proceedings to recover her security deposit in lieu of its return on May 3, 2022.

87. The Defendants did not return Rhodes's security deposit within seven days of her May 3, 2022, notice and have not returned Rhodes's security deposit as of the date of this filing.

88. To redress these injuries, Rhodes, on behalf of herself and a class of similarly situated individuals, brings this suit under Colorado law and the Form Lease Contract for (1) violations of the statutory warranty of habitability, the implied covenant of good faith and fair dealing, and express contractual covenants pertaining to maintenance/repairs and the Pest Control Fee; (2) threatening to assess, assessing, and collecting the Move-Out Fee because it constitutes an unlawful penalty, is void as against public policy, and is procedurally and substantively unconscionable; (3) assessing, collecting, and retaining the Administrative Fee in violation of Colorado's Rental Application Fairness Act, C.R.S. §§ 38-12-901-905, and (4) the wrongful retention of her security deposit in violation of C.R.S. 38-12-103(3)(a).

89. On behalf of the Class, Rhodes seeks an Order from this Court enjoining Cardinal: (1) from operating an uninhabitable property and failing to correct unsafe and unsanitary conditions pursuant to and as described in Colorado's Warranty of Habitability statute, C.R.S. § 38-12-507(b) and to make repairs as required by the Form Lease; (2) from charging, collecting, or retaining the Move-Out Fee, Pest Control Charge, or the Administrative Fee on the basis that such Fees constitute unlawful penalties under the Form Lease, are disallowed by law, are procedurally and substantively unconscionable and disallowed by public policy, and/or are in breach of their lease contract including the covenant of good faith and fair dealing; and (3) from withholding any portion of their tenants' security deposits to satisfy Move-Out Fee assessments.

90. Rhodes further seeks an award of all statutory and actual damages to the class members, together with costs, pre- and post-judgment interest, and reasonable attorneys' fees.

FACTS SPECIFIC TO PLAINTIFF MOHAN

91. Plaintiff Mohan leased a residential apartment at the Property from Defendants pursuant to Defendants' Form Lease that she electronically signed on or around May 18, 2019, with an initial lease term commencing that day and, following two renewals, was to end on July 17, 2022. Mohan fulfilled all of her obligations under the Lease including the timely payment of rent.

92. Plaintiff Mohan personally experienced many of the conditions listed *supra* in paragraph 36 and elsewhere and notified the Defendants of those conditions in writing via the online portal and otherwise. These issues included the exterior doors to Mohan's building being broken, removed, or otherwise not secure from March of 2021 through the end of her tenancy, her buildings elevators being in disrepair from the end of August 2021 through the end of her tenancy, her building's laundry facilities being out of order from July 22, 2021, through September 1, 2021, and the Mint Urban pools being out of service for all of 2021.

93. Mohan would not have agreed to pay rent in the amount set forth in her lease had the Defendants not misrepresented the true condition of the Property or had she been made aware of Defendants' policy and practice of failing to maintain the property such that it remains in a perpetually dilapidated and uninhabitable condition.

94. Defendants charged Mohan, and Mohan paid, the Pest Control Charge throughout her tenancy at Mint Urban Infinity despite the fact that the pest control services were not provided for the almost the entirety of her tenancy.

95. On or about September 20, 2021, Mohan provided notice to Defendants that she was terminating her lease and would leave the Property on or around October 31, 2021. Mohan's notice was made in accordance with C.R.S. § 38-12-507, based on Defendants' failure to maintain the premises. *See* Exhibit O ("Mohan Notice of Lease Termination").

96. On or about October 25, 2021, Mohan vacated the Property and surrendered her apartment to Defendants.

97. On or about November 26, 2021, the Defendants delivered to Plaintiff Mohan a final statement asserting that Mohan had an outstanding balance due of $2,441.28 including a charge for the Move-Out Fee (labeled a "Buy Out Fee") in the amount of $2,454.00, stating that the outstanding balance may be referred to a collection agency if left unpaid, and notifying Mohan that her $200.00 security deposit had been retained and applied against the Move-Out Fee and other amounts the Defendants alleged she owed. *See* Exhibit P ("Mohan Security Deposit Disposition Statement").

98. Through her Counsel, Mohan provided notice to the Defendants that she disputed the retention of her security deposit and the validity of amounts alleged owed, including the Move-Out Fee, and that she intended to file legal proceedings to recover her security deposit in lieu of its return on May 3, 2022.

99. The Defendants did not return Mohan's security deposit within seven days of her May 3, 2022, notice and have not returned Mohan's security deposit as of the date of this filing.

100. To redress these injuries, Mohan, on behalf of herself and a class of similarly situated individuals, brings this suit under Colorado law and the Form Lease Contract for (1) violations of the statutory warranty of habitability, the implied covenant of good faith and fair dealing, and express contractual covenants pertaining to maintenance and the Pest Control Fee; (2) threatening to assess, assessing, and collecting the Move-Out Fee because it constitutes an unlawful penalty, is void as against public policy, and is procedurally and substantively unconscionable; and (3) the wrongful retention of her security deposit in violation of C.R.S. 38-12-103(3)(a).

101. On behalf of the Class, Mohan seeks an Order from this Court enjoining Cardinal: (1) from operating an uninhabitable property and failing to correct unsafe and unsanitary conditions pursuant to and as described in Colorado's Warranty of Habitability statute, C.R.S. § 38-12-507(b) and from refusing to make repairs as required by the Form Lease; (2) from charging, collecting, or retaining the Move-Out Fee or Pest Control Charge on the basis that such Fees constitute unlawful penalties under the Form Lease, are disallowed by law, are procedurally and substantively unconscionable and disallowed by public policy, and/or are in breach of its lease contract including the covenant of good faith and fair dealing; and (3) from withholding any portion of its tenants' security deposits to satisfy Move-Out Fee assessments.

102. Mohan further seeks an award of damages to the class members, together with costs, pre- and post-judgment interest, and reasonable attorneys' fees.

CLASS ACTION ALLEGATIONS

103. Plaintiffs bring this action in accordance with Colorado Rule of Civil Procedure 23 on behalf of a Class and three Sub-Classes defined as follows:

Class: All persons in the United States who, from the date three years prior to the filing of the initial Complaint in this case through the date notice is sent to the Class, leased a residence in Colorado from Cardinal using Cardinal's Form Lease.

Subclass 1: All Class Members who Cardinal caused to be charged any Administrative Fee on or after August 2, 2019.

Subclass 2: All Class Members who leased a residence from Defendants at Defendants' Mint Urban Infinity Apartment site.

Subclass 3: All Class Members who paid all or part of the Move-Out Fee, including those who had any portion of their security deposit withheld, in whole or in part, to satisfy any portion of the Move-Out Fee.

104. The following people are excluded from the Class and Subclasses: (1) any Judge or Magistrate presiding over this action and members of their families; (2) Defendants, Defendants' principals, subsidiaries, parents, successors, predecessors, contractors, and any entity in which the Defendants or their parents have a controlling interest and their current or former employees, officers and directors; (3) persons who properly execute and file a timely request for exclusion from the Class or Subclasses; (4) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released; (5) Defendants' counsel and Plaintiffs' counsel; and (6) the legal representatives, successors, and assignees of any such excluded persons.

105. Plaintiffs anticipate the potential need to amend the Class and Subclass definitions following additional discovery.

106. **Numerosity:** The exact number of Class and Subclass Members is unknown and not available to Plaintiffs at this time, but individual joinder is impracticable. On information and belief, Defendants have leased residences at the Subject Property to thousands of tenants and charged or threatened to charge the unlawful Move-Out Fee and Administrative Fees to thousands of tenants who fall into the Class and Subclasses as defined. The number of Class and Subclass

Members and class membership can be identified through objective criteria, including Defendants' business records and tenant payment ledgers.

107. **Typicality:** Plaintiffs' claims are typical of the claims of other members of the Class and Subclasses in that Plaintiffs and the members of the Class all faced the same lease terms and unlawful Administrative Fees, Pest Control Charges, and Move-Out Fees. The Subclass Members were all assessed similar fees, faced similar uninhabitable and otherwise dilapidated conditions at the Mint Urban Property (and failures to repair), and had their security deposits wrongfully penalized. Indeed, Plaintiffs and the members of Subclass 2 leased a residence at the dilapidated Mint Urban Infinity Property and sustained the same legal injuries and damages arising out of Defendants' uniform wrongful conduct and failures to maintain the property in a habitable and safe condition. Plaintiffs and the members of Subclass 3 leased a residence and sustained the same legal injuries and damages arising out of the Defendants' uniform wrongful conduct in assessing the unlawful Move-Out Fee and retaining any portion of a tenant's security deposits to collect it. If Plaintiffs have an entitlement to relief, so do the rest of the Class and Subclass Members.

108. **Adequate Representation:** Plaintiffs will fairly and adequately represent and protect the interests of the Class and Subclasses and have retained counsel competent and experienced in complex class actions, including class actions against large landlords for charging unlawful penalties and class actions seeking damages and declaratory relief arising out of form contracts. Neither Plaintiffs nor their counsel has any interest in conflict with or antagonistic to those of the Class, and Defendant has no defenses unique to Plaintiffs.

109. **Commonality and Predominance:** There are questions of law and fact common to the claims of Plaintiffs and the Class and Subclasses, and those questions will drive the litigation and predominate over any questions that may affect individual members of the Class and Subclasses. Common questions for the Class and Subclasses include, but are not limited to, the following:

(a) Whether Defendant Cardinal's Move-Out Fee constitutes an unlawful penalty under Colorado law or is otherwise unconscionable or void as against public policy;

(b) Whether Defendant Cardinal's Administrative Fee is unlawful under RAFA, is otherwise unconscionable or against public policy, and/or violates the implied covenant of good faith and fair dealing;

(c) Whether Defendant Cardinal's assessment of the Pest Control Charge for a service it did not provide constitutes a breach of contract and/or the implied covenant of good faith and fair dealing;

(d) Whether Defendants' policies, practices, and performance in maintaining the Property violates Colorado's Warranty of Habitability statute, the implied covenant of good faith and fair dealing, or the Form Lease's express provisions related to repair and maintenance;

(e) Whether the Defendants' retention of any portion of their tenants' security deposits to collect the Move-Out Fee, in full or in part, violates Colorado law;

(f) Whether the Class is entitled to injunctive and declaratory relief; and

(g) Whether the Class is entitled to statutory damages.

110. **Conduct Similar Towards All Class Members:** By committing the acts set forth in this pleading, Defendants have acted or refused to act on grounds substantially similar towards all members of the Class, and Defendants have acted or refused to act on grounds substantially similar towards all members of the Subclasses, so as to render certification of the Class and Subclasses for final injunctive relief and corresponding declaratory relief appropriate under Rule 23(b)(2). All Class members were subject to uniform lease terms, and the Subclass Members were, respectively, subjected uniformly to dilapidated and uninhabitable conditions, the Pest Control Charge, the Administrative Fee, and the wrongful retention of their security deposits, in full or in part, to collect the unlawful Move-Out Fee.

111. **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. Complaints from tenants and government citations haven't resulted in Defendants fixing the property or maintaining their apartments in a habitable condition (or in any condition that honors the Defendants' duties under the Form Lease to repair and maintain the premises). Joinder of all parties is impracticable, and the damages suffered by the individual members of the Class and Subclasses will likely be relatively small, especially given the burden and expense of individual prosecution of the complex litigation necessitated by Defendants' actions. It would be virtually impossible for the individual members of the Class and Subclasses to obtain effective relief from Defendants' misconduct. Even if members of the Class and Subclasses 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 issues 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. This promotes economies of time, effort and expense and ensures a uniform decision.

FIRST CLAIM FOR RELIEF
Injunctive and Declaratory Relief on Behalf of Plaintiffs and the Class Against All Defendants

112. Plaintiffs reallege and incorporate by reference the allegations set forth above.

113. Plaintiffs and the Class and Subclass members are all parties to the Form Lease agreement, which is a contract with Defendant Cardinal that Defendants Mint Urban Infinity have authorized Cardinal to enter into on their behalf. As parties to a contract, they have the right to have their rights and duties established by the Court.

114. Plaintiffs, individually and on behalf of the Class, seek a declaration of the Parties' respective rights under the lease agreement including, inter alia, that the Move-Out Fee set forth in Defendant Cardinal's Form Lease, for a set amount equal to two months of a tenant's rent, regardless of the context surrounding a tenant moving out prior to the end of their lease term, constitutes an unenforceable and unlawful penalty under Colorado law. Plaintiffs seek a further declaration that the Plaintiffs and the class did not intend to liquidate damages, that damages to Defendant were not uncertain or difficult to prove at the time the leases were executed, and that the amounts charged for such Move-Out Fees, again judged at the time the leases were executed,

are unreasonable and not fair estimates of the damages suffered by Defendants in the event a tenant moved out of their rental residence prior to the expiration of the lease term or moved out without providing 60 day's-notice.

115. Plaintiffs also seek a declaration individually and on behalf of the Class that the Move-Out Fee set forth in Defendant Cardinal's Form Lease is procedurally and substantively unconscionable and therefore unenforceable.

116. Plaintiffs also seek a declaration individually and on behalf of the Class that the Move-Out Fee set forth in Cardinal's Form Lease is void as against public policy and therefore unenforceable.

117. Plaintiffs also seek a declaration individually and on behalf of Subclass 3 that collecting any or all of the Move-Out Fee by deducting such sums from tenant security deposits violates C.R.S. § 38-12-103.

118. Plaintiffs further seek a declaration individually and on behalf of Subclass 1 that the Administrative Fee Defendant Cardinal assesses prospective tenants prior to their signing a lease contract in its standard Pre Move-In Charge letter, and thereafter set forth in Cardinal's Form Lease, for an amount ranging from $185.00 to $335.00 (and possibly more), is an application fee and otherwise violates Colorado's Rental Application Fairness Act.

119. Plaintiffs also seek a declaration individually and on behalf of Subclass 1 that the Administrative Fee set forth in Cardinal's standard Pre Move-In Charge letter and Form Lease is procedurally and substantively unconscionable and therefore unenforceable.

120. Plaintiffs also seek a declaration individually and on behalf of Subclass 1 that the Administrative Fee set forth in Cardinal's standard Pre Move-In Charge letter and Form Lease is void as against public policy and therefore unenforceable.

121. Plaintiffs further seek a declaration individually and on behalf of Subclass 1 that the Administrative Fee set forth in Cardinal's standard Pre Move-In Charge letter and Form Lease breaches the implied covenant of good faith and fair dealing.

122. Plaintiffs, individually and on behalf of Subclass 2, seek a declaration of the Parties' respective rights under the lease agreement including, inter alia, that (a) the Pest Control Charge assessed and collected by the Defendants for a service that was not provided, (b) the condition of the property, (c) the assessment of sunken costs and unlawful upfront fees, (d) the failure to make repairs, and the charging of (d) move-out fees constitute breaches of contract and/or the implied covenant of good faith and fair dealing and/or have unjustly enriched the Defendants at the expense of the Plaintiffs.

123. Plaintiffs, individually and on behalf of Subclass 2, seek a declaration of the Parties' respective rights under the lease agreement including, inter alia, that the condition of the Subject Property (Mint Urban apartments) violated the warranty of habitability.

124. Plaintiffs, individually and on behalf of Subclass 2, seek a declaration of the Parties' respective rights under the lease agreement including, inter alia, that Defendants breached their duties under the Form Lease to act with customary diligence to make all reasonable repairs, make

repairs and reconnections, keep common areas reasonably clean, maintain fixtures, furniture, hot water, heating and A/C equipment, and to comply with applicable federal, state, and local laws regarding safety, sanitation, and fair housing.

125. Defendant should be enjoined from attempting to collect and/or collecting (1) the improper Move-Out Fees (at all but at the very least from deducting such amounts from tenant security deposits) (2) and the Administrative Fees provided in its Form Leas.

SECOND CLAIM FOR RELIEF
Breach of Contract On Behalf of Plaintiffs Keely, Rhodes, Mohan and Subclass 3 Against both Defendants

126. Plaintiffs reallege and incorporate by reference the allegations above as if set forth fully herein.

127. The Move-Out Fee is an unlawful penalty as opposed to lawful liquidated damages (or is unconscionable or void as against public policy) and Defendants breached the Form Lease contract by assessing and collecting such amounts.

128. Cardinal's charging of such unlawful amounts breached the implied covenant of good faith and fair dealing. Among other things, in granting Cardinal the authority to impose and collect charges under threat of eviction for nonpayment, there exists and implied duty of accurate billing. By including sums that are unlawful to collect, Cardinal abused its authority.

129. Cardinal's charging of such unlawful amounts also breached the price terms of the Form Lease.

130. Cardinal's breaches caused the Plaintiffs Keely, Rhodes, Mohan and the other members of Subclass 3 to suffer damages in the form of unlawful penalties they were forced to pay.

131. On information and belief, Cardinal retained a portion of all Move-Out Fees that it collected and remitted the balance to its property-owner clients, like co-Defendant Mint Urban.

132. Plaintiffs and the Subclass 3 Members seek to recover damages equal to sums paid representing unlawful Move-Out Fees, due to be coerced into staying at the property, the amount of all sums paid plus pre- and post-judgment interest, costs, and reasonable attorneys' fees as allowed under their form lease agreements and as special damages in light of Cardinal's conduct, and such other relief as the Court deems necessary and just.

THIRD CLAIM FOR RELIEF
Alternative Claim for Unjust Enrichment On Behalf of Plaintiffs Keely, Rhodes, Mohan and Subclass 3 Against both Defendants

133. Plaintiffs reallege and incorporate by reference the allegations set forth above.

134. Alternatively, in the event the fees are not found to have breached the contract or that the contract otherwise fails or is unenforceable, Defendants have been unjustly enriched by Plaintiffs and the other Subclass 3 Members by charging and collecting the Move-Out Fees—

monies that represent unlawful penalties, are unconscionable, or are void as against public policy under Colorado law.

135. Plaintiffs and the other Class Members conferred benefits on Defendants that would be unjust for Defendants to retain.

136. Defendants accepted the benefits conferred upon it by Plaintiffs and the other members of Subclass 3 when they charged and accepted the monies paid to satisfy the unlawfully assessed Move-Out Fees.

137. Defendants were aware of, and had knowledge of, the benefits conferred on them, as they demanded those benefits.

138. Defendants' collection, acceptance, and retention of unlawful Move-Out Fees when it was not entitled to collect such charges is, was, and continues to be unjust and inequitable.

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

140. Defendants should be disgorged of any and all unlawful and unjust gains from their assessment, collection, and sharing of unlawful Move-Out Fees paid by Plaintiffs and the other class members plus pre- and post-judgment interest, costs, and such other amounts as allowed by law, and such other relief as the Court deems necessary and just.

FOURTH CLAIM FOR RELIEF
Violation of Colorado Rental Application Fee Fairness Act,
C.R.S. § 38-12-905 On Behalf Plaintiffs Smith, Rhodes, and Subclass 1
Against both Defendants

141. Plaintiffs Smith and Rhodes reallege and incorporate by reference the allegations set forth above

142. Cardinal's assessment and collection of the Administrative Fee pursuant to its standard pre move-in costs letter and the Form Lease violates the rights of Plaintiffs and the Class Members as provided in Colorado's Rental Application Fairness Act because it meets the definition of an "application fee" provided in the RAFA and fails to comply with the limitations placed upon such application fees by the RAFA. Cardinal represents that the Administrative Fee is non-refundable and charges more than its actual expense or average expense it incurred in processing the rental applications of prospective tenants.

143. Cardinal mislabeled the supplemental application fee as an Administrative Fee in an effort to circumvent the RAFA.

144. Plaintiffs provided the pre-suit notice required by the RAFA, but Cardinal did not correct or cure its violation of the RAFA during the seven-day cure period provided by the Act (or at any other time).

145. Cardinal's violation of the RAFA caused Plaintiffs and the other Class Members to suffer damages in the form of unlawful application fees they were forced to pay.

146. Cardinal charged the fees on behalf of Mint Urban and its other property owner clients. Cardinal retained a portion of the fees and remitted the remainder to its property-owner clients. On information and belief, Defendants are jointly and severally liable for all damages and other relief available under the statute.

147. Plaintiff Smith and Rhodes and the Class Members seek to recover damages equal to treble the amount of all sums paid representing the unlawful Administrative Fees plus pre- and post-judgment interest, costs, and reasonable attorneys' fees as allowed under C.R.S. § 38-12-905(1) and their form lease agreements.

FIFTH CLAIM FOR RELIEF
Breach of Contract On Behalf of Plaintiffs Smith, Rhodes, and Subclass 1 Against Both Defendants

148. Plaintiff Smith and Rhodes reallege and incorporate by reference the allegations set forth above.

149. In addition to violating C.R.S. § 38-12-905, Cardinal's assessment and collection of the unlawful application fee that it mischaracterizes as an "Administrative Fee" breached the implied covenant of good faith and fair dealing. Cardinal has unilateral authority to assess charges against tenants under threat of eviction for non-payment. Implied in the lease, like every contract, is a duty of good faith and fair dealing that requires Cardinal not abuse its discretion but rather that Cardinal engage in accurate and lawful billing. Cardinal breached such duties by charging and collecting such unlawful amounts.

150. Cardinal's breach caused Plaintiff Smith and Rhodes and the other Class Members to suffer damages in the form of unlawful application fees they were forced to pay.

151. Cardinal charged the fees on behalf of Mint Urban and its other property owner clients. Cardinal retained a portion of the fees and remitted the remainder to its property-owner clients. On information and belief, Defendants are jointly and severally liable for all damages and other relief available under the statute.

152. Plaintiffs Smith and Rhodes and the Subclass 1 Members seek to recover damages equal to the amount of all sums paid representing unlawful application fees plus pre- and post-judgment interest, costs, and reasonable attorneys' fees as allowed under their form lease agreements and as special damages in light of Cardinal's conduct that unquestionably forced Plaintiffs to retain counsel to fix and such other relief as the Court deems necessary and just.

SIXTH CLAIM FOR RELIEF
Alternative Claims for Unjust Enrichment On Behalf of Plaintiffs Smith, Rhodes, and Subclass 1 Against Both Defendants

153. Plaintiffs Smith and Rhodes reallege and incorporate by reference the allegations set forth above.

154. In the event the claims related to Administrative Fees are determined to fall outside the Form Lease, or in the hypothetical event that the Court determines the Form Lease fails or is otherwise unenforceable for any reason, Defendants have been unjustly enriched by the charging

and retention of the Administrative Fees.

155. By paying money on the invalid and unlawful application fee mischaracterized as an Administrative Fee, under both law and contract, demanded by Defendant, Plaintiffs Smith, Rhodes, and the Class Members conferred the benefit of these unlawfully demanded and collected charges upon Defendants.

156. Defendants accepted the benefits conferred upon them by the Plaintiffs and the members of Subclass 1 when they accepted the money paid toward the impermissibly charged Administrative Fees. Defendants were aware of, and had knowledge of, the benefits conferred on them, as they demanded those benefits.

157. Defendants' collection, acceptance, and retention of the Administrative Fee when they were not entitled to such charges as a matter of law and/or contract is, was, and continues to be unjust and inequitable. Defendants should not be permitted to retain the benefits of such impermissible charges, and its continuing withholding of the illegitimate Fees is improper.

158. Defendants' should be disgorged of such sums equal to all Administrative Fees paid in favor of Plaintiffs and the Class together with all costs, pre- and post-judgment interest, such other amounts as allowed by law, and such other relief as the Court deems necessary and just.

SEVENTH CLAIM FOR RELIEF
Violation of Colorado's Warranty of Habitability, C.R.S. § 38-12-503 *et seq*. On Behalf of the Plaintiffs and Subclass 2 Against All Defendants

159. Plaintiffs reallege and incorporate by reference the allegations set forth above.

160. Defendants failed to maintain the property in compliance with the warranty of habitability.

161. Defendants systemically and routinely failed (a) to keep the common areas reasonably clean, sanitary, and free from all accumulations of debris, filth, rubbish, and garbage, (b) to have appropriate extermination in response to the infestation of rodents or vermin, (c) to cause appropriate extermination in response to the infestation of rodents or vermin throughout the Subject Property, (d) to maintain an adequate number of appropriate exterior receptacles for garbage and rubbish, in good repair, (e) to ensure that floors, stairways, and railings were maintained in good repair, (f) to ensure that locks on all exterior doors and locks or security devices on windows designed to be opened are maintained in good working order, and failed to maintain the property in compliance with all applicable building, housing, and health codes, the violation of which constitute a condition that materially interferes with the life, health, or safety of the tenant.

162. Defendants knew that the property and the rental units failed to adhere to the warranty of habitability prior to their being rented to tenants, including the Plaintiffs.

163. Defendants failed to commence remediation, permanently resolve, or otherwise address habitability issues (i.e. providing rent abatements, no-cost relocations, hotel accommodations, or lease releases as expressly contemplated by the Warranty of Habitability Statute ("WOH")) presented by Plaintiffs and the members of Subclass 2 who notified Defendants of habitability issues within the timeframe and using the method required by the WOH, the

Defendants violated the rights of the Plaintiffs and the members of the Subclass provided by the WOH.

164. Defendants' violation of the WOH caused the Plaintiffs and Subclass 2 Members to suffer damages to be proven at trial, including but not limited to excess rent paid beyond the fair rental value of their leased residences at the Property.

165. Plaintiffs and the Subclass 2 Members seek to recover such damages in an amount to be proven at trial, plus pre- and post-judgment interest, costs, and reasonable attorneys' fees as allowed under their form lease agreements, by the WOH, and as special damages in light of Defendants' conduct.

EIGHTH CLAIM FOR RELIEF
Breach of Contract on Behalf of the Plaintiffs and Subclass 2
Against All Defendants

166. Plaintiffs reallege and incorporate by reference the allegations set forth above.

167. Defendants charged tenants $2 monthly for pest control services that were not provided prior to October 2021—if ever.

168. Charging money for services not rendered, or false billing, is against public policy.

Defendants' assessment and collection of the Pest Control Charge without providing pest control services breached the express terms of the contract as well as the implied covenant of good faith and fair dealing. The contract provides Defendants with the authority to charge sums subject to eviction if they are unpaid by the tenant. As such to attain the benefit of the bargain, the implied covenant requires that Defendants bill accurate amounts for services actually rendered. Defendants abused any discretion afforded to them under the Form Lease agreements regarding the manner of fixing of any infestations by failing to engage in any pest control yet charging monthly fees as if such pest control services had been provided.

169. As a result of Defendants' breaches related to the charging of the Pest Control Fees, Plaintiffs and the Subclass 2 members suffered damages in the amount of all pest control fees paid during months when no such services were provided, plus the need for attorneys to recoup the wrongfully charged sums.

170. Defendants further breached the Form Lease agreements by failing to act with customary diligence to make all reasonable repairs, make repairs and reconnections, keep common areas reasonably clean, maintain fixtures, furniture, hot water, heating and A/C equipment, or comply with applicable federal, state, and local laws regarding safety, sanitation, and fair housing.

171. Defendants knew that the Subject Property needed serious repairs dating back to as early as 2019. This included the A/C equipment and other deficient conditions set forth throughout this pleading.

172. Cardinal and Mint Urban exchanged communications about the need for such repairs, particularly before the hot Summer months.

173. Despite repeated notifications from Cardinal that repairs were needed—repairs that under the management agreement between Cardinal and Mint Urban required Mint Urban's approval—Mint Urban refused to authorize the repairs. Mint Urban further refused to authorize any rent abatement, even following notice from Cardinal that the failure to provide functioning air conditioning warranted such a discount.

174. In addition to breaching express terms of the Form Lease, the failure to maintain the property breached the implied covenant of good faith and fair dealing by acting in a way so as to deprive the tenants the benefits of their bargains and the covenant of quiet enjoyment.

175. Defendants' breaches have caused Plaintiffs and the members of Subclass 2 to suffer damages in an amount to be proven at trial, including but not limited to amounts overpaid compared to the actual fair market value of their apartments in light of the defective conditions.

176. Plaintiffs and Sub-Class 2 Members seek to recover all actual and consequential damages, costs, pre- and post-judgment interest, costs, and reasonable attorneys' fees as allowed under the Form Lease agreements, and as special damages in light of Defendants' conduct and such other relief as the Court deems necessary and just.

NINTH CLAIM FOR RELIEF
Alternative Claim for Unjust Enrichment on Behalf of Plaintiffs and Subclass 2 Against All Defendants

177. Plaintiffs reallege and incorporate by reference the allegations set forth above.

178. In the event the charging for pest control services that were never provided is found to fall outside the Form Lease agreement, or in the event the lease fails or is otherwise found unenforceable, by paying money on the invalid Pest Control Charge for a service that was not provided under the contract, demanded by Defendants, Plaintiffs and Subclass 2 Members conferred the benefit of these unlawfully demanded and collected charges upon Defendants.

179. Defendants accepted the benefits conferred upon them by the Plaintiffs and the Subclass 1 Members when they accepted the money paid toward the impermissibly charged Pest Control Charge. Defendants were aware of, and had knowledge of, the benefits conferred on them, as they had demanded those benefits.

180. Defendants' collection, acceptance, and retention of the Pest Control Charge when they were not entitled to such charges as a matter contract is, was, and continues to be unjust and inequitable. Defendants should not be permitted to retain the benefit of such impermissible charges, and its continuing withholding of the illegitimate charges is improper. Defendants should be disgorged of all such monies.

181. Likewise, in the event the allegedly defective conditions at the Subject Property are found to fall outside the Form Lease agreement, or in the event the lease fails or is otherwise found unenforceable, by paying full rent when the property was in disrepair Plaintiffs and Subclass 2 Members conferred benefits upon Defendants that would be unjust for them to retain.

182. Defendants accepted the benefits conferred upon them by the Plaintiffs and the Subclass 2 Members when they accepted full market rent. Defendants were aware of, and had

knowledge of, the benefits conferred on them, as they demanded those benefits.

183. Defendants' collection, acceptance, and retention of full market rent when they knowingly failed to honor their obligations under their agreement, was, and continues to be unjust and inequitable. Defendants should not be permitted to retain the benefit of full market rent, and its continued retention of such charges is improper. Defendants should be disgorged of all such monies.

184. Plaintiffs, on behalf of themselves and the Subclass 2 Members, seek an Order disgorging Defendants of all such monies wrongfully retained and for such additional relief as the Court deems necessary and just.

TENTH CLAIM FOR RELIEF
Violation of C.R.S. § 38-12-103
On Behalf of Plaintiffs Keely, Rhodes, Mohan and Subclass 3
Against All Defendants

185. Plaintiffs reallege and incorporate by reference the allegations set forth above.

186. As set forth in paragraph 45 above and throughout this Amended Complaint, the Move-Out Fee is an unlawful penalty as opposed to lawful liquidated damages. Or it is unconscionable or void as against public policy. In either case, Defendants violated CRS 38-12-103 by charging them against the security deposits of Plaintiffs Keely, Rhodes, Mohan, and the members of Subclass 3.

187. More than seven days prior to the date of this filing, Plaintiffs Keely, Rhodes, and Mohan notified the Defendants that they disputed the retention of any portion of their security deposits to satisfy the Move-Out Fee and of their intent to file legal proceedings concerning such deductions.

188. The Defendants' standard practice of withholding portions of a tenant's security deposit to collect the unlawful Move-Out Fee violates C.R.S. § 38-12-103 because the statute does not allow landlords to withhold any portion of a tenant's security deposit unless first "actual cause exists" to deduct an amount. Deducting for unlawful sums like the Move Out penalty is not actual cause.

189. The Defendants' violation of the law has actually and proximately caused the Plaintiffs and the other Subclass 3 Members to suffer damages in the form of amounts unlawfully seized from their security deposits.

190. Plaintiff and Subclass 3 Members seek to recover damages equal to treble the amount of the portion wrongfully withheld from their security deposits attributed to the Move-Out Fee plus pre- and post-judgment interest, costs, and reasonable attorneys' fees as allowed under their form lease agreements and C.R.S. § 38-12-103(3).

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the following relief be granted to Plaintiffs and Class Members on their claims set forth above:

A. An Order certifying a class and subclasses of persons as set forth herein or as may be amended, appointing Plaintiffs Smith, Keely, Rhodes, and Mohan as Class and Subclass Representatives as set forth above, and appointing their counsel as Class and Subclass Counsel;

B. Entering a declaratory judgment establishing that the Move-Out Fee set forth in the Form Lease is an unlawful penalty, and is unconscionable, against public policy, and unenforceable;

C. An Order declaring that the Administrative Fee is unlawful pursuant to the RAFA;

D. An Order of declaratory judgment establishing that the assessment of the Pest Control Charge, Move Out Fee, and Administrative Fee constituted a breach of contract and unjustly enriched the Defendants;

E. An Order enjoining Defendants from collecting, or asserting any right to collect, the Administrative Fee or Move Out Fee;

F. An Order enjoining Defendants continued violations of the WOH as provided in C.R.S. § 38-12-507(1)(b) or continued failures to maintain the premises in accordance with customary diligence, in good faith, and the covenant of quiet enjoyment as required by the lease;

G. An order preliminarily and permanently enjoining Defendant Cardinal from attempting to collect any unlawful penalties, unconscionable fees, or otherwise improper Move-Out Fee, Pest Control Charge, or Administrative Fee set out in the form lease, including by withholding any portion of a tenant's security deposit to satisfy Move-Out Fee assessments;

H. An Order of judgment in favor of Plaintiffs and Subclass 3 Members against Defendant Cardinal in the amount of all sums paid by Plaintiff and Subclass 3 Members toward the Move-Out Fee or Subclass 2 Members toward Pest Control Charges for months when no such services were provided;

I. An Order of judgment in favor of Plaintiffs and Subclass 2 Members against Defendant Cardinal in the amount of all sums paid by Plaintiff and Subclass 2 Members toward Pest Control Charges for months when no such services were provided

J. An Order of judgment in favor of Plaintiffs and Class Members against Defendant Cardinal in the amount of treble all Administrative Fees paid by Plaintiff and Subclass 1 Members;

K. An Order of judgment in favor of Plaintiffs and Subclass 2 Members and against Defendants for an amount to be proven at trial for Defendants' violations of the and breaches of their duties under the Form Lease to act with customary diligence and in good faith to make repairs and to comply with the covenant of quiet enjoyment;

L. An Order of judgment in favor of Plaintiffs and Subclass 3 Members and against Defendants for treble the amount of all sums retained by Defendants from tenant security deposits for the Move-Out Fees.

M. An award of pre- and post-judgment interest against Defendants on all sums awarded to Plaintiffs and Class Members;

N. An award to Plaintiffs and Class Members reasonable attorneys' fees and the costs of these proceedings against Defendants on all claims where allowed by law or contract; and

O. An Order awarding such other and further relief as the nature of this case may require and that the Court deems necessary, reasonable, and just.

Dated: November 29, 2022

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CERTIFICATE OF SERVICE

I hereby certify that on November 29, 2022, 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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