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Attorneys for Plaintiff

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 05 2022

BY *Alma Vallejo Garcia*
ALMA VALLEJO GARCIA, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ANNE MOULTON, individually and on behalf
of all other persons similarly situated,

Plaintiff,

v.

UNITED DOMINION REALTY, L.P., UDR,
INC., and DOES 1-100, inclusive,

Defendants.

Case No. CIV SB 2123480

CLASS ACTION

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

1 Plaintiff Anne Moulton (“Plaintiff”) brings this action on behalf of herself and all others
2 similarly situated against Defendants United Dominion Realty, L.P., UDR, Inc., and DOES 1-100
3 (“Defendants” or “UDR”).

4 **NATURE OF THE ACTION**

5 1. This is a class action challenging UDR’s imposition of unlawful late fees on its
6 tenants in violation of Civil Code § 1671(d) and other provisions of California law.

7 2. Plaintiff seeks relief in this action individually and on behalf of all similarly situated
8 California residents.

9 3. For more than 45 years, UDR has been in the business of renting and managing
10 apartments. UDR’s provision of apartments for rent in California is, and at all times relevant hereto,
11 has been subject to UDR’s lease agreement (the “Lease Contract”). In its Lease Contract, UDR
12 states that it will charge its tenants a late fee in the amount of \$100 for the late payment of rent. The
13 late fee charges and other fixed charges provided for in the Lease Contract and imposed by the Lease
14 Contract are hereinafter referred to as “Late Fees.”

15 4. As is set forth more particularly below, Plaintiff Moulton and the members of the
16 proposed plaintiff class are individuals who are renting or have rented apartments from UDR in the
17 State of California, and who paid Late Fees.

18 5. The Late Fees have generated substantial revenues and profits for UDR. By this
19 complaint, Plaintiff Moulton seeks, *inter alia*, to permanently enjoin the enforcement and threat of
20 collection of the Late Fees and to recover as damages and/or restitution all Late Fees paid by members
21 of the plaintiff class.

22 6. The Late Fees constitute unlawful penalties that are void and unenforceable under
23 California Civil Code § 1671 (“§ 1671”); unlawful and unfair under California’s Unfair Competition
24 Law, Bus. & Prof. Code § 17200 *et seq.* (the “UCL”); and unconscionable under California Civil
25 Code § 1750 *et seq.*, the Consumers Legal Remedies Act (the “CLRA”).

26 7. Plaintiff therefore seeks, as alleged with greater particularity below, to (a) permanently
27 enjoin UDR from collecting the Late Fees; (b) impose constructive trusts on all amounts by which
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1 UDR was unjustly enriched as a result of collecting the Late Fees; (c) recover as damages and/or
2 restitution all Late Fees paid by members of the plaintiff class; and (d) obtain all such other relief to
3 which she may be entitled pursuant to Civil Code § 1671, the UCL or any other applicable provision
4 of California law, including, without limitation, disgorgement, actual damages, and restitution.

5 **PARTIES**

6 8. At all times relevant hereto, Plaintiff Moulton was a resident of Rancho Cucamonga in
7 San Bernardino County, California. At all times relevant hereto, Plaintiff Moulton has rented an
8 apartment from UDR, subject to the Lease Contract, and has incurred and paid Late Fees imposed by
9 UDR pursuant thereto. As a result, Plaintiff Moulton has suffered an injury in fact resulting in the
10 loss of money and/or property.

11 9. Defendant United Dominion Realty, L.P. (“UDR LP”) is a Delaware partnership
12 with its principal place of business in Highlands Ranch, Colorado.

13 10. Defendant UDR, Inc. is a Maryland corporation with its principal place of business
14 in Highlands Ranch, Colorado. Defendant UDR, Inc. is the sole general partner of UDR LP and is
15 authorized by UDR LP to to own, control, and manage all of UDR LP’s apartments pursuant to
16 UDR LP’s partnership agreement.¹ Through UDR LP and UDR, Inc.’s subsidiaries DOES 1-100,
17 inclusive, UDR, Inc. also controls all of the California properties where Plaintiff and the class
18 members reside and were charged the Late Fees.²

19 11. The true names and capacities of the DOE Defendants sued herein as DOES 1
20 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such
21 Defendants by said fictitious names.

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24 ¹ See Amended and Restated Agreement of Limited Partnership of United Dominion
25 Realty, L.P. dated as of February 23, 2004.
<https://www.sec.gov/Archives/edgar/data/74208/000103570404000111/d13216exv10w23.txt> (last
accessed March 24, 2022).

26 ² See Exhibit 21 to Form 10-K submitted jointly by UDR, Inc. and United Dominion Realty L.P.
27 for the year ending December 31, 2020.
[https://www.sec.gov/Archives/edgar/data/0001018254/000007420821000025/udr-](https://www.sec.gov/Archives/edgar/data/0001018254/000007420821000025/udr-20201231ex21ea607be.htm)
28 [20201231ex21ea607be.htm](https://www.sec.gov/Archives/edgar/data/0001018254/000007420821000025/udr-20201231ex21ea607be.htm) (last accessed March 24, 2022).

If you don't pay all rent on or before the expiration of one business day after due date, you'll be delinquent. You will be obligated to pay us a late charge of \$100 if you fail to pay any amount when due under this Contract.

20. UDR has in fact imposed such Late Fees on and collected them from Plaintiff Moulton and other members of the proposed class. UDR collects the Late Fees through its properties' staff members, mail-in checks sent to its post office boxes, and increasingly, through its nationwide web or smartphone online portals.³ UDR possesses unfettered discretion in choosing to collect or waive the Late Fees.⁴

21. UDR has collected significant revenues from imposing Late Fees on Plaintiff Moulton and the members of the proposed class.

22. If and to the extent that UDR suffers, would suffer or has suffered any damage upon late payment, it is neither impracticable nor extremely difficult to fix the actual damage. Furthermore, if and to the extent that UDR suffers, would suffer, or has suffered any damage upon late payment, the Late Fees are not a reasonable measure or approximation of such damages and do not provide fair average compensation therefor. Moreover, they are—and under the circumstances existing at the time the Lease Contract was made, were—unreasonable. On information and belief, UDR did not conduct a reasonable endeavor to fix fair average compensation for losses, if any, that it incurs, would incur or has incurred by virtue of late payments. The Late Fees were not negotiated or discussed with Plaintiff Moulton or the members of the proposed class.

23. The Late Fees imposed by UDR are unconscionable, void, and unenforceable under Civil Code §§ 1670.5 and 1671(d); constitute an unlawful, unfair and deceptive practice under the

³ UDR's online portals can be found at <https://residents.udr.com/> ; <https://www.udr.com/resident-services/> (last accessed March 24, 2022).

⁴ See e.g., Form 10-K submitted jointly by UDR, Inc. and United Dominion Realty L.P. for the year ending December 31, 2020 (“In addition, certain jurisdictions have restricted **our ability to charge certain fees, including fees for late payment of rent**. We have received, and continue to receive, more requests from our residents and retail and commercial tenants for assistance with respect to paying rent than we have historically received. **In response, we have instituted a number of initiatives to assist residents and other tenants**, including rent deferrals, payment plans, and **waiving late payment fees when appropriate**”) (emphasis added). <https://www.sec.gov/Archives/edgar/data/0001018254/000007420821000025/udr-20201231x10k.htm> (last accessed March 24, 2022).

1 UCL; and violate the CLRA, including without limitation Civil Code §§ 1770(a)(14) and
2 1770(a)(19).

3 **CLASS ALLEGATIONS**

4 24. Plaintiff Moulton brings this action on her own behalf and on behalf of all other
5 persons similarly situated pursuant to the provisions of Code of Civil Procedure § 382 and Civil
6 Code § 1781. Plaintiff seeks certification of the following class (the “Class”):

7 All California residents who rented and/or are renting a rental property from UDR pursuant
8 to the Lease Contract, or any successor agreement thereto, and who paid one or more Late
9 Fees imposed by UDR pursuant to the Lease Contract. Any judicial officer to whom the
10 Action is assigned is excluded from the Class.

11 25. Numerosity of the Class: The Class is composed of at least thousands of individuals
12 who are or were tenants subject to UDR’s Lease Contract, the joinder of which in one action would
13 be impracticable. The disposition of their claims through this class action will benefit both the
14 parties and the Court. The identities of individual members of the Class are ascertainable through
15 UDR’s billing records.

16 26. Existence and Predominance of Common Questions of Fact and Law: There is a
17 well-defined community of interest in the questions of law and fact that affect the members of the
18 proposed Class. The questions of law and fact common to the proposed Class predominate over
19 questions that affect only individual class members.

20 27. Such questions include, but are not limited to, the following:

- 21 a. Whether UDR’s Late Fees are illegal, void and unenforceable contractual
22 penalties pursuant to Civil Code § 1671(d);
- 23 b. Whether damages are extremely difficult or impracticable to determine;
- 24 c. Whether UDR conducted a reasonable endeavor, prior to imposing the Late
25 Fees or including them in the Lease Contract, to fix fair average compensation for losses, if any,
26 that it suffers when residential tenants pay rent late, and if so, whether the Late Fees reflect the
27 results of such a reasonable endeavor.
- 28 d. Whether UDR’s Late Fees are unconscionable;
- e. Whether UDR’s Late Fees violate the UCL;

- 1 f. Whether UDR's Late Fees violate the CLRA;
- 2 g. Whether Plaintiff and the proposed Class members are entitled to restitution
3 of Late Fees paid to UDR;
- 4 h. Whether Plaintiff and the proposed Class members are entitled to an award
5 of reasonable attorneys' fees, pre-judgment interest and costs of this suit; and
- 6 i. Whether UDR should be enjoined from collecting Late Fees and/or from
7 enforcing the Late Fee provision in its existing contracts.

8 28. Typicality: Plaintiff is asserting claims that are typical of the proposed Class
9 members' claims, having paid Late Fees to UDR pursuant to the Lease Contract. Plaintiff and the
10 proposed Class members have similarly suffered harm arising from UDR's violations of the law, as
11 alleged herein.

12 29. Adequacy: Plaintiff is an adequate representative of the proposed Class. Her
13 interests do not conflict with, and are not antagonistic to, the interests of the members of that Class.
14 She will fairly and adequately represent and protect the interests of the Class, and she has retained
15 counsel that have considerable experience and success in prosecuting complex class actions and
16 consumer protection cases.

17 30. Superiority: A class action is superior to other available means for the fair and
18 efficient adjudication of Plaintiff Moulton's and the proposed Class members' claims. Plaintiff and
19 the members of the proposed Class have suffered irreparable harm as a result of UDR's unfair,
20 unlawful, and unconscionable conduct. The class is readily definable, and because of the size of
21 the individual Class members' claims, few, if any, proposed Class members could afford to seek
22 legal redress for the wrongs complained of herein. Prosecution as a class action avoids repetitious
23 litigation and duplicative litigation costs, conserves judicial resources, and ensures uniformity of
24 decisions. UDR has acted on grounds generally applicable to the Class, thereby making final
25 injunctive relief appropriate with respect to the class as a whole. Absent the class action, the
26 proposed Class members will continue to suffer losses, the violations of law described herein will
27 continue without remedy, and UDR will be permitted to retain the proceeds of its misdeeds. UDR
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1 continues to engage in the unlawful, unfair, and unconscionable conduct that is the subject of this
2 Complaint. Without a class action, UDR will continue a course of action that will result in further
3 damages to Plaintiff Moulton and members of the class and will likely retain the benefits of its
4 wrongdoing.

5 **FIRST CAUSE OF ACTION**

6 **Violation of California Civil Code § 1671(d)**

7 31. Plaintiff incorporates herein by reference the allegations contained in all preceding
8 paragraphs of this complaint.

9 32. Plaintiff brings this claim individually and on behalf of the members of the Class
10 against UDR.

11 33. The Late Fees are impermissible liquidated damages provisions under California
12 law. The Late Fees themselves, the contractual provisions that provide for them, and UDR's
13 imposition and collection of them violate Civil Code § 1671(d) and are unlawful, void, and
14 unenforceable under that statute.

15 34. Civil Code § 1671(d) states that a contractual provision liquidating damages for the
16 breach of a contract for a lease of real property for use as a dwelling by the party or those
17 dependent upon the party for support is void. The statute contains an exception that states that the
18 parties to such a contract may agree on an amount that shall be presumed to be the amount of the
19 damage sustained by a breach, when it would be impracticable or extremely difficult to fix that
20 actual damage. The Lease Contract is a contract for the lease of real property for use as a dwelling
21 by the party or those dependent upon the party for support.

22 35. If and to the extent that UDR suffers, would suffer, or has suffered any damages due
23 to late payment by Plaintiff or members of the Class, it would not be impracticable, nor would it be
24 extremely difficult, to determine those damages with certainty. Furthermore, the liquidated
25 damages in the Lease Contract do not reflect a reasonable endeavor by UDR to fix fair average
26 compensation for any harm that UDR would suffer, may suffer, or have suffered, if any, from the
27 late rent payments. The Lease Contract is a contract of adhesion UDR drafted and presented to
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1 of the Class. Plaintiff and the members of the Class have suffered harm as a proximate result of the
2 violations of law and the wrongful conduct of UDR alleged herein.

3 40. UDR intentionally, knowingly, and unlawfully perpetrated harm upon Plaintiff
4 Moulton and the Class members by inserting unconscionable, unenforceable, and illegal provisions
5 in its Lease Contracts with Plaintiff Moulton and the Class members in violation of Civil Code §
6 1770(a)(19), and by enforcing those provisions. By inserting an unconscionable, unenforceable,
7 and void Late Fees provision in the Lease Contract, and then enforcing that provision by imposing
8 and collecting Late Fees, UDR has also violated Civil Code § 1770(a)(14), which prohibits it from
9 representing that a transaction confers or involves rights, remedies, or obligations which it does not
10 have or involve, or which are prohibited by law.

11 41. UDR's inclusion of Late Fees in its Lease Contract and its collection of Late Fees is
12 unlawful, unethical, oppressive, fraudulent, and malicious. The gravity of the harm to all
13 consumers from UDR's policies and practices far outweighs any purported utility those policies
14 and practices may have.

15 42. Plaintiff Moulton and the members of the Class have suffered harm as a proximate
16 result of the violations of law and the wrongful conduct of UDR alleged herein and will continue to
17 suffer such harm if UDR's illegal practices are not abated.

18 43. Under California Civil Code § 1780(a), Plaintiff and members of the Class seek
19 damages, injunctive and equitable relief for UDR's violations of the CLRA. On August 11, 2021,
20 Plaintiff mailed an appropriate demand letter consistent with California Civil Code § 1782(a).
21 UDR failed to take corrective action within 30 days of receipt of the demand letter.

22 WHEREFORE, Plaintiff Moulton prays for judgment as hereinafter set forth.

23 **THIRD CAUSE OF ACTION**

24 **Unlawful Business Practices in Violation of the Unfair Competition Law**
25 **California Business and Professions Code §§ 17200 *et seq.***

26 44. Plaintiff incorporates herein by reference the allegations contained in all preceding
27 paragraphs of this complaint.

1 45. Plaintiff brings this claim individually and on behalf of the members of the Class
2 against UDR.

3 46. UDR's continuing imposition, enforcement and collection of unlawful,
4 unconscionable, and unenforceable Late Fees constitute unlawful business practices in violation of
5 Bus. & Prof. Code §§ 17200 *et seq.* Plaintiff and the members of the Class have suffered harm as a
6 proximate result of the violations of law and the wrongful conduct of UDR alleged herein.

7 47. Civil Code § 1671(d) states that a provision in a contract liquidating damages for the
8 breach of the contract is void except that the parties to such a contract may agree therein on an
9 amount that shall be presumed to be the amount of the damage sustained by a breach thereof,
10 when, from the nature of the case, it would be impracticable or extremely difficult to fix the actual
11 damage.

12 48. The Late Fees charged by UDR to, and collected by UDR from, Plaintiff Moulton
13 and the members of the Class are unlawful liquidated damages provisions under Civil Code §
14 1671(d) for the reasons set forth above. Because UDR includes the Late Fees provision in the
15 Lease Contract and imposes and collects Late Fees, UDR has violated Civil Code § 1671(d).

16 49. UDR also violates Civil Code § 1670.5 by including the Late Fees provision in the
17 Lease Contract and collecting Late Fees from Plaintiff Moulton and the members of the Class
18 because the Late Fees are unconscionable. Prospective tenants have no meaningful choice with
19 respect to the inclusion of the Late Fees in the Lease Contract nor in the amount of the Late Fees,
20 and there are no reasonable market alternatives available. UDR drafts and presents the Lease
21 Contract to prospective tenants on a "take it or leave it" basis with no opportunity or possibility for
22 prospective tenants to negotiate any different terms and conditions with UDR. The Late Fees
23 provision in the Lease Contract is therefore procedurally unconscionable.

24 50. The Late Fees are unreasonably favorable to UDR, unreasonably one-sided, and
25 unduly harsh with respect to UDR's tenants, and therefore, are substantively unconscionable. For
26 example, the Late Fees have no relationship whatsoever to any damages incurred by UDR, if any,
27 as a result of late payment by tenants.

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1 violation of various laws and policies recognized by the California Legislature and the California
2 courts, including without limitation Civil Code § 1670.5 and the CLRA.

3 59. UDR's said practices with respect to the Late Fees also violate the "unfair" prong of
4 the UCL because the gravity of the harm that the Late Fees impose on consumers significantly
5 outweigh any utility. The Late Fees have limited or no utility as compared to alternatives that
6 would more fairly measure the harm (if any) incurred by UDR when a tenant makes a late rent
7 payment. The gravity of the harm that the Late Fees impose on consumers is substantial in that
8 they exceed the actual amount of harm (if any) incurred by UDR when a tenant makes a late rent
9 payment. Through its imposition and collection of the Late Fees from the members of the Class,
10 UDR has been massively and unjustly enriched. UDR's Late Fees also violate the "unfair" prong
11 of the UCL because their inclusion in the Lease Contracts, and their imposition on and collection
12 from tenants are and at all times relevant hereto have been oppressive, unscrupulous or
13 substantially injurious to consumers.

14 60. UDR's said practices with respect to the Late Fees also violate the "unfair" prong of
15 the UCL because the Late Fees, the provision of the Lease Contract imposing the Late Fees, and
16 UDR's enforcement of them through the imposition and collection thereof cause substantial harm
17 that is not outweighed by countervailing benefits to consumers or competition and consumers
18 could not reasonably have avoided the harm.

19 61. UDR's practices with respect to the Late Fees also violate the "unfair" prong of the
20 UCL for the reasons set forth in the Third Cause of Action, above.

21 62. Plaintiff and the members of the Class have suffered an injury in fact resulting in the
22 loss of money or property as a result, *inter alia*, of having paid the Late Fees.

23 63. Pursuant to Bus. & Prof. Code § 17203, Plaintiff seeks an order of this Court
24 permanently enjoining UDR from continuing to engage in its unfair and unlawful conduct as
25 alleged herein. Plaintiff also seeks an order, *inter alia*, requiring UDR to:

26 n. Immediately cease its unlawful acts and practices;

27 o. Make full restitution of all monies wrongfully obtained; and
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p. Disgorge all ill-gotten revenues and /or profits.

WHEREFORE, Plaintiff Moulton prays for judgment as hereinafter set forth.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Moulton respectfully requests that the Court grant Plaintiff and all members of the proposed class the following relief against Defendants:

- A. An order certifying the Class and appointing Plaintiff Moulton and the undersigned counsel of record to represent the Class;
- B. A permanent injunction enjoining Defendants, their partners, joint ventures, subsidiaries, agents, servants, and employees, and all persons acting under, in concert with them directly or indirectly, or in any manner, from in any way engaging in the unfair and unlawful practices and violations of law set forth herein;
- C. Full restitution of all funds acquired from UDR's unfair business practices and other violations of law, including disgorgement of profits;
- D. Imposition of a constructive trust upon all monies and assets that UDR has acquired from its unfair practices;
- E. Damages according to proof;
- F. A judicial declaration regarding the validity of UDR's liquidated damages provisions in the Lease Contract;
- G. Costs of suit herein;
- H. Both pre- and post-judgment interest on any amounts awarded;
- I. Payment of reasonable attorneys' fees; and
- J. Such other and further relief as the Court may deem proper.

JURY DEMAND

Plaintiff demands a trial by jury of any and all issues so triable.

1 Dated: July 5, 2022

Respectfully submitted,

2 **BURSOR & FISHER, P.A.**

3 By: L. Timothy Fisher

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CLRA Venue Declaration Pursuant to California Civil Code Section 1780(d)

I, L. Timothy Fisher, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and a member of the bar of this Court. I am a partner at Bursor & Fisher, P.A., counsel of record for Plaintiff Anne Moulton in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, I could and would competently testify thereto under oath.

2. The Complaint filed in this action is filed in the proper place for trial under Civil Code Section 1780(d) in that a substantial portion of the transaction alleged in the Complaint occurred in San Bernardino County. Plaintiff Moulton alleges that she was charged and paid Late Fees in this County.

I declare under the penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct, and that this declaration was executed at Walnut Creek, California, this 5th day of July, 2022.



L. Timothy Fisher

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PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Bursor & Fisher, P.A., 1990 North California Blvd, Suite 940, Walnut Creek, California 94596. On July 5, 2022, I served the within document(s):

FIRST AMENDED CLASS ACTION COMPLAINT

by e-mail transmission on that date. These documents were transmitted via e-mail to the following e-mail addresses as set forth below.

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Attorneys for United Dominion Realty, L.P.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, executed on July 5, 2022, at Walnut Creek, California.



Debbie Schroeder