

1 Jason H. Tarricone (SBN 247506)
jason@clsepa.org
2 Margaret McBride (SBN 294066)
mmcbride@clsepa.org
3 COMMUNITY LEGAL SERVICES IN EAST PALO ALTO
1861 Bay Road
4 East Palo Alto, CA 94303
Tel: (650) 326-6440
5 Fax: (866) 688-5204

6 Linda M. Dardarian (SBN 131001)
ldardarian@gbdhlegal.com
7 Laura L. Ho (SBN 173179)
lho@gbdhlegal.com
8 Megan E. Ryan (SBN 264922)
mryan@gbdhlegal.com
9 GOLDSTEIN, BORGEN, DARDARIAN & HO
300 Lakeside Drive, Suite 1000
10 Oakland, CA 94612
Tel: (510) 763-9800
11 Fax: (510) 835-1417

12 Attorneys for Plaintiffs

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF ALAMEDA

16 JAVANNI MUNGUIA-BROWN, ANGELINA
MAGAÑA, and NORMA RODRIGUEZ,
17 individually and on behalf of others similarly
situated,

18 Plaintiffs,

19 vs.

20 EQUITY RESIDENTIAL, a real estate investment
trust, ERP OPERATING LIMITED
21 PARTNERSHIP, a partnership, EQUITY
RESIDENTIAL PROPERTIES MANAGEMENT
22 CORPORATION, and DOES ONE through TWO
HUNDRED AND FIFTY inclusive,

23 Defendants.
24

Case No.: RG14739053

**COMPLAINT FOR INJUNCTIVE RELIEF,
DECLARATORY RELIEF, AND
DAMAGES; CLASS ACTION
[CAL CODE CIV. PROC. § 382]**

- (1) **VIOLATION OF CAL. CIV. CODE § 1671;**
- (2) **UNLAWFUL, UNFAIR, AND FRAUDULENT BUSINESS PRACTICES (BUS. & PROF. CODE §§ 17200-17208);**
- (3) **REASONABLE ATTORNEYS' FEES AND COSTS**

1 Javanni Munguia-Brown, Norma Rodriguez, and Angelina Magaña (“Plaintiffs”), on behalf of
2 themselves and all others similarly-situated (hereinafter “Class Members”), upon information and
3 belief, complain and allege as follows:

4 INTRODUCTION

5 1. Defendants Equity Residential, ERP Operating Limited Partnership, Equity Residential
6 Properties Management Corporation, and Does One through Two Hundred and Fifty (hereinafter
7 collectively referred to as “Defendants”), own, lease, and manage residential properties throughout the
8 country. In California, Defendants own or manage over 25,000 individual rental units. Defendants
9 have uniform late rent fee policies and practices across all of their California residential rental
10 properties. Defendants’ policy and practice is to charge tenants flat-rate fees of at least \$50 for the late
11 payment of rent, even if Defendants receive the rent as little as one day late (past the grace period) and
12 incur no damages as a result. This flat late fee is a liquidated damages penalty that violates California
13 law because it is excessive and bears no relation to any actual damages incurred by Defendants when
14 rent is paid late. Moreover, Defendants’ policy and practice is also to impose late fees on tenants for
15 accrued balances of late fees or other charges, although this policy and practice is not explained in the
16 terms of Defendants’ rental leases. That practice results in Defendants imposing late rent fees even
17 when the tenants make timely rent payments in accordance with their respective lease agreements.
18 Defendants also fail to advise tenants they have incurred and continue to accumulate unpaid late rent
19 fees until many months of late fees have accrued. As a result, tenants are often unaware they have
20 accrued a balance with Defendants and are not afforded the opportunity to pay that balance in a timely
21 manner. Defendants then continue to charge tenants additional fees for their late payment of that
22 accrued balance of which the tenant is unaware. Plaintiffs bring this action to challenge these policies
23 and practices on behalf of themselves and all other similarly-situated residents of Defendants’
24 residential rental properties in California.

25 2. Defendants’ late rent fees exceed any reasonable measure of Defendants’ actual
26 damages sustained as a result of their tenants’ late rent payments, constituting liquidated damages in
27 violation of California Civil Code § 1671(d). For example, when Defendants charge a \$50 late fee
28 when a tenant has paid a rent of \$1,200 two days late, this amounts to an interest rate of 760 percent

1 per annum. By contrast, a 10 percent annual interest rate in this example would dictate a daily late fee
2 of approximately thirty-three cents. The unreasonableness of the late fee penalty is further
3 demonstrated by the fact that Defendants charge these fees whether the rent is one day late or two
4 weeks late. These late fee penalties are hereinafter referred to as “Excessive Late Fees.”

5 3. Defendants’ violation of California Civil Code § 1671(d) is an unlawful business
6 practice which causes Plaintiffs and other tenants financial injury. As such, Defendants’ policy and
7 practice of charging Excessive Late Fees violate California’s Unfair Competition Law, Business and
8 Professions Code § 17200, *et seq.* (hereinafter referred to as the “UCL”).

9 4. Defendants’ policy and practice of charging Excessive Late Fees is also an unfair
10 business practice under the UCL. California law establishes a presumption that “the detriment caused
11 by the breach of an obligation to pay money only, is deemed to be the amount due by the terms of the
12 obligation, with interest thereon.” Cal. Civ. Code § 3302. Pursuant to Civil Code section 3289(b), the
13 applicable rate is fixed at 10 percent per annum. Defendants’ Excessive Late Fees represent exorbitant
14 interest rates for tenants’ failure to pay the amount of rent due. Defendants’ violation of California
15 Civil Code § 1671(d), failure to timely advise tenants of accrued balances, and practice of charging
16 tenants additional fees for their late payment of fees, rather than rent, are likewise unfair practices
17 under the UCL.

18 5. Defendants further implement a policy and practice of accepting on time rent payments
19 in full and applying such payments to tenants’ existing balances, rather than to the full amount of rent
20 due that month. Defendants then assess another late fee against the tenant for alleged failure to pay the
21 current month’s rent in full. For instance, if a tenant has paid the rent a few days late in two different
22 months, and has a \$100 balance consisting of two late fees, Defendants will charge that tenant a new
23 late fee in every month that follows, even if the tenant is paying the full rent on time. Defendants do
24 not, either orally or in their lease agreements, disclose to tenants that such rent payments are applied to
25 other charges in a way that results in a new late fee each month. Defendants also have failed to inform
26 tenants that they have balances that result in additional late fee charges each month. Failure to inform
27 tenants and the charging of additional late fees when rent is paid on time constitute an unlawful, unfair,
28 and fraudulent business practice under California’s Unfair Competition Law.

1 State of California, including Plaintiffs’ and Class Members’ residences. Equity Residential, 2012
2 Annual Report, F-22 (2012). EQUITY RESIDENTIAL PROPERTIES MANAGEMENT
3 CORPORATION is herein referred to as “EQRPMC.”

4 18. Defendants own and lease residential properties throughout California and throughout
5 Alameda County.

6 19. Defendants DOES ONE through TWO HUNDRED AND FIFTY inclusive are sued
7 herein pursuant to California Code of Civil Procedure § 474.

8 20. Plaintiff Javanni Munguia-Brown is a current tenant of Defendants’ residential property
9 in East Palo Alto, California. Her tenancy is subject to Defendants’ late fee penalty assessment policy.
10 Defendants have assessed and may continue to assess Excessive Late Fees against Plaintiff Munguia-
11 Brown subject to Defendants’ unlawful late fee policies and practices set forth herein.

12 21. Plaintiff Norma Rodriguez is a current tenant of Defendants’ residential property in East
13 Palo Alto, California. Her tenancy is subject to Defendants’ late fee policies and practices.
14 Defendants have assessed and may continue to assess Excessive Late Fees against Plaintiff Rodriguez
15 subject to Defendants’ late fee policies and practices set forth herein.

16 22. Plaintiff Angelina Magaña is a current tenant of Defendants’ residential property in East
17 Palo Alto, California. Her tenancy is subject to Defendants’ late fee penalty assessment policy.
18 Defendants have assessed and may continue to assess Excessive Late Fees against Plaintiff Magaña
19 subject to Defendants’ unlawful late fee policies and practices set forth herein.

20 **FACTUAL BACKGROUND**

21 23. Defendants own, lease, and manage residential properties throughout California, and
22 have done so since at least four years prior to the filing of this complaint.

23 24. Plaintiff Javanni Munguia-Brown has been a tenant in an EQR-owned apartment in East
24 Palo Alto since 2008. Her apartment is within a residential rental property owned and managed by
25 Defendants.

26 25. Plaintiff Javanni Munguia-Brown’s lease requires that she pay rent by the first of each
27 month, but allows a four-day grace period. Her lease also specifies that the landlord will assess a \$100
28

1 late fee if her rent payment is received after the fourth day of the month in which rent is due.

2 Defendants have assessed her a late fee of \$50 per month on multiple occasions.

3 26. Plaintiff Norma Rodriguez has been a tenant in an EQR-owned apartment in East Palo
4 Alto for over 10 years. Her apartment is within a residential rental building owned and managed by
5 Defendants.

6 27. Plaintiff Norma Rodriguez's lease requires that she pay rent by the first of each month,
7 but allows a four-day grace period. Her lease also specifies that the landlord will assess a \$50 late fee
8 if her rent payment is received after the 5th day of the month in which rent is due if she is late more
9 than once (the first time the fee is \$25). Defendants have assessed her a late fee of \$50 per month on
10 multiple occasions.

11 28. Plaintiff Angelina Magaña has been a tenant in an EQR-owned apartment in East Palo
12 Alto since 2006. Her apartment is within a residential rental property owned and managed by
13 Defendants.

14 29. Plaintiff Angelina Magaña's lease requires that she pay rent by the first of each month,
15 but allows a five-day grace period. Her lease also specifies that the landlord will assess a late fee of
16 6% of her monthly rent if her rent payment is received after the fifth day of the month in which rent is
17 due. Defendants have assessed her a late fee of \$50 per month on multiple occasions.

18 **Imposition of Excessive Late Fees**

19 30. Defendants' policy and practice, throughout California, is to assess residential tenants a
20 flat fee of a minimum of \$50 for the late payment of rent regardless of the amount of rent owed or the
21 length of time which elapses from the time rent is due and the time that the tenant pays that rent. A
22 tenant's failure to timely pay rent constitutes "a breach of an obligation to pay money only" pursuant
23 to Civil Code section 3302, as held by the California Supreme Court in *Knight v. Marks*, 183 Cal. 354,
24 357 (1920) and other published decisions.

25 31. Plaintiff Javanni Munguia-Brown's lease with Defendant provided her rent was due on
26 the first day of the month, with a grace period of four days. Defendants acknowledge receiving
27 Plaintiff Javanni Munguia-Brown's full February 2012 rent, including past late fees, on February 9,
28 2012. Defendants assessed a \$50 late fee against Plaintiff Munguia-Brown, though she paid her

1 monthly rent only four days past the grace period. This resulted in an interest rate of 324 percent per
2 annum based on the rent of \$1,409.75 being late by four days. Defendants again assessed a \$50 late
3 fee in April 2012 after Ms. Munguia-Brown paid her rent in full on April 13, 2012, eight days late. On
4 April 13, 2012, she paid this \$50 late fee. Defendants charged Ms. Munguia-Brown multiple other
5 Excessive Late Fees in other months as well.

6 32. Plaintiff Norma Rodriguez's lease with Defendants provided her rent was due on the
7 first day of the month, with a grace period of five days. Defendants acknowledge that they received
8 her full rental payment for August 2012 on August 6, one day after the five-day grace period. On
9 August 7, 2012, after receiving rent a single day past the grace period, Defendants assessed a \$50
10 "Auto Late Fee" against Ms. Rodriguez. This resulted in an interest rate of 1,824 percent per annum
11 based on the rent of \$1,000.80 being late by one day. This happened again in January 2013 when
12 Defendants assessed a \$50 fee for Ms. Rodriguez's payment of rent just two days after the grace
13 period.

14 33. Plaintiff Angelina Magaña's lease with Defendant provided her rent was due on the first
15 day of the month, with a grace period of five days. Defendants acknowledge receiving Plaintiff
16 Angelina Magaña's full December 2012 rent on December 8, 2012. Defendants assessed a \$50 late fee
17 against Plaintiff Magaña, though she paid her monthly rent only three days past the grace period. This
18 resulted in an interest rate of 644 percent per annum based on the rent of \$944.38 being late by three
19 days. Defendants also assessed a \$50 late fee in November 2012 when Ms. Magaña paid her rent five
20 days after the grace period, representing an interest rate of 386 percent per annum on Plaintiff's then
21 \$944.38 rent. Defendants charged Ms. Magaña multiple other Excessive Late Fees in other months as
22 well.

23 34. Defendants' collection of a flat fee of \$50 for delays of as little as one to several days in
24 their receipt of tenants' rent payments does not reflect a reasonable estimate of Defendants' damages
25 caused by the delay. Defendants' actual damages sustained by its late receipt of rent due are neither
26 impracticable nor extremely difficult to fix. As the California Supreme Court has held, "[w]hen a
27 tenant fails to pay rent as provided in the lease, the amount of damage is not extremely difficult to fix,
28 and it certainly is not impracticable to fix the amount of such damage." *Jack v. Sinsheimer*, 125 Cal.

1 563, 566 (1899). The California Supreme Court reiterated this presumption again in *McCarthy v.*
2 *Tally*, 46 Cal. 2d 577, 583 (1956), where the Court cited other California cases and explained that
3 “[o]rdinarily, provisions for liquidated damages will not lie for failure to pay rent as provided in the
4 lease.” More recently, in *Garrett v. Coast & Southern Federal Savings & Loan Association*, 9 Cal. 3d
5 731, 741 n.11 (1973), the California Supreme Court again stated that “[d]amages resulting because of
6 the wrongful withholding of money are fixed by law [in Civil Code § 3302] and other damages . . .
7 such as administrative and accounting costs, would not appear to present extreme difficulty in
8 prospective fixing.”

9 35. Defendants’ late fee is an arbitrary amount which functions as a penalty. Any marginal
10 interest accumulated or other damages that Defendants sustain due to the delay in rent payments or due
11 to collecting late rent are definite and easily ascertainable, as the California Supreme Court has long
12 held. Moreover, when Defendants seek to collect late rent payments by filing an unlawful detainer
13 action, they seek to collect the attorney’s fees and costs of filing the action from tenants, demonstrating
14 that this cost is not among the damages that result when rent is paid late. On information and belief,
15 Defendants have never made a reasonable endeavor to estimate a fair average compensation for the
16 losses sustained when a tenant pays rent late.

17 **Successive Imposition of Excessive Late Fees, Without Notice**

18 36. Defendants routinely fail to timely advise tenants that they have been assessed
19 Excessive Late Fees at the time the charge is incurred. Defendants record fees as a debt on tenants’
20 rent ledger or account without notifying tenants that they have accrued such debt. Upon receiving
21 tenants’ subsequent monthly rent payments, Defendants’ apply that payment to the previously recorded
22 debt, rather than the rent due for the month in which payment is made. Defendants then consider that
23 month’s rent as not paid in full and again assesses another Excessive Late Fee despite tenants’ full and
24 timely monthly rent payment. As a result, tenants unknowingly incur repeated Excessive Late Fees
25 without being given a warning that they should pay those penalties or the opportunity to contest those
26 penalties. Plaintiffs have each accrued such successive penalties and paid wrongfully assessed fees.

27 37. On February 28, 2014, Plaintiff Javanni Munguia-Brown paid Defendants her complete
28 rental payment for the month of March 2014 plus additional money. On March 7, 2014, Defendants

1 assessed Ms. Munguia-Brown a \$50 “Auto Late Fee” despite her having made a complete and timely
2 rental payment for that month because she had a balance of previously assessed fees and other
3 charges.”

4 38. In June 2014, this happened again. Plaintiff Javanni Munguia-Brown paid Defendants
5 her complete rental payment for June on May 30, 2014, but was short \$2.02 for the City of East Palo
6 Alto’s administrative fee. On June 7, 2014, Defendants assessed Ms. Munguia-Brown a \$50 “Auto
7 Late Fee” despite her having made a complete and timely rental payment for that month because she
8 had a balance of previously-assessed late fees and other charges. It was not until around June of 2014
9 that Defendants decided to tell Ms. Munguia-Brown that she was incurring late fees every month
10 because she was carrying a balance. Plaintiff Munguia-Brown’s lease does not explain that
11 Defendants will charge her a late fee when she pays within the grace period if she owes previously-
12 assessed late fees or other charges.

13 39. Plaintiff Munguia-Brown paid hundreds of dollars in late fees over the months of
14 January 2012, February 2012, April 2012, and August 2013.

15 40. On July 4, 2012, Plaintiff Norma Rodriguez paid Defendants her complete rent payment
16 for that month. On July 7, 2012, Defendants assessed Plaintiff Norma Rodriguez a \$50 “Auto Late
17 Fee” despite her having made a complete rental payment for that month during the five day grace
18 period set forth in her lease agreement. Defendants assessed this late fee despite a timely rent payment
19 because Ms. Rodriguez had a balance of \$100 in previously-assessed late fees.

20 41. In September 2012, this happened again. Plaintiff Rodriguez paid Defendants her
21 complete rental payment for September on September 4, 2012, but was short \$0.55 for the City of East
22 Palo Alto’s administrative fee. On September 7, 2012, Defendants assessed Ms. Rodriguez a \$50
23 “Auto Late Fee” despite her having made a complete and timely rental payment for that month because
24 she had a balance of previously-assessed late fees. Ms. Rodriguez received a receipt for this rental
25 payment that explicitly stated the payment was “FOR RENT” for the days of “9.1.12 to 9.30.12.”
26 Despite issuing her this receipt, Defendants applied her payment to her prior late fees in order to assess
27 a new late fee despite her timely payment. Plaintiff Rodriguez only received notice that Defendants
28 had assessed these Excessive Late Fees after several late fees had accumulated in mid-September 2012

1 and the balance exceeded \$200. Plaintiff Rodriguez's lease does not explain that Defendants will
2 charge her a late fee when she pays within the grace period if she owes previously-assessed late fees or
3 other charges.

4 42. Plaintiff Norma Rodriguez paid Defendants \$180 of accumulated late fees in October
5 2012.

6 43. On May 4, 2013, Plaintiff Angelina Magaña paid Defendants her complete rental
7 payment for that month. On May 7, 2013, Defendants assessed Ms. Magaña a \$50 "Auto Late Fee"
8 despite her having made a complete and timely rental payment for that month. Plaintiff Magaña
9 received no notice that Defendants had assessed this late rent fee. Defendants did not advise Plaintiff
10 Magaña they were assessing late fees when she was paying her rent on time because she was carrying a
11 balance consisting primarily of late fees from prior months. Plaintiff Magaña's lease does not explain
12 that Defendants will charge her a late fee when she pays within the grace period if she owes
13 previously-assessed late fees or other charges.

14 44. Plaintiff Angelina Magaña paid hundreds of dollars in accumulated late fees in
15 September 2012, October 2012, November 2012, and August 2013.

16 **CLASS ACTION ALLEGATIONS**

17 45. This action is maintainable as a class action pursuant to California Code of Civil
18 Procedure § 382 for Defendants' violations of California Civil Code § 1671(d) and California Business
19 and Professions Code §§ 17200. Plaintiffs are representative of other tenants at Defendants' properties
20 throughout California and are acting on behalf of their interests. The similarly situated tenants are
21 known to Defendants and are readily identifiable and locatable through Defendants' own business
22 records. The Class that Plaintiffs seek to represent is defined as follows:

23 All persons who are or were tenants of Defendants' properties in the
24 State of California at any time from four years prior to the date of filing
25 of this complaint through the date of judgment who have been subjected
26 to Defendants' Excessive Late Fees.

26 Throughout the Class Period, Class Members were tenants of Defendants' properties and
27 subjected to the Excessive Late Fee policies and procedures of Defendants. As such, Class Members,
28 and each of them, were subjected to Excessive Late Fees pursuant to California Civil Code § 1671(d).

1 These liquidated damages provisions violate California law in that (1) determination of Defendants’
2 actual damages would not be “impracticable or extremely difficult,” Cal. Civ. Code § 1671(d), and
3 (2) the amounts selected by Defendants in these contracts of adhesion do not represent a reasonable
4 endeavor to estimate fair compensation for the loss sustained. Class Members have also been
5 subjected to Defendants’ unfair business practices pursuant to California Business and Professions
6 Code § 17200, *et seq.* Throughout the Class Period, Class Members have been subject to Defendants’
7 policy and practice of applying tenants’ rent payments to their previous balances without notifying the
8 tenants and, as such, causing tenants to incur additional Excessive Late Fees. Throughout the Class
9 Period, Class Members have additionally been subjected to Defendants’ deceptive practices of
10 charging such late fees without adequate notice, without informing tenants that their payments may not
11 cover the entire amount owed if prior late fees are pending, and not disclosing to tenants that
12 Defendants’ policy is to charge additional late fees for tenants’ failure to pay previously assessed late
13 fees. This practice of charging late fees on top of an accumulated balance of late fees is sometimes
14 referred to as “pyramiding” and federal law prohibits banks from engaging in the same scheme. *See* 12
15 C.F.R. § 227.15(a); 12 C.F.R. § 226.36(c)(ii).

16 **Numerosity of Class**

17 46. The potential members of the class as defined are so numerous that joinder of all Class
18 Members is impracticable. Although the precise number of such tenants is unknown, Plaintiffs believe
19 that hundreds or thousands of tenants who rent or have rented Defendants’ properties and have been
20 assessed late fees by Defendants would fall within the putative Class. The exact number would be
21 easily ascertained from Defendants’ own business records, which are presently within Defendants’
22 control.

23 **Existence and Predominance of Common Questions of Fact and Law**

24 47. There are questions of law and fact common to the class that predominate over any
25 questions affecting only individual members of the class including, without limitation, whether, as
26 alleged herein, Defendants have:

27 a. Included late fees in their standard lease agreements that equate to unlawful
28 liquidated damages;

1 b. Charged such late fees, as liquidated damages, when determining the actual
2 amount of damages is neither impracticable nor extremely difficult;

3 c. Selected a late fee amount without embarking on the required reasonable
4 endeavor to estimate whether it would represent fair compensation for the loss sustained;

5 d. Engaged in unlawful business practices that violate California Civil Code
6 § 1671;

7 e. Engaged in unfair business practices by charging tenants fees for unpaid
8 balances without informing them of those balances or of the fee being charged;

9 f. Engaged in unfair business practices by applying tenants' rent payments to their
10 previous balances without notifying the tenants and, as such, causing tenants to incur additional
11 Excessive Late Fees;

12 g. Engaged in fraudulent business practices by applying tenants' rent payments to
13 their previous balances without notifying the tenants and, as such, causing the tenants to incur
14 additional Excessive Late Fees.

15 **Typicality**

16 48. The claims of the Plaintiffs are typical of the claims of the class they seek to represent.
17 Plaintiffs and Class Members are or were tenants of Defendants' owned, leased, or managed
18 properties. Plaintiffs and Class Members have the same rights to not be subjected to Excessive Late
19 Fees under California Civil Code § 1671. Plaintiffs and all Class Members were subjected to the same
20 violations of their rights under California Law by Defendants and have suffered damages, including
21 Excessive Late Fees, resulting from Defendants' wrongful conduct. In addition, Plaintiffs and Class
22 Members are entitled to equitable relief, as permitted by law, because Defendants' actions and
23 violations of state statutes have harmed Class Members, will continue to harm Class Members, and
24 constitute unlawful and unfair business practices, especially when compared to those of competitors
25 that comply with California Law.

26 **Adequacy of Representation**

27 49. Class Representative Plaintiffs will fairly and adequately represent and protect the
28 interests of the Class Members. Plaintiffs' interests are not in conflict with those of the Class

1 Members. Plaintiffs' counsel are competent and experienced in litigating large class actions and other
2 complex litigation matters, including housing-related matters like this case.

3 **Superiority of Class Action**

4 50. A class action is superior to other available means for the fair and efficient adjudication
5 of this controversy. Each Class Member is entitled to recovery as each has been subjected to or
6 damaged by reason of Defendants' illegal, unfair, and/or fraudulent policies and/or practices of
7 including liquidated damages clauses in their standard lease agreements that equate to Excessive Late
8 Fees; charging Excessive Late Fees as liquidated damages when determining the actual amount of
9 damages is neither impracticable nor extremely difficult; selecting a Late Fee amount without
10 embarking on the required reasonable endeavor to estimate whether it would represent fair
11 compensation for the loss sustained; engaging in business practices that were and are unlawful as they
12 violate California Civil Code § 1671; engaging in business practices that were and are unfair by
13 charging tenants fees for unpaid balances without informing them of those balances or of the fee being
14 charged and by applying rent payments to previous balances without notifying the tenants and, as such,
15 causing additional late fees to be charged; and, likewise engaging in business practices that were
16 fraudulent by applying rent payments to previous balances without notifying the tenants and causing
17 additional late fees to be charged.

18 51. The damages suffered by individual Class Members are small compared to the expense
19 and burden of individual prosecution of this litigation. Individual plaintiffs may lack the financial
20 resources to vigorously prosecute a lawsuit against Defendants to recover such small amount of
21 damages. This is particularly true since Defendants typically seek to enforce their Excessive Late Fee
22 Policy by having collection agencies collect the Excessive Late Fees as debts from former tenants.
23 Low-income tenants dependent on local rent stabilization ordinances to maintain affordable housing
24 are especially hard hit by Defendants' practice of charging unlawful late fees. *See* John Gittelsohn and
25 Healthier Perlberg, *In Silicon Valley, a New Investment: Eviction*, Bloomberg.com, Apr. 7, 2014
26 (Defendants own more than 70% of the rent controlled apartments in East Palo Alto, give 300 residents
27 a month eviction notices, and have filed 236 unlawful detainer actions since December 2011).

