

1 Andrew Wolff, Esq. (SBN 195092)
David Lavine, Esq. (SBN 166744)
2 Wortham F. Briscoe, Esq. (SBN 303359)
LAW OFFICES OF ANDREW WOLFF, PC
3 1956 Webster Street, Ste. 275
Oakland, California 94612
4 T(510) 834-3300
F(510) 834-3377
5 andrew@awolfflaw.com
david@awolfflaw.com

ENDORSED
FILED
ALAMEDA COUNTY

OCT 20 2017

CLERK OF THE SUPERIOR COURT
By: ERICA HARRIS, Deputy

6
7 Attorney for Plaintiffs
MOHAMMAD I. NIAZI, et al.
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9 SUPERIOR COURT FOR THE STATE OF CALIFORNIA
10 IN AND FOR THE COUNTY OF ALAMEDA
11 UNLIMITED JURISDICTION

12 MOHAMMAD I. NIAZI, for himself
individually, and for all persons
13 similarly situated,

Case No.: **RG17879561**

14 Plaintiffs,

**CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE
RELIEF; JURY TRIAL DEMANDED**

15 vs.

16
17 KMF ALAMEDA, LLC, dba
LADERA WOODS APARTMENTS,
18 KLINGBIEL CAPITAL
MANAGEMENT, INC., JOHNNY
19 RODRIGUEZ, and DOES 1-30,

20 Defendants.

21 Plaintiff, MOHAMMAD I. NIAZI, for himself individually, and for all other persons
22 similarly situated, alleges as follows:

23 **PRELIMINARY STATEMENT**

24 Plaintiff MOHAMMAD I. NIAZI represents a class of past, present and prospective
25 tenants (hereinafter "Class Members") of Defendants KMF ALAMEDA, LLC, dba LADERA
26 WOODS APARTMENTS, KLINGBIEL CAPITAL MANAGEMENT, INC., JOHNNY
27 RODRIGUEZ, and DOES 1-30 (hereinafter "Defendants") which rent approximately 100
28 apartment units in the City of Fremont, Alameda County. Plaintiffs are informed and believe

Niazi v. KMF Alameda, LLC, et al.
Class Action Complaint for Damages and Injunctive Relief, Jury Trial Demanded

1 and thereon allege that Defendants have owned the property which is located at 4401 Central
2 Avenue, #8, Fremont, California 94536 (hereinafter the “**Subject Premises**”) since on or around
3 ~~March 6, 1999.~~

4 As part of their course of business Defendants collect unlawfully increased rents from the
5 Class Members at the Subject Premises. The collection of rent by the Defendants violates
6 California law and the City of Fremont Municipal Code. As a result of this illegal conduct,
7 Defendants jeopardize the health and safety of their tenants and the community at large, and
8 deprive Class Members of the financial means to acquire alternate housing, and gain an unfair
9 advantage over law-abiding competitors who provide rental housing.

10 FACTUAL ALLEGATIONS

11 1. This is a class action pursuant to Code of Civil Procedure §382 seeking damages,
12 injunctive and other equitable relief on behalf of the Class Members and all persons similarly
13 situated who are, have been and will become tenants of the Defendants, and those who have been
14 or are at risk of being unlawfully deprived of money.

15 2. The “Class Period” is designated as the time period from four years prior of this
16 filing in Superior Court. During the Class Period, Defendants have a consistent policy of
17 increasing rents of the Class Members in violation of the laws of California and the City of
18 Fremont.

19 3. Plaintiffs are informed and believes, and thereon alleges, that Defendants, and
20 DOES 1-30 owned, controlled, and/or managed the units that Class Members resided in during
21 all relevant periods of time in this complaint.

22 4. Pursuant to Civil Code Section 827, landlords may only raise residential tenants
23 rents upon written notice and in compliance with this code. Defendants have consistent policy of
24 increasing rents of the Class Members in violation of this code. Class Members are tenants as
25 defined within Civil Code Section 827. Defendants are landlords as defined within Civil Code
26 Section 827.

27 5. Pursuant to The City of Fremont's Residential Rent Increase Dispute Resolution
28 Ordinance (hereinafter, “**RRIDRO**”), landlords within the City of Fremont may only raise

1 residential tenants rents as prescribed by the City of Fremont Municipal Code. Defendants have
2 consistent policy of increasing rents of the Class Members in violation RRIDRO. Class
3 Members are tenants as defined within RRIDRO. Defendants are landlords as defined within
4 RRIDRO.

5 6. Class Members are informed, believe and on that basis allege that commencing at
6 a time well prior to the Class Period, Defendants in collusion with each and all other Defendants,
7 devised and engaged in a course of business conduct designed and intended to violate the Civil
8 Code Section 827 and RRIDRO. During the course of their tenancies all Class Members
9 received notices of change of terms of tenancy which raised the rent in their respective units.
10 Each of the notices of change of terms of tenancy which was given to the Class Members
11 violated the Civil Code Section 827 and RRIDRO. During their tenancies, Class Members have
12 paid rents which were unlawfully raised, or are in jeopardy of paying rents which were
13 unlawfully raised, to the Defendants pursuant to the notices of change of terms of tenancy.
14 Moreover, the amounts of rent which are raised by the Defendants in violation of Civil Code
15 Section 827 and RRIDRO are individually so small that it is economically unfeasible for the
16 Class Members to pursue his/her remedies alone.

17 7. Defendants DOES 1-30 are individuals and/or business entities doing business in
18 the County of Alameda and/or who are contracted to do work in the County of Alameda. Each
19 and every Defendant was at all relevant time the agents and/or employees of other Defendants
20 and acted within the scope of said agency and/or employment. Class Members do not know the
21 true names of Defendants identified as DOES 1-30, but will seek leave to amend this complaint
22 if and when Class Members discovers the identity of any of the Defendants now sued under the
23 fictitious names DOES 1-30.

24 8. In committing the acts complained of herein, each Defendant acted as the
25 authorized agent, employee, and/or representative of each other Defendant. Each act of each
26 Defendants complained of herein was committed within the scope of said agency, employment,
27 or other representation, and each act was ratified by each other Defendant. Each Defendant is
28 liable, in whole or in part, for the damages and injuries suffered by Class Members.

1 9. This court is the proper court because Defendants do business in its jurisdictional
2 area, the damage to Class Members—and the making of the contract which is the subject of this
3 action—occurred within its jurisdictional area.

4 10. Named Plaintiff and Class Members are informed and believe, and thereon allege,
5 that at all relevant times, Defendants were Named Plaintiff and Class Members' landlords, and
6 Class Members was the tenant of Defendants as those terms, "landlord" and "tenant" are defined
7 under California Common Law, under California Code of Civil Procedure § 1161 et seq. and
8 under California Civil Code § 1980.

9 11. On or about July 21, 2012, Plaintiff NIAZI, as tenant, and Defendant KMF
10 ALAMEDA, LLC, dba LADERA WOODS APARTMENTS, as owner and/or agent and/or
11 lessor, entered into a written agreement to rent the premises located at 4401 Central Avenue, #8,
12 Fremont, California 94536 to Plaintiff NIAZI. Such address is hereinafter referred to as the
13 "Subject Premises". The essential terms of this agreement were as follows: Plaintiff NIAZI was
14 to occupy the Subject Premises for a term of one year, with a right of renewal thereafter, with a
15 monthly rental value of \$1,199.00 due on the first day of each month. After a diligent search,
16 Plaintiff has been unable to locate a copy of this agreement. Plaintiff reserves the right to amend
17 this pleading when and if a copy of this agreement is discovered.

18 12. The Subject Premises is a residential building located in the City of Fremont, and
19 subject to the laws of the State of California and the City of Fremont. Pursuant to California Civil
20 Code Section 827, landlords may only raise residential tenants rents upon written notice and in
21 compliance with this code. Plaintiff is a tenant as defined within Civil Code Section 827.
22 Defendants are landlords as defined within Civil Code Section 827. Defendants have consistent
23 policy of increasing Plaintiff's rent in violation of this code.

24 13. Pursuant to the City of Fremont's RRIDRO, landlords within the City of Fremont
25 may only raise residential tenants rents as prescribed by the City of Fremont Municipal Code.
26 Plaintiff is a tenant as defined within RRIDRO. Defendants are landlords as defined within
27 RRIDRO. Defendants have a consistent policy of increasing Plaintiff's rent in violation
28 RRIDRO.

1 14. Defendants named herein were the owners and/or property managers or the agents
2 and/or employees of the owners and/or property managers of the Subject Premises during all time
3 periods relevant herein.

4 15. Plaintiff NIAZI's tenancy has always been governed by leases for periods of one
5 year. Each year, near the expiration of the current lease, Defendants have served Plaintiff NIAZI
6 with a notice of rent increase, informing him that the rent for the next year will be higher should
7 he choose to sign a new lease and continue to reside in the Subject Premises. These increase
8 notices did not comply with the requirements of RRIDRO at any time.

9 16. Plaintiff NIAZI was presented with the following rent increases during his
10 tenancy, none of which complied with the requirements of RRIDRO:

- 11 a. July 2013 increase, signed into contract on August 16, 2013: increase from
12 \$1,199.00 per month to \$1,250.00 per month (\$51.00 per month increase over base rent)
- 13 b. July 2014 increase, signed into contract on August 14, 2014: increase from
14 \$1,250.00 per month to \$1,375.00 per month (\$176.00 per month increase over base rent)
- 15 c. July 2015 increase, signed into contract on August 15, 2015: increase from
16 \$1,375.00 per month to \$1,481.00 per month (\$282.00 per month increase over base rent)
- 17 d. July 2016 increase, signed into contract on August 16, 2016: increase from
18 \$1,481.00 per month to \$1,695.00 per month (\$496.00 per month increase over base rent)

19 17. Due to the unlawful nature of Defendants' rent increases, Plaintiff NIAZI has paid
20 excessive rents beginning in August 2013 and continuing to the present. Plaintiff NIAZI paid
21 excessive rent in the amounts of \$612.00 between August 2013 and July 2014, \$2,112.00
22 between August 2014 and July 2015, \$3,384.00 between August 2015 and July 2016, and
23 \$5,952.00 between August 2016 and July 2017, for a total of \$12,060.00 in excessive rent paid
24 pursuant to unlawful rent increases through July 2017. All of the increases of rent have been in
25 violation of Civil Code Section 827 and RRIDRO, as none of the increase notices issued by
26 Defendants have included notice to Plaintiff NIAZI of the existence of the RRIDRO as required
27 by the ordinance. The increased rent paid by Plaintiff NIAZI was therefore collected in violation
28 of Fremont Ordinance.

1 are at risk of sustaining, injuries and damages arising out of and caused by the Defendants
2 conduct as alleged in the complaint herein.

3 c. **Numerosity:** A class action is the only available method for the fair and efficient
4 adjudication of this controversy, as the Court can resolve the matter in one rather than
5 numerous lawsuits. Plaintiff and Class Members are informed, believe and allege thereon
6 that the Defendants own and/or rent at least approximately 100 residential units within
7 the County of Alameda, and that the turnover on these units is such that the Class
8 Members are likely to exceed 200. Membership will be determined upon an analysis of
9 the Defendants rental agreements, notices of change of terms of tenancy, notices of
10 eviction, and written communications to the named Plaintiff and the Class Members.

11 d. **Superiority of Class Action:** The damages suffered by individual named Plaintiff and
12 Class Members, while not inconsequential, may be relatively small, and the expense and
13 burden of individual litigation by each individual relatively large. Moreover, this fact is
14 known by the Defendants, and this reality makes it impractical of Class members to seek
15 redress individually for the wrongful conduct alleged herein. A class action is a superior
16 method of resolving this dispute and securing justice. In addition judicial economy
17 would be enhanced as a multiplicity of lawsuits, undue hardship and expense for both the
18 Court and the litigants will be avoided. In addition, the prosecution of separate actions
19 would create a risk of inconsistent rulings, which might be dispositive of the interests of
20 the other Class Members who are not parties to the adjudications and/or may substantially
21 impede their ability to adequately protect their interests.

22 e. **Adequacy of Representation:** The named Plaintiff in this action is an adequate
23 representative of the Class in that his claims are typical of those in the Class. He has been
24 damaged as alleged herein and is willing to go forward. Further, he has retained
25 competent counsel who are ready, willing and able to vigorously prosecute this action.

26 COMMON FACTUAL ALLEGATIONS

27 21. As alleged herein, Class Members are informed, believe and on that basis allege
28 that commencing at a time well prior to the Class Period, Defendants in collusion with each and

1 all other Defendants, devised and engaged in a course of business conduct designed and intended
2 to violate the Civil Code Section 827 and RRIDRO. During the course of their tenancies all
3 Class Members received notices of change of terms of tenancy which raised the rent in their
4 respective units. Each of the notices of change of terms of tenancy which was given to the Class
5 Members violated the Civil Code Section 827 and RRIDRO. During their tenancies, Class
6 Members have paid rents which were unlawfully raised, or are in jeopardy of paying rents which
7 were unlawfully raised, to the Defendants pursuant to the notices of change of terms of tenancy.
8 Moreover, the amounts of rent which are raised by the Defendants in violation of Civil Code
9 Section 827 and RRIDRO are individually so small that it is economically unfeasible for the
10 Class Members to pursue his/her remedies alone.

11 22. Plaintiff NIAZI was and is a tenant of the Defendants under leases to a residential
12 unit within this County. Named Plaintiff and the Class Members have paid unlawfully increased
13 rental amounts to the Defendants, or are at risk of paying unlawfully increased rental amounts to
14 the Defendants.

15 23. As a direct and proximate result of the Defendants unlawful conduct, as set forth
16 in this complaint, named Plaintiff and Class Members have sustained damages and/or are entitled
17 to the relief as described above, including but not limited to, (1) a return of all rents which were
18 unlawfully obtained by the Defendants; (2) statutory interest on such amounts according to proof;
19 (3) additional statutory damages of each Plaintiff and per Class Member due the acts and
20 omission of the Defendants according to proof; (4) attorneys fees pursuant to contract and statute;
21 (5) injunctive relief according to proof, including restorative damages of money wrongfully
22 retained by Defendants, and interest thereon.

23 24. In addition to the foregoing, this action will result in the enforcement of important
24 rights affecting the public interest, to wit: the right of the tenants of residential units to have their
25 residential rental amounts determined in a lawful manner and free of harassment and
26 intimidation. The successful conclusion of this litigation will confer a significant benefit on the
27 general public and a large class of persons. Accordingly, Plaintiff and Class Members are
28 entitled to an award of attorneys' fees pursuant to California code of Civil Procedure Section

1 1021.5. The necessity and financial burden of the private enforcement are such as to make such
2 an award appropriate. Such fees should not, in the interest of justice, be paid out of the recovery.

3 25. Wherefore named Plaintiff and Class Members pray for the damages stated below.

4 **FIRST CAUSE OF ACTION**
5 **VIOLATION OF TITLE 9, CHAPTER 9.60 OF THE FREMONT MUNICIPAL CODE**
6 **(Plaintiff v. All Defendants)**

7 26. Plaintiff and Class Members re-allege and incorporate into this cause of action the
8 allegations of paragraphs 1 through 25, as if the same were set out at length herein.

9 27. As tenant of the residential property located in Fremont, California and subject to
10 The City of Fremont's Residential Rent Increase Dispute Resolution Ordinance (Hereinafter,
11 "RRIDRO"), Plaintiff and Class Members are entitled to bring an action against all Defendants
12 who have violated said Ordinance to their detriment.

13 28. RRIDRO provides safeguards for tenants in Fremont from illegal rent increases.
14 Pursuant to the RRIDRO every landlord of residential rental property may only increase rents as
15 proscribed by the Ordinance, including providing notice of said increase which contains the
16 required information as detailed in the RRIDRO. Any rent increase accomplished in violation of
17 the RRIDRO shall be void. Moreover, pursuant to the RRIDRO when a landlord wrongfully or
18 illegally increases a tenant's rent, a Plaintiff is entitled to bring action for damages for any illegal
19 rent increase amounts which were paid.

20 29. Defendants have violated the RRIDRO, by illegally increasing the named
21 Plaintiff and Class Members' rent throughout their tenancies, said rental increases failed to
22 comply with RRIDRO and did not advise Plaintiff and Class Members of their rights to dispute
23 Defendants' rent increases, or advise them of the RRIDRO.

24 30. Plaintiff and Class Members were harmed by these violations in that they were
25 forced to pay illegal rent increase amounts. They have also been forced to hire an attorney to
26 enforce their rights.

27 31. Wherefore Plaintiff and Class Members pray for the damages stated below.

28 **SECOND CAUSE OF ACTION**
BREACH OF CONTRACT - CAL. CIVIL CODE §3300 et seq.
(Plaintiff v. Defendants KMF ALAMEDA, LLC, dba LADERA WOODS APARTMENTS)

1 and DOES 1 to 30)

2 32. Plaintiff and Class Members re-allege and incorporate into this cause of action the
3 allegations of paragraphs 1 through 25, as if the same were set out at length herein.

4 33. Plaintiff and Class Members and Defendants entered into a written residential
5 rental agreement. Defendants were obligated to perform under the terms of this agreement.
6 Plaintiff and Class Members performed or were excused from performing their obligations under
7 the contract. A covenant of good faith and fair dealing is contained in every residential rental
8 lease and/or agreement in the State of California pursuant to state statute and common law.

9 34. Defendants breached the terms of said agreement on multiple occasions during the
10 term of preceding the filing of this complaint by unlawfully raising Plaintiff and Class Members'
11 rents. Said conduct also breached the covenant of good faith and fair dealing contained in all the
12 relevant rental agreements.

13 35. As a result of all Defendants' conduct named Plaintiffs and Class Members
14 suffered damages including overpayment of rent, out of pocket expenses, physical and mental
15 discomfort, and other damages to be ascertained at trial.

16 36. Wherefore Plaintiff and Class Members pray for the damages stated below.

17 **THIRD CAUSE OF ACTION**
18 **UNFAIR BUSINESS PRACTICE - VIOLATION OF CALIFORNIA BUSINESS AND**
19 **PROFESSIONS CODE §§17200, et seq., 17500**
20 **(Plaintiff v. All Defendants)**

21 37. Plaintiff and Class Members re-allege and incorporate into this cause of action the
22 allegations of paragraphs 1 through 25, as if the same were set out at length herein.

23 38. Named Plaintiffs and Class Members bring this cause of action on named
24 Plaintiffs' own behalf, on behalf of the Class Members and all persons similarly situated, and on
25 behalf of the People of the State of California.

26 39. By reason of Defendants' failure to comply with state and local law for the
27 management of real property, Defendants' conduct constitutes an unfair and/or unlawful business
28 practice as set forth in California Business and Professions Code §17200 - §17208. Specifically,
29 Defendants conducted business activities in violation of the legal mandates as alleged herein.

30 40. The conduct of the Defendants, as alleged in this complaint, constitutes unfair

1 and/or unlawful business practices. Plaintiffs are informed and believe and thereon allege that it
2 is the regular practice of Defendants to intentionally disregard the rights of tenants and violate
3 applicable laws relating to tenancies in their buildings in ways that include, but are not limited to,
4 unlawfully raising and collecting tenants rents.

5 41. The conduct of the Defendants, and each of them, is continuing and constitutes an
6 ongoing threat and deterrent to the current tenants at the Subject Premises. For that reason,
7 among others, an injunction in the from set forth in the below prayer, which incorporated herein
8 by reference, against the continuation of such conduct is reasonable, equitable and appropriate
9 and should be ordered.

10 42. Because this conduct is continuing in nature as alleged, there is no adequate
11 remedy at law with respect to the ongoing business activities of the Defendants, thus
12 necessitating injunctive relief to protect those tenants and other landlords who conduct their
13 business fairly, honestly and in compliance with applicable laws.

14 43. At all times herein relevant, Defendants were conducting business under the laws
15 of the State of California, the County of Alameda, and the City of Fremont. In conducting said
16 business, Defendants were obligated to comply with the laws of the State of California, the
17 County of Alameda, and the City of Fremont.

18 44. As a direct and proximate result of Defendants' conduct, Defendants have accrued
19 unjust enrichment.

20 45. Wherefore Plaintiff and Class Members pray for the relief stated below.

21
22 **PRAYER**

23 WHEREFORE Plaintiff prays for judgment as follows as to all Defendants:

24 A. For an Order certifying the prosed and/or any other appropriate sub-classes under
25 the Code of Civil Procedure Section 382;

26 B. For an award to the named Plaintiff and Class Members of damages for all of the
27 unlawfully increased and collected rents within the Class Period, including statutory interest
28 thereon and statutory damages to each member of the Class in amounts to be proven at trial;

1 C. That Defendants be restrained, enjoined and ordered to disgorge all profits
2 obtained by them and to pay restitution to Plaintiff and Class Members and others similarly
3 situated, together with statutory interest thereon, on account of their violations of Business and
4 Professions Code §§17200-17208;

5 D. That the Defendants be restrained and enjoined to cease and desist from further
6 unlawful activities in violation of Business and Professions Code §17200, et. seq. including
7 orders for the publication of this injunction, and its dissemination to all current tenants;

8 E. That the Court appoint an independent Trustee/Receiver to accept and retain all
9 rents collected by the Defendants to prevent the continued collection of unlawfully increased
10 rent;

11 F. For general damages in the amount of \$1,000,000.00, or according to proof for
12 each cause of action,

13 G. For special damages in the amount of \$1,000,000.00, or according to proof for
14 each cause of action;

15 H. For compensatory damages in the amount of \$1,000,000.00, or according to proof;

16 I. For incidental expenses, past, present and future;

17 J. For interest on the amount of losses incurred at the prevailing legal rate;

18 K. For attorney's fees in the amount of \$1,000,000.00, or according to contract and
19 statute pursuant to CCP §1021.5;

20 L. For treble damages pursuant to Civil Code §1947.11;

21 M. For costs of suit incurred herein;

22 N. For pre-judgment interest;

23 O. For statutory penalties;

24 P. For such other and further relief which this Court deems just and proper.

25 Dated: September 6, 2017

LAW OFFICES OF ANDREW WOLFF, PC

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ANDREW WOLFF, ESQ.
Attorney for Plaintiff
MOHAMMAD I. NIAZI