

NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT JUSTICE
SUPERIOR COURT DIVISION
FILE NO. _____

ADDIE FARROW, DEIRDRE GASSAWAY,)
URINA GOINS, KATHERINE LATHAM,)
PATRICIA MCLENDON, DONNA MICHAEL,)
KELLEY RUSSELL, DAVID SIMS,)
VAUGHAN SMITH, JOSEFINA CARRIZALES,)
TONI FLOWERS, MAURICE LEAVELL,)
MAKITA GORDON, BRANDON RITCH,)
JOYCE GRAVES, ALCIDES HERRERA,)
MARTHA MARTINEZ-HERNANDEZ,)
KENNETH MONTGOMERY, ACOREA SIMS,)
CHAD WADE, and JAMES WILLIAMS,)

Plaintiffs,)

vs.)

ALLIANCE MANAGEMENT, INC., and)
SHANNON ENTERPRISES OF THE)
SOUTHEAST, LLC d/b/a SOUTH POINTE)
APARTMENTS,)

Defendants.)

COMPLAINT

PRELIMINARY STATEMENT

This is an action by former and present tenants of South Pointe Apartments in Greensboro, North Carolina, for damages due to the Defendants' failure to repair the premises and to put and keep them in a decent, safe and sanitary condition, while continuing to demand and collect rent from the Plaintiffs. Plaintiffs seek damages for Breach of the Implied Warranty of Habitability pursuant to N.C. Gen. Stat. §42-42, Unfair and Deceptive Acts and Practices pursuant to N.C. Gen. Stat. §§ 75-1.1 et seq., Unfair Debt Collection practices pursuant to N.C. Gen. Stat. §§ 75-50 et. seq., Breach of the Implied Covenant of Quiet Enjoyment, Negligence, Negligence Per Se, and Negligent Infliction of Emotional Distress.

PARTIES

1. Plaintiffs Carrizales, Farrow, Flowers, Gassaway, Goins, Gordon, Graves, Herrera, Leavell, Martinez-Hernandez, McLendon, Michael, Montgomery, Ritch, Russell, A. Sims, D.

Sims, Smith, Wade and Williams are all citizens and residents of Guilford County, North Carolina. Plaintiff Latham is a citizen and resident of Rockingham County.

2. Defendant Alliance Management (hereinafter “Alliance”) is a North Carolina corporation authorized to transact business in North Carolina and which conducted on-site management of South Pointe Apartments for the relevant time period covered by this action. In managing the premises, it acted as the agent of Defendant Shannon Enterprises of the Southeast, LLC. Upon information and belief, Defendant Alliance was the only manager of South Pointe Apartments at all times relevant to the allegations contained in this complaint.

3. Defendant Shannon Enterprises of the Southeast, LLC (hereinafter “Shannon Enterprises”), is a limited liability corporation organized in North Carolina and, at all times relevant to this action, it owned South Pointe Apartments located at 3216 South Holden Road, Greensboro, North Carolina. As the principal of its agent, Defendant Alliance, Defendant Shannon Enterprises is liable for Alliance’s actions and inactions and is therefore also liable for the damages caused thereby.

4. All of the Plaintiffs are current or former tenants of South Pointe Apartments, located at 3216 S. Holden Road, Greensboro, North Carolina. The Plaintiffs’ tenancies lasted from four to fifty-five (55) months.

5. Plaintiffs Gassaway, Goins, Latham, McLendon, Michael, Russell, D. Sims, and Smith all participate in the Section 8 Housing Choice Voucher Program (hereinafter “Section 8”).

6. Plaintiffs Carrizales, Flowers, Gordon, Graves, Herrera, Leavell, Martinez-Hernandez, Montgomery, Ritch, A. Sims, Wade, and Williams were all private pay tenants and have moved out of South Pointe Apartments.

7. Plaintiff McLendon still resides at South Pointe Apartments.

JURISDICTION

8. Jurisdiction of this matter is conferred on this Court by N.C. Gen. Stat. § 7A-243, as the amount in controversy in this matter exceeds \$10,000.00.

FACTS

9. Throughout their tenancies, all the Plaintiffs endured unfit, unsanitary, unsafe, and substandard conditions.

10. At all times relevant to this action there were frequent problems with sewage back-up throughout South Pointe Apartments. There was sewage and toilet paper seeping up in the common areas throughout the complex, flooding which caused sewage in the breezeways, regular plumbing back-up of a brown, thick substance that smelled like human waste in almost all of the Plaintiffs’ apartments. A strong odor of human waste pervaded the common areas and many of the Plaintiffs’ apartments.

11. These sewage problems were particularly severe in the 3230 building where sewage often flooded the breezeway multiple times per week during the relevant period up until December 2006, leaving toilet paper and other debris on the walkway. An intense odor of human waste emanated both outside the building and from the plumbing inside the tenants' apartments.

12. In December 2006, the entire 3230 building was placed under a 48-hour condemnation due to the severe problems with the plumbing system.

13. All of the Plaintiffs' apartments were infested with roaches, which created unsafe and unsanitary conditions. In many cases, Plaintiffs suffered extensive property damage due to the severe roach infestation because their personal property became infested with roaches.

14. There was a problem with bats throughout South Pointe Apartments. Colonies of bats lived in the breezeways of some of the buildings. Bats infested the common areas and, in some cases, infested individual Plaintiff's apartments. One Plaintiff and her family had to undergo a series of rabies shots because a bat got into her couch and came into contact with her family.

15. The ceilings of most of the Plaintiffs' apartments leaked to varying degrees, promoting the growth of mold, causing unsanitary and uninhabitable conditions, and damaging some Plaintiffs' personal property.

16. There were problems with rodents in many of the apartments, which had cracks and holes in the walls and doors through which rodents, bats, and insects entered the premises.

17. There were plumbing leaks in most of the apartments, causing flooding, unsanitary conditions, the growth of mold, and damage to personal property.

18. The pool was inoperable, despite the fact that residents were promised use of the pool when they moved in.

19. Unless otherwise specified, all the defects described in this complaint existed throughout the Plaintiffs' tenancies. All of the defective, unsanitary, unsafe, and unfit conditions described herein were reported to the Defendants' agents on numerous occasions, but the Defendants failed and refused to remedy these defective, unsanitary, unsafe, and unfit conditions in an adequate or timely manner.

20. Defendants failed to maintain the premises in a safe condition in conformity with Chapter 11 of the Greensboro Local Ordinances.

21. Throughout Plaintiffs' tenancies, Defendants continued to demand and accept full contract rent from the Plaintiffs with full knowledge of the defective, unsanitary, unsafe, and unfit conditions of the premises.

22. Plaintiffs experienced severe emotional distress due to living in the defective, unsanitary, unsafe, and unfit conditions at the premises. One Plaintiff was even hospitalized due to a complete emotional breakdown.

SECTION 8 TENANTS

23. The Greensboro Housing Authority (hereinafter “GHA”) operates the Section 8 program in Greensboro, North Carolina. Under the Section 8 program, rent is subsidized by GHA based in part on a percentage of the program participant’s income. GHA and Defendant Shannon Enterprises entered into Housing Assistance Program Contracts (hereinafter “HAP contracts”) for the benefit of the above-named Section 8 Plaintiffs.

24. HAP contracts are executed concurrently with the original lease signed between the Section 8 participant/tenant and the landlord. Where there are contrary terms between the HAP contract and the lease, the terms of the HAP contract control. Under the HAP contract, the original term of the tenancy is one year. After the first year, the tenancy converts to a periodic tenancy and provides that either party may terminate the tenancy by providing a 30-day notice of intent to terminate to the other party.

25. The HAP contract determines the rate of rent for each specific unit. Any subsequent changes in rent amount must be approved by GHA. If a rent increase is approved by GHA, it notifies the Section 8 participant/tenant of the change in writing. Both the HAP contract and the Section 8 Tenant Obligations contract between GHA and the tenant prohibit payment of rent in excess of the amount agreed upon in the HAP contract. The penalties for making “side payments” of rent under the Section 8 program include participant/tenant termination from the Section 8 program.

26. The following tenants received rental assistance from the Section 8 Program during their tenancies with Defendants:

ADDIE FARROW

27. Plaintiff Addie Farrow entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3250-F S. Holden Road, Greensboro, North Carolina, from February 1, 2005 to December 20, 2006. The contract rent for the unit was \$585.00 per month throughout her tenancy.

28. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The sewage problems that existed in the common areas throughout the apartments were particularly severe near Plaintiff Farrow’s apartment. There was a horrible smell inside and outside the premises.

- b) A brown, thick substance that smelled like human waste backed up in the master bathroom to the extent that the master bathroom could not be used. The toilet in the master bath was inoperable.
- c) There were severe leaks in the ceiling of one bedroom causing a severe mold infestation. Conditions became so bad that the room could not be used.
- d) The apartment was infested with roaches.
- e) A colony of bats resided in the breezeway of Plaintiff Farrow's building and could be heard in the walls of her unit.

DEIRDRE GASSAWAY

29. Plaintiff Deirdre Gassaway entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3236-B S. Holden Road, Greensboro, North Carolina, from August 2002 to March 31, 2007. The contract rent for the unit was \$685.00 per month throughout her tenancy.

30. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) At least once per week, and sometimes up to three times per week, a brown, thick substance that smelled like human waste backed up in the bathroom and kitchen in the premises. Plaintiff Gassaway was unable to use the dishwasher and garbage disposal at the premises because using them caused this "sludge" back up in the bathroom. Plaintiff Gassaway was unable to use her washing machine in the apartment because the water that came into it was filthy and foul-smelling.
- b) There was a continuous leak behind the kitchen sink in the premises.
- c) The ceiling in the kitchen and the hall started leaking during the first three months of Plaintiff Gassaway's tenancy.
- d) The apartment was infested with roaches.
- e) Throughout Plaintiff Gassaway's tenancy, the kitchen cabinets were not securely attached to the walls and the countertops in the kitchen were peeling. In January 2007, the cabinets and countertops were replaced, but the countertops were installed over a severe mold infestation.
- f) The overhead light in the kitchen did not function properly.
- g) The heating and cooling system inside the premises did not work consistently or properly, resulting in high electricity bills.

- h) The windows in the premises did not lock properly.
- i) For two years of Plaintiff Gassaway's tenancy, the front door did not properly lock and there was a large gap under the door.
- j) On a Sunday in July 2006, Plaintiff Gassaway discovered a bat on her couch inside the premises. Plaintiff Gassaway's youngest child was sitting on the couch near where Plaintiff Gassaway discovered the bat. Plaintiff Gassaway and her children were required to undergo a series of painful rabies shots as a result of their exposure to the bat.

URINA GOINS

31. Plaintiff Urina Goins entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3244-F S. Holden Road, Greensboro, North Carolina, from May 1, 2005 to June 2007. The contract rent for the unit was \$585.00 per month throughout her tenancy.

32. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) A brown, thick substance that smelled of human waste backed up in the kitchen and bathrooms until on or about April 2007.
- b) The carpet and walls at the premises smelled like mold and mildew due to the excessive moisture caused by the leaking ceilings at the premises.
- c) The apartment was infested with roaches.
- d) There was a crack at the top of the door and a gap at the bottom of the door to the premises. Insects crawled into the premises around the door.

KATHERINE LATHAM

33. Plaintiff Katherine Latham entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3256-D S. Holden Road, Greensboro, North Carolina, from February 28, 2004 to February 28, 2006. The contract rent for the unit was \$585.00 per month throughout her tenancy.

34. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The toilet backed up in the bathroom and flooded the hallway multiple times in December 2005 and January 2006.
- b) The ceiling leaked in the kitchen.

- c) A colony of bats resided in the breezeway of Plaintiff Latham's building.
- d) On or about September 2005, the air conditioning stopped working and remained inoperable for two months.

PATRICIA MCLENDON

35. Plaintiff Patricia McLendon entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3230-C S. Holden Road, Greensboro, North Carolina, from November 2005 until the present. The contract rent for the unit has been \$505.00 per month throughout her tenancy.

36. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The sewage problems that existed in the common areas throughout the apartments were particularly severe in and around the 3230 building in which Plaintiff McLendon lived. There was a horrible smell inside and outside the premises, and sewage backed up into the breezeway leaving toilet paper and other debris. These problems continued until about December 2006.
- b) The toilet inside the premises ran constantly and leaked around the base, causing damage to the bathroom floor. In or around October 2006, the toilet leak became so severe that there was a quarter inch of water on the bathroom floor. At that time, the Defendants finally repaired the leak.
- c) The air conditioning vent in the hallway leaked, causing damage to the carpet, creating mold and mildew problems and a foul odor. This condition existed until in or about May 2006.
- d) The apartment was infested with roaches until about April or May 2007.
- e) There was no door on the linen closet.
- f) There were large gaps around the front door. This condition existed until about April 2007.
- g) There were cracks in the kitchen walls.

DONNA MICHAEL

37. Plaintiff Donna Michael entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3230-J S. Holden Road, Greensboro, North Carolina, from April 2003 to February 2007. The contract rent for the unit was \$470.00 per month throughout her tenancy.

38. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The sewage problems that existed in the common areas throughout the apartment complex were particularly severe near Plaintiff Michael's apartment. There was a horrible smell inside and outside the premises, and sewage backed up into the breezeway, leaving toilet paper and other debris. The dishwasher could not be used due to the horrible smell it caused and the sludge and debris that backed up into the dishwasher.
- b) A brown, thick substance that smelled like human waste backed up in the kitchen and bathroom approximately once a month.
- c) In December 2006, the entire 3230 building was placed under a 48-hour condemnation due to severe plumbing problems.
- d) The apartment was infested with roaches.
- e) The heating system did not adequately heat the apartment.
- f) The windows did not have working locks.
- g) There was a hole in the wall in the dining room area.
- h) The kitchen cabinets were not securely fastened to the wall.

KELLEY RUSSELL

39. Plaintiff Kelley Russell entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3242-C S. Holden Road, Greensboro, North Carolina, from November 2002 to January 2008. The contract rent for the unit was \$585.00 per month throughout her tenancy.

40. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) There were leaks around the toilets in both bathrooms until about February or March 2006.

- b) The garbage disposal could not be used because it would cause sewage backup into the bathroom sink.
- c) The apartment was infested with roaches, spiders and other insects until about April 2007.
- d) The ceiling in the hall bathroom periodically leaked throughout Plaintiff Russell's tenancy. In October 2007, the leak became severe and water streamed into the bathroom. Defendants' maintenance personnel came to the premises and cut a hole in the ceiling to make repairs. Defendants' agent never returned to complete the repairs during the remainder of Plaintiff Russell's tenancy.
- e) The vinyl in both bathrooms separated from the sub-floor due to the leaking toilets. This problem was not repaired until January 2007 in response to a Greensboro Local Ordinance Enforcement inspection and citation.
- f) The windows in the living room leaked, creating severe mold and mildew problems.
- g) The windows did not lock.
- h) The kitchen countertops were warped; they sagged and were separated from the wall. The condition of the countertops continued to deteriorate throughout Plaintiff Russell's tenancy.
- i) Plaintiff Russell's refrigerator never worked properly. The refrigerator had to be replaced three times. She lost \$85.00 worth of food because of the defective refrigerators. Plaintiff Russell did not have a refrigerator that worked properly until in or about January or February 2007.

DAVID SIMS

41. Plaintiff David Sims entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3228-D S. Holden Road, Greensboro, North Carolina, from August 2004 to October 31, 2006. The contract rent for the unit was \$550.00 per month throughout his tenancy.

42. On or about August 2005, Defendants notified Plaintiff Sims that his rent would increase to \$565.00 per month unless he signed a new lease. Plaintiff Sims had not received a rate increase notice from GHA, so he continued to pay his portion of the rent pursuant to his tenant obligations under the Section 8 program for the remainder of his tenancy.

43. In February 2007, Plaintiff Sims received a collections letter from Pinnacle Corporate Services, Inc. Upon information and belief, Defendants turned Plaintiff Sims over to Pinnacle Corporate Services, Inc. for the unpaid \$15.00 per month improperly demanded by Defendants.

44. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The sewage problems that existed in the common areas throughout the apartments were particularly severe near Plaintiff Sims' apartment. There was a horrible smell inside and outside the premises due to sewage backing up outside of his window.
- b) The ceiling leaked in the bathroom and the hallway. The tiles in the hallway sagged due to the leak.
- c) A brown, thick substance that smelled like human waste backed up in the bathroom two to three times per week. The shower in Plaintiff Sims' apartment did not drain properly. The toilet regularly backed up and overflowed, creating unsanitary conditions.
- d) The apartment was infested with roaches.

VAUGHN SMITH

45. Plaintiff Smith entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3232-D S. Holden Road, Greensboro, North Carolina, from December 2005 to November 2006. The contract rent for the unit was \$585.00 per month throughout his tenancy.

46. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The refrigerator stopped working the first weekend after the Plaintiff Smith moved in. The refrigerator was replaced with a filthy refrigerator containing old food which only worked for one month.
- b) The bathroom sink did not drain properly.
- c) The hot water in one of the bathroom sinks ran continuously for three months.
- d) The sink in the kitchen backed up with debris multiple times, and Plaintiff Smith was unable to use the garbage disposal and dishwasher due to the back up.
- e) The toilet in one of the bathrooms overflowed, flooding the bathroom and was unusable. The toilet in the other bathroom worked intermittently.
- f) The bathtub in one of the bathrooms could not be used because it would not drain.
- g) There was a hole in the linoleum in the Plaintiff's bathroom which the Defendants "repaired" by covering it with a piece of carpet.

- h) The air conditioner did not work for most of the 2006 summer. It did not properly cool the apartment, and then the malfunctioning air conditioner flooded the hallway.
- i) Plaintiff Smith's electric bill was extremely high during this time because the air conditioner had to be run all the time in order for it to cool the apartment at all.
- j) The heating system in the unit did not properly heat the unit.
- k) The apartment was infested with roaches.
- l) The hallway in the apartment was stained brown from a leak. Water leaked from the ceiling in the living room onto the Plaintiff's coffee table.

PRIVATE PAY PLAINTIFFS

47. The following Plaintiffs did not receive Section 8 rental assistance:

PLAINTIFF JOSEFINA CARRIZALES

48. On or about January, 2004, Plaintiff Carrizales entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3230-A S. Holden Road, Greensboro, North Carolina. The original lease term was for one year. Plaintiff Carrizales and Defendants renewed their lease agreement with the term scheduled to expire on April 30, 2007. During Plaintiff Carrizales' tenancy, the monthly rent for the premises during the initial lease was \$475.00 per month and increased to \$505.00 per month under the second lease. Plaintiff Carrizales vacated the premises in January 2007.

49. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The sewage problems that existed in the common areas throughout the apartments were particularly severe near Plaintiff Carrizales' apartment. There was a horrible smell inside and outside the premises.
- b) Within one month of moving into the premises, the bathtub and the toilet in the only bathroom on the premises backed up. The bathtub was covered with a brown, thick substance and the toilet and sink were covered in the same brown, thick substance. The "sludge" smelled like raw sewage. On the same day, a stream of water filled with bits of toilet paper flowed out of a utility room located in the breezeway. The "toilet paper" water smelled like human waste and ran like a faucet that was left running. The stream of water ran past the door to the premises and into the grassy area leading to the common area adjacent to the playground.
- c) The plumbing problems at the premises continued throughout Plaintiff Carrizales's tenancy at the premises. Throughout the remainder of her tenancy at the premises, the bathtub, sink and toilet in the bathroom inside the premises backed up a brown

- substance that smelled like human waste approximately 2-3 times per month. Each time the brown sewage “sludge” backed up inside the premises, the toilet paper water flowed in the breezeway of building 3230 in front of the premises.
- d) In December 2006, the entire 3230 building was placed under a 48-hour condemnation due to severe plumbing problems.
 - e) The apartment was infested with roaches and spiders.
 - f) The dishwasher and the garbage disposal at the premises did not work. When Plaintiff Carrizales used the garbage disposal or dishwasher, food particles and dirty water from the garbage disposal and dishwasher would back-up in the bathroom sink and toilet.
 - g) The pipes underneath the kitchen sink and the bathroom sink leaked.
 - h) The faucet in the bathtub leaked.
 - i) The air conditioning vent in the hallway of the premises leaked, causing the ceiling tile in the hallway to become saturated. At times, the leak was so severe that water dripped through the tile and soaked the carpet in the hallway.
 - j) On or about June 2004, the air conditioner went out and Plaintiff Carrizales was without air conditioning for approximately two weeks.
 - k) On or about the summer of 2006, Plaintiff Carrizales saw a mouse in the kitchen of the premises. Plaintiff Carrizales continued to see evidence of rodents at the premises for the remainder of her tenancy.
 - l) Several windows in the premises did not lock.
 - m) The lock on the exterior door to the premises was defective and would not always lock, leaving the unit unsecured.

TONI FLOWERS AND MAURICE LEAVELL

50. On or about August 7, 2006, Plaintiffs Toni Flowers and Maurice Leavell entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3230-D South Holden Road, Greensboro, North Carolina. The original lease term was for one year. The contract rent for the premises was \$505.00 per month throughout their tenancy.

51. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) There was no smoke detector.

- b) Upon moving in, the stove did not have any electric surface burners attached. Defendants supplied Plaintiffs Flowers and Leavell with 3 surface burners. Defendants did not supply Plaintiffs Flowers and Leavell with the fourth surface burner until on or about the end of November 2006.
- c) On or about Friday, August 11, 2006, the bathtub and the toilet in the only bathroom at the premises backed up with a brown, thick substance that smelled like human waste. The bathtub was filled halfway with a brown, thick substance and the toilet was filled to the rim with the same brown, thick substance. Also, on or about Friday, August 11, 2006, Plaintiffs Flowers and Leavell observed a stream of water filled with bits of toilet paper flowing out of a utility room located in the breezeway next to the premises. The water had a foul odor and ran past the door to the premises and into the grassy area leading to the common area adjacent to the playground. Plaintiffs Flowers and Leavell could not occupy the premises for three days because of the noxious smell and because they could not use the bathroom.
- d) On or about August 14, 2006, Defendants made repairs to the plumbing so that the backup drained from the tub and toilet and the foul-smelling water stopped running out of the utility room, but they failed to clean up any of the resulting unsanitary debris.
- e) Approximately 3 or 4 times per week for the duration of their tenancy, Plaintiffs Flowers and Leavell would hear a “bubbling” sound in the toilet and the bathroom and the premises would fill with the same human waste smell experienced on or about the weekend of August 11, 2006. The smell was so foul that Plaintiffs Flowers and Leavell went through approximately one bottle of bleach every 2 weeks for the duration of their tenancy.
- f) On multiple occasions during Plaintiffs Flowers and Leavell’s tenancy, toilet paper-filled water overflowed from the utility room in the breezeway next to the premises.
- g) On or about September 1, 2006, Plaintiff Leavell stepped in a brown, sludgy substance in the common area that smelled like human waste. Plaintiff Leavell was unable to clean his shoes thoroughly and had to dispose of them.
- h) Plaintiffs Flowers and Leavell frequently were unable to open the windows at the premises due to the foul, human waste odors permeating from the breezeway next to the premises and the common area next to the playground.
- i) During Plaintiffs Flowers and Leavell entire tenancy, plumbing problems continued inside the premises, in the utility room next to the premises, and in the common area next to the playground
- j) On December 24, 2006, following the Greensboro Local Ordinance Enforcement Office’s 48-hour condemnation of the 3230 building at South Pointe Apartments, Plaintiffs Flowers and Leavell vacated the premises. Upon turning in their keys,

Defendants notified them that they were bound by their lease and would have to continue to pay rent at the premises.

MAKITA GORDON AND BRANDON RITCH

52. On or about April 28, 2006, Plaintiffs Makita Gordon and Brandon Ritch entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3230-L S. Holden Road, Greensboro, North Carolina. The original lease term was to expire April 30, 2007. The contract rent for the premises was \$505.00 per month throughout their tenancy.

53. Plaintiffs Gordon and Ritch paid their rent through October 31, 2006, and then vacated the premises.

54. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) Only one sink in the bathroom drained. The bathtub took approximately fourteen hours to drain. The plumbing would also back up in the bathroom sink and shower drain, creating a foul sewage odor that made the bathroom unusable.
- b) A portion of the living room ceiling leaked and eventually collapsed in or about the first week of June 2006.
- c) Defendants plastered the ceiling where it had collapsed, but did not fix the source of the leak and the ceiling continued to leak. The leaking was usually worse the day after a rain event.
- d) The water soaked the carpet in the living room making that room uninhabitable.
- e) The water that leaked through the roof also caused the appliances in the kitchen to short-out. To remedy this problem, the power to the kitchen had to be shut off so that repairs could be made. The Plaintiffs were without power in the kitchen for approximately one week.
- f) Because of the leaking water, the premises became infested with mold and mildew, the ceiling turned black with mold, and there was an overwhelming foul odor that permeated the entire residence.
- g) Defendants attempted to remedy the odor and moisture problems resulting from the leak by having the carpet cleaned. However, Defendants failed to repair the leak and did not remedy the moisture or odor. The leak continued, so the smell and mold returned.
- h) When the ceiling broke and the water began flowing through the ceiling and onto the living room couch, Plaintiff Gordon's college course books were destroyed, requiring her to purchase new books for approximately \$300.00.

- i) The premises became filled with insects, including cockroaches, gnats, and spiders. Plaintiffs' use of the residence was restricted to the bedroom. They stored their furniture in the dining room to protect it from water damage.
- j) In or about the first week of October 2006, Defendants tore open a two foot by three foot hole in the ceiling to attempt to locate the problem. This action worsened the leaking.
- k) In or about October 2006, Plaintiffs Gordon and Ritch vacated the premises because the conditions of the premises became completely uninhabitable due to Defendants failure to make necessary repairs.

PLAINTIFF JOYCE GRAVES

55. On or about October 1, 2005, Plaintiff Joyce Graves entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3244-C S. Holden Road, Greensboro, North Carolina. The original lease term was for one year. Plaintiff Graves and Defendants renewed multiple periodic leases with the last term expiring on March 31, 2007. The contract rent for the premises was \$585.00 per month throughout her tenancy.

56. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The dishwasher did not work properly. It did not clean Plaintiff Graves' dishes and she had to wash all of her dishes by hand.
- b) In or about January 2006, the pipe under the kitchen sink began leaking and the bathroom sink would not drain. After Defendants failed to respond to her multiple requests for repairs, in or about March 2006, Plaintiff Graves' son repaired the kitchen and bathroom sinks.
- c) There was a problem with severe moisture in the premises which caused a severe mold infestation and foul odors.
- d) In or about July 2006, the air conditioning vents inside the premises started leaking.
- e) The carpet covering the hallway at the premises became soaked and smelled of mold and mildew.
- f) In or about July 2006, the window in the living room at the premises cracked.
- g) On or about January 2007, Defendants finally replaced the cracked window at the premises. Defendants replaced the glass window with a plastic window. Defendants did not caulk or seal the window.

- h) Beginning in or about November 2006, the lock on the front door did not work properly.
- i) In February 2007, Plaintiff Graves' son saw a rat inside the premises. Plaintiff Graves found a hole under a counter in the kitchen where the rat appeared to be entering the premises.

ALCIDES HERRERA

57. Plaintiff Herrera entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3246-A S. Holden Road, Greensboro, North Carolina in March 2006. Plaintiff Herrera and his family lived in 3246-A S. Holden Road for only three weeks. Plaintiff Herrera and his family were moved at his request to a new apartment due to criminal activity in the 3246 building. Plaintiff Herrera moved into 3240-E S. Holden Road, Greensboro, North Carolina in approximately mid-March 2006. The contract rent for all apartments occupied by Plaintiff Herrera throughout his tenancy was \$525.00 per month.

58. Plaintiff Herrera lived in 3240-E with his wife and three young children. Plaintiff Herrera's third child, Joanna Herrera, was born during the tenancy. Joanna was born with sickle cell anemia.

59. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The two sinks in the main bathroom leaked continuously. Neither sink would drain properly.
- b) The dishwasher backed up two to three times a week. Plaintiff Herrera and his family stopped using the dishwasher because it did not work properly and backed up with almost every use.
- c) The shower leaked continuously.
- d) The garbage disposal did not work properly. If Plaintiff Herrera, or his family, used the garbage disposal, it would emit a horrible odor.
- e) In June 2006, water started leaking from the air conditioning unit, soiling the carpet.
- f) The ceiling leaked in the hallway.
- g) The multiple leaks created a moisture problem that led to mold forming on the walls. Plaintiff Herrera and his family were not able to spend much time in the apartment.
- h) Plaintiff Herrera's apartment was infested with roaches and mice.
- i) The moisture problem in the apartment was extremely detrimental to Plaintiff Herrera's infant daughter, Joanna. The infant was taken to the hospital with breathing

problems. Plaintiff Herrera notified Defendants that the conditions in the apartment were hazardous to Joanna's health and that he and his family needed to move.

- j) Plaintiff Herrera and Defendants discussed transferring to another property owned and managed by Defendants, but the parties were unable to reach an agreement. Plaintiff Herrera moved out in or about August 2006.

MARTHA MARTINEZ-HERNANDEZ

60. Plaintiff Martha Martinez-Hernandez entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3542-C S. Holden Road, Greensboro, North Carolina in or about January 2004. Plaintiff lived in 3532-C until on or about December 9, 2006. The contract rent for 3532-C was \$560.00 per month for 2004; \$575.00 per month for 2005; and \$575.00 per month for 2006.

61. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The kitchen sink in Plaintiff's apartment rarely, if ever, worked properly. At least once per week, and sometimes several times per week, a brown, thick substance that smelled like human waste backed up in the kitchen in the premises.
- b) There was a frequent, if not constant, leak under the kitchen sink.
- c) The garbage disposal rarely, if ever, worked properly. Frequently, if not always, black water backed up into the sink when the garbage disposal was used.
- d) The bathroom sink in Plaintiff's apartment rarely, if ever, worked properly. There was a frequent, if not constant, leak under the bathroom sink. There was water coming from the drain that had a yellowish color and the odor of urine. A brown, thick substance that smelled like human waste backed up in the bathrooms.
- e) The dishwasher rarely, if ever, worked.
- f) The ceiling in the Plaintiff's bedroom would frequently, if not always, leak whenever it rained.
- g) The sink in the bathroom was not properly secured to the wall. In or about September 2006, the sink fell on Plaintiff's daughter, Citlaly Martinez-Campos. It hit her chest and she had to be taken to the hospital for treatment.
- h) The windows in the bedroom had to be covered with plastic to stop a draft. The windows in the bedroom rarely, if ever, worked properly. The windows did not close all the way and could not be locked.

- i) The apartment was infested with roaches. There were rats and mice in the apartment. There was a hole in the bathroom where the rats would come in and out. The rats and mice would leave feces and urine throughout the apartment.

KENNETH MONTGOMERY

62. Plaintiff Montgomery entered into a lease agreement for an apartment at South Pointe at the end of January 2006. Plaintiff Montgomery lived in 3250-A S. Holden Road, Greensboro, North Carolina, until approximately February 2007. The contract rent for 3250-A was \$525.00.

63. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) The toilets in both bathrooms did not flush properly. Plaintiff Montgomery had to reach into the back of the toilets to flush them manually. Defendants' maintenance staff replaced a part in the toilets, but it failed to correct the problem.
- b) There was a ceiling leak in Plaintiff Montgomery's kitchen above the refrigerator and in the hallway. Water also dripped from the duct work.
- c) In October 2006, there was a bat in the bedroom on the window sill.
- d) Plaintiff Montgomery's heating bill was irregularly high for two months. Plaintiff reported the problem to the office. Defendants subsequently repaired the switch on the heater.
- e) The apartment was infested with roaches.

ACOREA SIMS

64. Plaintiff Acorea Sims entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3242-E S. Holden Road, Greensboro, North Carolina in approximately May 2005. Plaintiff Acorea Sims lived in 3242-E S. Holden Road, Greensboro, North Carolina until approximately the end of March 2007. The contract rent for 3242-E was \$600.00 per month throughout his tenancy.

65. In addition to the conditions described above, numerous defects existed in the premises, including but not limited to the following:

- a) There were ceiling leaks during most of the tenancy. The leak in the hallway caused the tiles to swell with water. The light fixture in the hallway fell and was left hanging by the wires for a year and a half.
- b) The dishwasher would back up with a brown, thick substance that smelled like human waste when it was used.

- c) The air conditioner rarely worked in 2005. In 2006, the air conditioner worked intermittently.
- d) The bathtub did not drain properly.
- e) The heating system did not work at all during the 2005-2006 winter.
- f) There was mold around the inside of the windows in the premises.
- g) The apartment was infested with roaches.

CHAD WADE AND JAMES WILLIAMS

66. Plaintiffs Wade and Williams and Defendants entered into a lease with Defendants for the premises in South Pointe Apartments, located at 3250-G S. Holden Road, Greensboro, North Carolina during the summer of 2001. Due to habitability issues, Plaintiffs Wade and Williams moved to 3248-H S. Holden Road, Greensboro, North Carolina in July 2005. In June 2006, Plaintiffs Wade and Williams moved a second time due to habitability issues at the premises to 3244-H S. Holden Road, Greensboro, North Carolina. They vacated the apartment in December 2006. The contract rent for all of the apartments was \$585.00 per month throughout their tenancy.

67. In addition to the conditions described above, numerous defects existed in the premises at 3250-G, including but not limited to the following:

- a) The dishwasher did not work.
- b) The back bathroom and bedroom did not have working electricity for at least six months.
- c) The oven in the premises was inoperable.
- d) The bathtub/shower never drained properly.
- e) The air conditioning did not work properly.
- f) A colony of bats resided in the breezeway of the building.
- g) In approximately June 2004, a ceiling tile in the hallway of 3250-G fell and the hallway light was left dangling. Defendants failed to repair the dangling light for the duration of Plaintiffs Wade and Williams' tenancy.
- h) One evening in July 2004, Plaintiffs Wade and Williams came home to find a bat flying back and forth inside the premises. Plaintiffs Wade and Williams notified Defendants and left the premises. Defendants waited three days before removing the

bat from the premises. Plaintiffs Wade and Williams were unable to return to the premises during this time.

- i) On the first Saturday night following their return to the premises, another bat entered the apartment, but Plaintiffs Wade and Williams were able to get this second bat out of the unit.
- j) One week later, near the end of July 2004, another bat was found in the apartment. A South Pointe manager, Wayne Roosevelt, allowed Plaintiffs Wade and Williams to move to another apartment, 3248-H South Holden Road.

68. During Plaintiff Wade and William's tenancy at 3248-H, the defective conditions included but were not limited to the following:

- a) The dishwasher did not work.
- b) The ceiling in the back bedroom leaked severely because of problems with the roof.
- c) In April of 2006, the ceiling collapsed in the back bedroom and water gushed into the apartment through a large hole in ceiling. The ceiling was not repaired for approximately three weeks and Plaintiffs Wade and Williams lived in the premises during this time. The water and debris from the collapsed ceiling caused damage to several items of Plaintiff Williams' personal property, including but not limited to, jeans, shirts, three pairs of shoes, and one pair of boots.

69. In approximately June 2006, the Defendants moved Plaintiffs Wade and Williams to another South Pointe apartment located at 3244-H. Defendants made multiple promises to make necessary repairs at 3244-H, but never fulfilled those promises.

70. During Plaintiff Wade and William's tenancy at 3244-H, the defective conditions included but were not limited to the following:

- a) The front bathroom toilet never worked.
- b) In the fall 2006, the other toilet in the apartment became inoperable and was not repaired for over a month. During this time there was no working toilet at the premises, the Plaintiffs were unable to spend every night at the apartment.
- c) The dishwasher was never operable.
- d) The apartment was infested with roaches. The roach infestation caused damage to several items of the Plaintiffs' personal property, specifically a Dell laptop computer, a twenty-seven inch television, a mini-refrigerator, mattresses, one sofa, a loveseat, and two upholstered chairs.

FIRST CLAIM FOR RELIEF
VIOLATION OF IMPLIED WARRANTY OF HABITABILITY

71. Paragraphs one through seventy are realleged and incorporated as if fully set forth herein.

72. The premises occupied by all Plaintiffs and rented from the Defendants were subject to the Residential Rental Agreements Act, N.C. Gen. Stat. § 42-38 *et seq.* At all relevant times, the Defendants had actual or apparent authority to perform the landlord's obligations required by the Residential Rental Agreements Act pursuant to N.C. Gen. Stat. § 42-42.

73. With respect to all of the Plaintiffs, the Defendants have failed to comply with the applicable building and housing codes, failed to make all repairs and do whatever was necessary to put and keep the Plaintiffs' respective premises in a fit and habitable condition, failed to keep the common areas in a safe condition, and failed to maintain in good and safe working order and to promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning and other facilities and appliances in violation of N.C. Gen. Stat. § 42-42 and in violation of Chapter 11 of the Greensboro Local Ordinances.

74. Defendants have breached the implied warranty of habitability contained in the Residential Rental Agreements Act.

75. Plaintiffs have suffered damages as a result of the Defendants' failure to comply with the provisions of N.C. Gen. Stat. § 42-42.

76. Plaintiffs are entitled to recover damages in the form of a rent abatement calculated as the difference between the fair rental value of the premises as warranted (i.e., in full compliance with N.C. Gen. Stat. § 42-42) and the fair rental value of the premises in their unfit condition for the period during which they were in a defective or substandard condition, plus any other actual or consequential damages to be proven at trial.

SECOND CLAIM FOR RELIEF
BREACH OF THE COVENANT OF QUIET ENJOYMENT

77. Paragraphs one through seventy-six are realleged and incorporated as if fully set forth herein.

78. The Plaintiffs were tenants in lawful possession of the premises with rights to undisturbed possession of the leasehold. The actions of the Defendants, as described herein, constitute a breach of the common law covenant of quiet enjoyment.

79. As a result of Defendants' breach of Plaintiffs' rights to quiet enjoyment of the premises, Plaintiffs have been harmed and are entitled to damages in an amount to be proven at trial.

THIRD CLAIM FOR RELIEF
UNFAIR AND DECEPTIVE TRADE PRACTICES

80. Paragraphs one through seventy-nine are realleged and incorporated as if fully set forth herein.

81. The Defendants' rental of the premises to the Plaintiffs was conduct that was "in or affecting commerce" within the meaning of N.C. Gen. Stat. § 75-1.1.

82. Defendants' actions constitute an inequitable assertion of power and position against Plaintiffs and offend the established public policy of North Carolina which mandates that landlords shall only lease residential premises that are in a fit and habitable condition.

83. Defendants' actions and omissions, as described above, were willful, wanton, deliberate, intentional, and malicious, and are by their very nature unfair, unethical, deceptive, and illegal practices in violation of N.C. Gen. Stat. § 75-1.1.

84. The Plaintiffs' have suffered damages as a result of the Defendants' violations of N.C. Gen. Stat. § 75-1.1 et seq.

85. The Plaintiffs are entitled to actual damages, in an amount to be proven at trial, as well as treble the amount of damages awarded at trial, and Plaintiffs' private attorney should be awarded attorney's fees pursuant to N.C. Gen. Stat. § 75-16.

FOURTH CLAIM FOR RELIEF
UNFAIR DEBT COLLECTION

86. Paragraphs one through eighty-five are realleged and incorporated as if fully set forth herein.

87. Plaintiffs are "consumers" and Defendants are "debt collectors" as defined by N.C. Gen. Stat. § 75-50 (1) and (3). Amounts owed to Defendants by Plaintiffs are debts as defined by N.C. Gen. Stat. § 75-50 (2).

88. Defendants continued to demand and collect the contract rent from the Plaintiffs and GHA when they knew or should have known that the unfit and uninhabitable premises were worth substantially less, and that therefore the full rent should not have been owed in violation of N.C. Gen. Stat. § 75-54(4).

89. The natural consequences of Defendants' conduct was to repress, harass, or abuse Plaintiffs in connection with the attempt to collect a debt, in violation of N.C. Gen. Stat. § 75-52.

90. The above-described actions of the Defendants constitute unfair debt collection practices within the meaning of N.C. Gen. Stat. § 75-50, et seq.

91. Plaintiffs are entitled to recover a statutory penalty of up to \$2,000.00 for each separate instance of Defendants' unfair debt collection practices pursuant to N.C. Gen. Stat. § 75-56, as well as actual damages in an amount to be proven at trial. Plaintiffs' private attorney should be awarded attorney's fees pursuant to N.C. Gen. Stat. § 75-16.1.

FIFTH CLAIM FOR RELIEF
NEGLIGENCE

92. Paragraphs one through ninety-one are realleged and incorporated as if fully set forth herein.

93. Defendants owed a duty of reasonable care to Plaintiffs to maintain the leased premises in a safe condition and according to the applicable standards of care.

94. Defendants breached their duty of reasonable care to Plaintiffs through the conduct described in this Complaint and by failing to maintain the leased premises in a safe condition.

95. Defendants' negligent conduct was willful and wanton within the meaning of N.C. Gen. Stat. § 1D-5.

96. As a proximate and foreseeable result of Defendants' breach of their duty of reasonable care, Plaintiffs have been harmed and are entitled to actual, consequential, and punitive damages in an amount in excess of \$10,000.00 to be proven at trial.

SIXTH CLAIM FOR RELIEF
NEGLIGENCE PER SE

97. Paragraphs one through ninety-six are realleged and incorporated as if fully set forth herein.

98. Defendants owed a duty to Plaintiffs to follow the standards of conduct enacted as laws for the safety of the public.

99. Defendants breached this duty by failing to maintain the premises in compliance with Chapter 11 of the Greensboro Local Ordinances.

100. Defendants' violations of Chapter 11 of the Greensboro Local Ordinances constitute negligence per se.

101. Defendants' negligence per se was willful and wanton within the meaning of N.C. Gen. Stat. § 1D-5.

102. As a proximate and foreseeable result of Defendants' negligence per se, Plaintiffs have been harmed and are entitled to actual, consequential, and punitive damages in an amount in excess of \$10,000.00 to be proven at trial.

SEVENTH CLAIM FOR RELIEF
NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

103. Paragraphs one through one hundred two are realleged and incorporated as if fully set forth herein.

104. Defendants' negligent failure to maintain the premises in a safe condition and in conformity with Chapter 11 of the Greensboro Local Ordinances caused Plaintiffs reasonably to fear for the health and safety of themselves, their children, and their guests.

105. Such fears caused Plaintiffs severe emotional distress.

106. It was reasonably foreseeable that Defendants' negligent conduct would cause the severe emotional distress suffered by Plaintiffs and in fact did cause severe emotional distress to Plaintiffs.

107. As a proximate and foreseeable result of the severe emotional distress caused by Defendants' negligence and negligence per se, Plaintiffs have been harmed and are entitled to actual, consequential, and punitive damages in an amount in excess of \$10,000.00 to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray the Court:

1. Pursuant to Plaintiffs' First Claim for violation of N.C. Gen. Stat. § 42-42, Plaintiffs be awarded actual and consequential damages in an amount to be determined at trial;

2. Pursuant to Plaintiffs' Second Claim for Breach of the Implied Covenant of Quiet Enjoyment, Plaintiffs be awarded actual and consequential damages in an amount to be determined at trial;

3. Pursuant to Plaintiffs' Third Claim for Unfair and Deceptive Trade Practices, Plaintiffs be awarded their damages resulting from Defendants' unlawful acts, in an amount to be determined at trial, and that said actual damages be trebled pursuant to N.C. Gen. Stat. § 75-16; and that Plaintiffs' counsel, Joel T. Alexander, be awarded attorney's fees;

4. Pursuant to Plaintiffs' Fourth Claim for Unfair Debt Collection Practices, Plaintiffs be awarded the statutory penalty of \$2,000.00 for each violation pursuant to N.C. Gen. Stat. § 75-56; and that Plaintiffs' counsel, Joel T. Alexander, be awarded attorney's fees;

5. Pursuant to Plaintiffs' Fifth Claim for Negligence, Plaintiffs be awarded actual, consequential, and punitive damages in an amount to be proven at trial;

6. Pursuant to Plaintiffs' Sixth Claim for Negligence Per Se, Plaintiffs be awarded actual, consequential, and punitive damages in an amount to be proven at trial;

7. Pursuant to Plaintiffs' Seventh Claim for Negligent Infliction of Emotional Distress, Plaintiffs be awarded actual, consequential, and punitive damages in an amount to be proven at trial;

8. **A jury trial be held on all issues so triable;**

9. The costs of this action be taxed against Defendants; and,

10. For such other and further relief as the Court deems just and proper.

This the 23rd day of January, 2008.

LEGAL AID OF NORTH CAROLINA, INC.

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