

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR SEMINOLE COUNTY,
FLORIDA

CASE NO.: 2023-CA-003292

JAY ALAN DURRANCE on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

CONCORD MANAGEMENT LTD and
WATERVUE PARTNERS, LLC,

Defendants.

**DEFENDANTS, CONCORD MANAGEMENT LTD AND WATERVUE PARTNERS,
LLC'S ANSWER AND AFFIRMATIVE DEFENSES TO
PLAINTIFF'S AMENDED COMPLAINT**

Defendants, CONCORD MANAGEMENT LTD and WATERVUE PARTNERS, LLC
("Defendants"), by and through its undersigned counsel, hereby files its Answer and Affirmative
Defenses in response to JAY ALAN DURRANCE'S ("PLAINTIFF") Amended Complaint as
follows:

INTRODUCTION

1. Admitted for jurisdictional purposes only. Otherwise, denied Plaintiff is entitled to said relief.
2. Admitted for jurisdictional purposes only. All remaining allegations contained within Paragraph 2 are denied and strict proof thereof is hereby demanded.
3. Admitted for jurisdictional purposes only. All remaining allegations contained within Paragraph 3 are denied and strict proof thereof is hereby demanded.

4. Admitted the referenced Exhibits A and B and Florida Statute §83.49 speaks for themselves and denied as to any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 4 are denied and strict proof thereof is hereby demanded.

5. Admitted Florida Statute §83.49 speaks for itself. All remaining allegations contained within Paragraph 5 are denied and strict proof thereof is hereby demanded.

6. The allegations contained within Paragraph 6 are denied and strict proof thereof is hereby demanded.

7. The allegations contained within Paragraph 7 are denied and strict proof thereof is hereby demanded.

JURISDICTION

8. Admitted for jurisdictional purposes only. Otherwise, denied Plaintiff is entitled to said relief.

9. Admitted Florida Statute §83.54 and Florida Statute §559.77 speaks for themselves and denied as to any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 9 are denied and strict proof thereof is hereby demanded.

PARTIES

10. Admitted for jurisdictional purposes only. All remaining allegations contained within Paragraph 10 are denied and strict proof thereof is hereby demanded.

11. Admitted for jurisdictional purposes only. All remaining allegations contained within Paragraph 11 are denied and strict proof thereof is hereby demanded.

12. Admitted for jurisdictional purposes only. All remaining allegations contained within Paragraph 12 are denied and strict proof thereof is hereby demanded.

FACTUAL ALLEGATIONS

13. Admitted the subject lease referenced as Exhibit A is a document which speaks for itself. All remaining allegations contained within Paragraph 13 are denied and strict proof thereof is hereby demanded.

14. Admitted the subject lease referenced as Exhibit A is a document which speaks for itself. All remaining allegations contained within Paragraph 14 are denied and strict proof thereof is hereby demanded.

15. Admitted the subject lease referenced as Exhibit A is a document which speaks for itself. All remaining allegations contained within Paragraph 15 are denied and strict proof thereof is hereby demanded.

16. Admitted the subject lease referenced as Exhibit A is a document which speaks for itself. All remaining allegations contained within Paragraph 16 are denied and strict proof thereof is hereby demanded.

17. In response to Paragraph 17, admitted that Plaintiff's lease was terminated early. All remaining allegations contained within Paragraph 17 are denied and strict proof thereof is hereby demanded.

18. Admitted the Deposit Disposition referenced as Exhibit B is a document which speaks for itself. All remaining allegations contained within Paragraph 18 are denied and strict proof thereof is hereby demanded.

19. Admitted the Deposit Disposition referenced as Exhibit B is a document which speaks for itself. All remaining allegations contained within Paragraph 19 are denied and strict proof thereof is hereby demanded.

20. Admitted the Deposit Disposition referenced as Exhibit B is a document which speaks for itself. All remaining allegations contained within Paragraph 20 are denied and strict proof thereof is hereby demanded.

21. Admitted the Deposit Disposition referenced as Exhibit B is a document which speaks for itself. All remaining allegations contained within Paragraph 21 are denied and strict proof thereof is hereby demanded.

22. Admitted the Deposit Disposition referenced as Exhibit B is a document which speaks for itself. All remaining allegations contained within Paragraph 22 are denied and strict proof thereof is hereby demanded.

23. The allegations contained within Paragraph 23 are denied and strict proof thereof is hereby demanded.

24. Admitted the Correspondence referenced as Exhibit C is a document which speaks for itself. All remaining allegations contained within Paragraph 24 are denied and strict proof thereof is hereby demanded.

25. Admitted the Correspondence referenced as Exhibit D is a document which speaks for itself. All remaining allegations contained within Paragraph 25 are denied and strict proof thereof is hereby demanded.

26. Admitted the Correspondences referenced as Exhibits E, F, and G are documents which speaks for itself. All remaining allegations contained within Paragraph 26 are denied and strict proof thereof is hereby demanded.

CLASS REPRESENTING ALLEGATIONS

27. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all

remaining allegations contained within Paragraph 27 are denied and strict proof thereof is hereby demanded.

28. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 28 are denied and strict proof thereof is hereby demanded.

29. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 29 are denied and strict proof thereof is hereby demanded.

30. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 30 are denied and strict proof thereof is hereby demanded.

31. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 31 are denied and strict proof thereof is hereby demanded.

32. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 32 are denied and strict proof thereof is hereby demanded.

33. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 33 are denied and strict proof thereof is hereby demanded.

34. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 34 are denied and strict proof thereof is hereby demanded.

35. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 35 are denied and strict proof thereof is hereby demanded.

36. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 36 are denied and strict proof thereof is hereby demanded.

37. Admitted that Plaintiff purports to bring this action on behalf of himself and a putative class. Defendants deny that this action meets the requirements of a class action and all remaining allegations contained within Paragraph 37 are denied and strict proof thereof is hereby demanded.

**COUNT I – VIOLATION OF THE FLORIDA RESIDENTIAL LANDLORD
TENANT ACT, FLA STAT §83.40 – SECURITY DEPOSIT**

37. Defendants readopt and reincorporate its answers in the foregoing paragraphs as though the same were fully set forth herein.

38. Paragraph 38 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Residential Landlord Tenant Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 38 are denied and strict proof thereof is hereby demanded.

39. Paragraph 39 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Residential Landlord Tenant Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 39 are denied and strict proof thereof is hereby demanded.

40. Paragraph 40 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Residential Landlord Tenant Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 40 are denied and strict proof thereof is hereby demanded.

41. Paragraph 41 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Residential Landlord Tenant Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 41 are denied and strict proof thereof is hereby demanded.

42. Paragraph 42 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Residential Landlord Tenant Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 42 are denied and strict proof thereof is hereby demanded.

43. Paragraph 43 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Residential Landlord Tenant Act speaks

for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 43 are denied and strict proof thereof is hereby demanded.

44. The allegations contained within Paragraph 44 are denied and strict proof thereof is hereby demanded.

**COUNT II – VIOLATION OF FLORIDA CONSUMER PROTECTION
PRACTICES ACT, FLA STAT §559.55**

45. Defendants readopt and reincorporate its answers in the foregoing paragraphs as though the same were fully set forth herein.

46. Paragraph 46 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Consumer Protection Practices Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 46 are denied and strict proof thereof is hereby demanded.

47. Paragraph 47 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Consumer Protection Practices Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 47 are denied and strict proof thereof is hereby demanded.

48. Paragraph 48 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Consumer Protection Practices Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 48 are denied and strict proof thereof is hereby demanded.

49. Paragraph 49 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Consumer Protection Practices Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 49 are denied and strict proof thereof is hereby demanded.

50. Paragraph 50 states a legal conclusion, to which no response is required. To the extent a response is required, Defendants state the Florida Consumer Protection Practices Act speaks for itself and denies any allegations or characterizations contrary thereto. All remaining allegations contained within Paragraph 50 are denied and strict proof thereof is hereby demanded.

51. The allegations contained within Paragraph 51 are denied and strict proof thereof is hereby demanded.

52. The allegations contained within Paragraph 52 are denied and strict proof thereof is hereby demanded.

PRAYER FOR RELIEF

Defendants are not obligated to provide a response to Plaintiff's Prayer for Relief, but to the extent a response is required, Defendants deny same.

DEMAND FOR JURY TRIAL

Defendants demand a trial by jury on all issues so triable.

AFFIRMATIVE DEFENSES

First Affirmative Defense

Defendants affirmatively assert compliance with Chapter 83, *et seq.*, Florida Statutes. Specifically, a notice of intent to make a claim on the security deposit was mailed via certified mail to the Plaintiff's forwarding address.

Second Affirmative Defense

Defendants affirmatively assert that they provided Plaintiff a written Notice of Intent to Make a Claim on Security Deposit via certified mail.

Third Affirmative Defense

Defendants affirmatively assert compliance with Plaintiff's lease agreement.

Fourth Affirmative Defense

Defendants affirmatively assert that Plaintiff's claims are barred by the doctrine of unclean hands. Specifically, Plaintiff read and acknowledged the terms of the executed lease agreement and occupied the subject property until on or about January 5, 2022. Plaintiff frivolously seeks to absolve themselves of any further obligations under the lease agreement.

Fifth Affirmative Defense

Defendants affirmatively assert that Plaintiff's claims are barred to the extent they have failed to mitigate or otherwise take steps to lessen their alleged damages.

Sixth Affirmative Defense

Defendants affirmatively assert that Plaintiff's claims are barred by the doctrine of waiver. Specifically, Plaintiff read and signed the lease agreement and was expressly aware of the provisions contained therein.

Seventh Affirmative Defense

Defendants affirmatively assert that Plaintiff ratified and confirmed the terms of the lease agreement and accepted the benefits thereof.

Eighth Affirmative Defense

Defendants affirmatively assert that Plaintiff's claims are barred to the extent they are subject to setoff.

Ninth Affirmative Defense

Defendants affirmatively assert that with respect to each and every allegation of the Amended Complaint as they relate to the request for class certification, class certification is not appropriate because there is a lack of:

- a. numerosity;
- b. commonality;

- c. typicality;
- d. a reasonable ascertainable class;
- e. adequate representation;
- f. appropriateness of relief to the putative class as a whole;
- g. predominance of common questions over questions affecting individual class members.
- h. substantial benefit to the litigants and to the court;
- i. superiority of a class action to other available methods for fair and efficient adjudication; and
- j. impracticability of joinder of all putative class members.

Tenth Affirmative Defense

Defendants affirmatively assert that Plaintiff does not sufficiently plead the class action requirements under the Florida Rules of Civil Procedure.

Eleventh Affirmative Defense

Defendants affirmatively assert that Plaintiff's purported injuries are not uniform and accordingly, not appropriate for class disposition. Specifically, Plaintiff alleges in their Amended Complaint that Plaintiff suffers specific injuries and damages not shared by the putative class.

Twelfth Affirmative Defense

Defendants affirmatively assert that Plaintiff's claims fail because their circumstances are not representative of those of the purported class, thus, they are not an appropriate class representative.

Thirteenth Affirmative Defense

Defendants affirmatively assert that Plaintiff's Amended Complaint and each purported claim for relief therein are barred because Plaintiff and each alleged class member have not suffered any injury or damage (monetary or otherwise) as a result of the actions taken by Defendants.

Reservation of Defenses

Defendants hereby reserve the right to amend these affirmative defenses pending the outcome of future discovery in this matter.

Demand for Jury Trial

Defendants demand a trial by jury of all issues so triable as a matter of right.

Respectfully Submitted,

/s/Andrew B. Jaffe

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LLC*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with the Florida e-Courts Portal, which will serve a copy of the foregoing document on all counsel or parties of record on this date **March 3, 2025**.

/s/Andrew B. Jaffe

Andrew B. Jaffe