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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAVANNI MUNGUIA-BROWN, ANGELINA  
MAGANA, NORMA RODRIGUEZ, nad  
DAVID BONFANTI, individually and on behalf  
of others similarly situated,

No. C 16-01225 JSW

Plaintiffs,

**ORDER GRANTING MOTION FOR  
CLASS CERTIFICATION**

v.

EQUITY RESIDENTIAL, ERP OPERATING  
LIMITED PARTNERSHIP, EQUITY  
RESIDENTIAL MANAGEMENT, LLC, EQR-  
WOODLAND PARK A LIMITED  
PARTNERSHIP, and EQR-WOODLAND  
PARK B LIMITED PARTNERSHIP,

Defendants.

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Now before the Court is Plaintiffs’ motion for class certification. Pursuant to Civil Local Rule 7-1(b), the Court finds that the motion is appropriate for decision without oral argument and HEREBY VACATES the hearing set for October 27, 2017. Having considered the parties’ pleadings and relevant legal authority, the Court hereby GRANTS the motion.

**BACKGROUND**

Plaintiffs Javinna Munguia-Brown, Angelina Magana, Norma Rodriguez, and David Bonfanti (“Plaintiffs”) filed this putative class action against Defendants Equity Residential and its corporate affiliates, ERP Operating Limited Partnership, Equity Residential Management, LLC, EQR-Woodland Park A Limited Partnership, and EQR-Woodland Park B Limited Partnership (collectively, “Equity” or “Equity Residential”) which, during the class period, owned and operated

1 residential leased properties in California and charged their tenants late fees that Plaintiffs allege  
2 violate California Civil Code Section 1671(d) (“Section 1671(d)”) and the California Unlawful  
3 Competition law, California Business and Professions Code Section 17200 *et seq.*

4 Under Section 1671(d), such late fees are “void” unless the landlord proves both: (1) it is  
5 “impracticable or extremely difficult” to determine the actual damages caused by a late payment of  
6 rent; and (2) the landlord arrived at the late fee amount by making a “reasonable endeavor . . . to  
7 estimate a fair average compensation for any loss that may be sustained” by the late payment of  
8 rent. *See Garrett v. Coast & S. Fed. Saving & Loan Assoc.*, 9 Cal. 3d 731, 738-39 (1973). If the  
9 landlord fails to may either of these showings, the late fees paid by tenants must be returned to  
10 them. However, these amounts may be reduced, or offset, by the amount of any actual costs the  
11 landlord can prove were suffered as a result of the tenant’s late payment of rent.

12 By this motion, Plaintiffs assert that class certification is appropriate under Federal Rule of  
13 Civil Procedure 23(a) because: (1) the classes of California tenants that Plaintiffs seek to certify are  
14 so numerous that joinder of all members is impracticable; (2) there are questions of law or fact that  
15 are common to the class members; (3) the claims of the representative plaintiffs are typical of the  
16 claims of the classes they seek to represent; (4) the representative plaintiffs and their counsel will  
17 fairly and adequately protect the interests of the proposed classes. Plaintiffs assert that class  
18 certification is appropriate here under Rule 23(b) because: (1) the questions of law or fact common  
19 to the class members predominate over any questions affecting only individual members; and (2) a  
20 class action is superior to other available methods for fairly and efficiently adjudicating this  
21 controversy.

22 First, Plaintiffs allege that Equity’s standard late fee has remained in effect as the default at  
23 every property in California during the class period. Therefore, Plaintiffs seek to certify a class that  
24 consists of every tenant in the class period who was subject to the standard late fee provision,  
25 defined as:

26 **Standard Late Fee Class**

27 All Equity Residential tenants in California from September 3, 2010 until the  
28 date of class certification who were charged one or more late fee(s) under  
Equity Residential’s standard late fee provision: 5% of the outstanding balance  
owed (called at 5% of the total amount of monthly recurring charges) or \$50,  
whichever is greater.

1 Second, Plaintiffs seek to certify a separate class of tenants for several California properties  
 2 where local rent control laws gave tenants the right to remain on preexisting leases once Equity  
 3 acquired the property. One of those properties, acquired in 2011 by Equity, is the Woodland Park  
 4 property located in East Palo Alto, where Equity implemented a policy of charging preexisting  
 5 tenants the standard \$50 late fee, regardless of the provisions of their preexisting leases. Therefore,  
 6 Plaintiffs seek to certify a separate class that consists of the tenants of Woodland Park with  
 7 preexisting leases who were charged the \$50 late fee under this policy, defines as:

8 **Woodland Park Preexisting Lease Class**

9 All Equity Residential tenants in the Woodland Park Property from December  
 10 1, 2011 until Defendant sold the property in February 2016 who were charged  
 one or more late fee(s) of \$50 under Equity Residential's policy of charging a  
 flat \$50 late fee to tenants on pre-existing non-EQR leases.

11 Plaintiffs also seek the appointment of Plaintiff David Bonfanti as class representative for  
 12 the Standard Late Fee Class, and Plaintiffs Javanni Munguia-Brown, Angelina Magana, and Norma  
 13 Rodriguez as class representatives for the Woodland Park Preexisting Lease Class. Plaintiffs seek  
 14 the appointment of counsel, Goldstein, Borge, Dardarian & Ho, Community Legal Services in East  
 15 Palo Alto, and Nicholas & Tomasevic, LLP as class counsel. Finally, Plaintiffs seek an order  
 16 approving the proposed class notices submitted with their papers and request that they be issued to  
 17 the proposed class members.

18 The Court shall address other specific facts in the remainder of this order.

19 **ANALYSIS**

20 **A. Class Certification Standard.**

21 Class certifications are governed by Federal Rule of Civil Procedure 23. As the moving  
 22 parties, Plaintiffs bear the burden of “demonstrating that [they have] met each of the four  
 23 requirements of Rule 23(a) and at least one of the requirements of Rule 23(b).” *Lozano v. AT&T*  
 24 *Wireless Servs., Inc.*, 504 F.3d 718, 724 (9th Cir. 2007); *see also Zinser v. Accufic Research*  
 25 *Institute, Inc.*, 253 F.3d 1180, 1186 (9th Cir.), *amended* 273 F.3d 1266 (9th Cir. 2001) (holding that  
 26 the trial court must conduct a “rigorous analysis” to determine whether the requirements of Rule 23  
 27 have been met). “Rule 23 does not set forth a mere pleading standard. A party seeking class  
 28 certification must be prepared to prove that there are in fact sufficiently numerous parties, common

1 questions of law or fact, etc.” *Wal-Mart Stores, Inc. v. Dukes*, \_\_ U.S. \_\_, 131 S. Ct. 2541, 2551  
2 (2011). “Class certification is not immutable, and class representative status could be withdrawn or  
3 modified if at any time the representatives could no longer protect the interests of the class.”  
4 *Cummings v. Connell*, 316 F.3d 886, 896 (9th Cir. 203) (citing *Soc. Servs. Union, Local 535 v.*  
5 *County of Santa Clara*, 609 F.2d 944, 948-49 (9th Cir. 1979)).

6 The Supreme Court has noted that, frequently, a “rigorous analysis” of the Rule 23 factors  
7 “will entail some overlap with the merits of the plaintiff’s underlying claim. That cannot be  
8 helped.” *Wal-Mart*, 131 S. Ct. at 2551. The Court need not accept conclusory or generic  
9 allegations regarding the suitability of the litigation for resolution through class action. *Id.* (noting  
10 that “[s]ometimes it may be necessary for the court to probe behind the pleadings before coming to  
11 rest on the certification question.”). “The district court is required to examine the merits of the  
12 underlying claim in this context, only inasmuch as it must determine whether common questions  
13 exist; not to determine whether class members could actually prevail on the merits of their claims.”  
14 *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 983 n.8 (9th Cir. 2011) (citing *Wal-Mart*, 131 S. Ct.  
15 at 2552 n.6). “To hold otherwise would turn class certification into a mini-trial.” *Id.* Ultimately, it  
16 is in the court’s discretion whether a class should be certified. *See, e.g., Molski v. Gleich*, 318 F.3d  
17 937, 946 (9th Cir. 2003).

18 **1. Threshold Contentions of Claim Identification and Standing.**

19 Equity contends that Plaintiffs fail to identify whether they seek class certification over both  
20 the claims of violations of Section 1671(d) and the Section 17200 claims. It is clear from Plaintiffs’  
21 notice of motion and briefing, that they intend to seek class certification for both claims. (*See, e.g.*,  
22 Dkt No. 64, Notice of Motion at 1; Dkt. No. 63-2, Plaintiffs’ Motion at 1, 20.) Accordingly, the  
23 Court addresses the motion for class certification of both of the two causes of action alleged in  
24 Plaintiffs’ complaint.

25 Equity further contends that Plaintiffs lack standing to sue because residents who were  
26 merely charged a late fee, as opposed to having paid a late fee, cannot seek reimbursement of  
27 monetary relief and therefore have not suffered injury. “Standing is a jurisdictional element that  
28 must be satisfied prior to class certification.” *Lee v. Oregon*, 107 F.3d 1382, 1390 (9th Cir. 1997).

1 However, “[i]n a class action, standing is satisfied if at least one named plaintiff meets the  
2 requirements” for standing. *See Bates v. United Parcel Service, Inc.*, 511 F.3d 974, 985 (9th Cir.  
3 2007). “[O]nce the named plaintiff demonstrates her individual standing to bring a claim, the  
4 standing inquiry is concluded, and the court proceeds to consider whether the Rule 23(a)  
5 prerequisites for class certification have been met.” *Kirola v. City and County of San Francisco*,  
6 860 F.3d 1164, 1176 (9th Cir. 2017) (internal citations omitted).

7 Plaintiffs do not dispute that class members who were charged but failed to pay late  
8 penalties would not be entitled to money damages in restitution. Plaintiffs’ complaint tracks the  
9 way in which Equity reports the charges and payments of late fees in their own records.  
10 Regardless, the common question of law would pertain to all members of the class and there is no  
11 contention that the named plaintiffs lack standing to seek restitution. Accordingly, the Court does  
12 not find the issue of standing bars decision on the merits of the request for class certification.

13 **2. Rule 23(a) Factors.**

14 Class certification is appropriate only if (1) the class is so numerous that joinder of all  
15 members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims  
16 or defenses of the representative parties are typical of the claims or defenses of the class; and (4)  
17 the representative parties will fairly and adequately protect the interests of the class. Fed. R. Civ. P.  
18 23(a).

19 **a. Numerosity.**

20 Equity does not dispute that Plaintiffs have met their burden to demonstrate that the classes  
21 are sufficiently numerous. The Standard Late Fee Class consists of tenants at approximately 150  
22 California properties with a total of about 36,000 units, and Equity has represented that thousands  
23 of tenants have been charged the subject late fees during the class period. The Woodland Park  
24 Preexisting Lease Class consists of approximately 1,800 members. The Court finds Plaintiffs have  
25 met their burden on this factor.

26 **b. Commonality.**

27 Equity contends that the Court should deny the motion because Plaintiffs cannot satisfy the  
28 commonality requirement. Commonality requires that there be “questions of fact and law which

1 are common to the class.” Fed. R. Civ. P. 23(a)(2). “The commonality requirement serves chiefly  
2 two purposes: (1) ensuring that absentee members are fairly and adequately represented; and (2)  
3 ensuring practical and efficient case management.” *Rodriguez v. Hayes*, 591 F.3d 1105, 1122 (9th  
4 Cir. 2010) (internal quotation marks omitted). Courts look for “shared legal issues or a common  
5 core of facts.” *Id.* Where diverging facts underlie the individual claims of class members, courts  
6 consider whether the issues “at the heart” of those claims are common such that the class vehicle  
7 would “facilitate development of a uniform framework for analyzing” each class member’s  
8 situation. *Id.* at 1123. The class claims “must depend on a common contention,” which “must be of  
9 such nature that it is capable of classwide resolution – which means that determination of its truth  
10 or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke.”  
11 *Wal-Mart*, 131 S. Ct. at 2551. The “existence of shared legal issues with divergent factual  
12 predicates is sufficient, as is a common core of salient facts coupled with disparate legal remedies  
13 within the class.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1019 (9th Cir. 2008). The  
14 commonality requirement has been construed permissively and is “less rigorous than the  
15 companion requirements of Rule 23(b)(3).” *Id.*

16 Plaintiffs contend that common questions of fact abound in this case relating to the  
17 centralization of the policy among Equity’s various California properties, the accounting for the late  
18 payments and fees assessed, the same late fee provision in the residential leases, and the process  
19 Equity underwent when setting the uniform fee policies, and Equity’s record-keeping practice to  
20 help track costs and fees. Plaintiffs argue that common issues of law are prevalent because the  
21 dispositive questions on liability “generate common answers apt to drive the resolution of the  
22 litigation.” *Abdullah v. U.S. Assocs., Inc.*, 731 F.3d 952, 957 (9th Cir. 2013) (citing *Wal-Mart*, 546  
23 U.S. at 350). The test for determining whether Section 1671(d) has been violated turns on whether  
24 Equity can prove that the costs arising from a late payment can be fixed and whether they selected a  
25 late fee based upon a reasonable endeavor to approximate those costs. *See Garrett*, 9 Cal. 3d at  
26 738-39.

27 In response, Equity argues that when determining whether common questions predominate  
28 under Rule 23, the Court must identify both the relevant causes of action and the affirmative

1 defenses, taking into account the evidence necessary to establish each element of both the claims  
2 and of the defenses. Equity's affirmative defenses include the voluntary payment doctrine which, it  
3 argues, cannot be adjudicated on a classwide basis. Under the voluntary payment doctrine, a party  
4 engaged in a dispute over the validity of a debt who agrees to settle the dispute by making payment,  
5 is barred from later recovering the payment. *See, e.g., Am. Oil Serv. v. Hope Oil Co.*, 194 Cal. App.  
6 2d 581, 587 (1961); *see also* Restatement 3d of Restitution and Unjust Enrichment (2011), § 6 cmt.  
7 e (voluntary payment doctrine applies to "money voluntarily paid in the face of a recognized  
8 uncertainty as to the existence or extent of the payor's obligation").

9 Without making a determination regarding the merits of the affirmative defense, the Court  
10 finds that regardless whether Equity is successful in demonstrating that the payment of any  
11 particular late fee was made voluntarily with full knowledge of the facts and without the tenant  
12 feeling compelled to make the payment, the affirmative defense does not defeat class certification.  
13 Rather, the Court finds that such a defense, if applicable, would be considered an offset to the  
14 specific collection of restitution for any particular tenant, or to the group en masse. *See Hahn v.*  
15 *Massage Envy Franchising, LLC*, 2014 WL 5099373, at \*12 (S.D. Cal. April 15, 2014) (holding  
16 that while defendant's argument regarding offsets "are relevant only to the calculation of restitution  
17 for each putative class member. While such calculations may be individualized, that is insufficient  
18 to defeat class certification.") Should Plaintiffs prevail on their Section 1672(d) claim and  
19 attendant Section 17200 claim, Equity will be tasked with the computation of their actual costs,  
20 including any payments of late fees received from potential class members. It appears from the  
21 record submitted to the Court thus far, that Equity would be able to generate the documentation  
22 which would enable them to determine these offset amounts. The legal issue of the amounts that  
23 could be considered an offset is amenable to resolution classwide and the analysis of aggregate  
24 costs can only be made in the context of a classwide analysis. Accordingly, the Court finds that  
25 Plaintiffs have sustained their burden of satisfying the commonality requirement of Rule 23.

26 The Woodland Park Preexisting Lease Class also satisfies the commonality requirement for  
27 much the same reasons because Equity charges the proposed class a late fee of \$50 when rent was  
28 not timely paid, regardless of the late fee provision in the class members' preexisting leases. These

1 factual predicates raise the same legal issues whether assessing Equity's actual damages resulting  
2 from late rent was "impracticable or extremely difficult" and whether the \$50 late fee was  
3 supported by a "reasonable endeavor to estimate actual costs." The uniform policy and the  
4 rationale for the policy is common to this class as well.

5 **c. Typicality and Adequacy to Represent the Class.**

6 Equity also argues that Plaintiffs cannot satisfy the typicality requirement. Typicality  
7 requires that "the claims or defenses of the representative parties are typical of the claims or  
8 defenses of the class." Fed. R. Civ. P. 23(a)(3). As with the commonality requirement, the  
9 typicality requirement is applied permissively. *See Hanlon*, 150 F.3d at 1020. "[R]epresentative  
10 claims are 'typical' if they are reasonably co-extensive with those of absent class members; they  
11 need not be substantially identical." *Id*; *see also Lozano v. AT&T Wireless Servs., Inc.*, 504 F.3d  
12 718, 734 (9th Cir. 2007) ("Under Rule 23(a)(3) it is not necessary that all class members suffer the  
13 same injury as the class representative."). Thus, typicality is "satisfied when each class member's  
14 claim arises from the same course of events, and each class member makes similar legal arguments  
15 to prove the defendant's liability." *Armstrong v. Davis*, 275 F.3d 849, 868 (9th Cir. 2001) (internal  
16 quotations omitted). "[T]he adequacy-of-representation requirement is satisfied as long as one of  
17 the class representatives is an adequate class representative." *Rodriguez v. West Publishing Co.*,  
18 563 F.3d 948, 961 (9th Cir. 2009) (internal citations omitted).

19 The typicality and commonality requirements are similar and tend to merge. *See General*  
20 *Telephone Co. of Southwest v. Falcon*, 457 U.S. 147, 156 (1982). "The test of typicality is whether  
21 other members have the same or similar injury, whether the action is based on conduct which is not  
22 unique to the named plaintiffs, and whether other class members have been injured by the same  
23 course of conduct." *Hanlon*, 150 F.3d at 1020. The named plaintiff must "understand the  
24 gravamen of the claim" but need not "be intimately familiar with every factual and legal issue in the  
25 case." *Moeller v Taco Bell Corp.*, 220 F.R.D. 604, 611 (N.D. Cal. 2004) (quotation omitted).

26 In opposition to the motion, Equity combines much of its response regarding typicality with  
27 its contentions regarding the adequacy of representation, by asserting that the various individual  
28 named plaintiffs are not adequate representatives because, among other reasons, their claims are not



1 typical of the claims of the class. For the Standard Late Fee Class, Bonfanti is the named  
2 representative plaintiff. He was party to the standard lease and was charged late fees under the late  
3 fee provision, and challenges that policy on the same legal grounds as the remainder of the class.  
4 On this basis, Plaintiffs contend he is typical. Having reviewed the record submitted, the Court  
5 finds that Bonfanti has read the complaint and understands its allegations, met and communicates  
6 with the attorneys. Further, Bonfanti declares that he is an Equity tenant subject to the late payment  
7 fee and the Court finds his alleged injury based on the common alleged conduct to be sufficiently  
8 typical and adequate to represent the class.

9 Equity argues that the named plaintiffs in the Woodland Park Preexisting Lease Class are  
10 both atypical and inadequate by virtue of a multiplicity of claims in addition to their late fee claims  
11 and their testimony indicating some confusion over terms and allegations in the case. However,  
12 having reviewed the entirety of the record submitted, the Court finds that the confusion was  
13 minimal and premised on misunderstanding of the legalese and language errors. In addition, the  
14 Court finds that the named plaintiffs all share the same challenge of the imposition and  
15 accumulation of late fees. In addition, there is no indication that the named plaintiffs have any  
16 conflicts of interests with the members of the proposed class, and it appears that Plaintiffs are  
17 represented by qualified and competent counsel. Accordingly, the Court finds the named plaintiffs  
18 of both proposed classes to be both typical and adequate.

19 **3. Rule 23(b) Factors.**

20 In addition to satisfying the four Rule 23(a) factors, Plaintiffs bear the burden of  
21 demonstrating that they satisfy the requirements for Rule 23(b)(3). A class action may be  
22 maintained under this subsection where “the court finds that question of law or fact common to  
23 class members predominate over any questions affecting only individual members, and that a class  
24 action is superior to other available methods for fairly and efficiently adjudicating the controversy.”  
25 Fed. R. Civ. P. 23(b)(3). Factors include: “(A) the class members’ interest in individually  
26 controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation  
27 concerning the controversy already begun by or against class members; (C) the desirability or  
28 undesirability of concentrating the litigation in the particular forum; and (D) the likely difficulties

1 in managing a class action.” Fed. R. Civ. P. 23(b)(3). Certification is appropriate “whenever the  
2 actual interests of the parties can be served best by settling their differences in a single action.”  
3 *Hanlon*, 150 F.3d at 1033 (citations omitted). Specifically, “when common questions present a  
4 significant aspect of the case in a single adjudication, there is clear justification for handling the  
5 dispute on a representative rather than on an individual basis.” *Id.*

6 As set forth above, the Court finds that the common questions regarding Equity’s liability  
7 and right to offset the potential restitution of late fee charges predominate over questions of  
8 individual class members under Section 1671(d) and the attendant Section 17200 analysis. *See*,  
9 *e.g.*, *Ubaldi v. SLM Corp.*, 2014 WL 12639953, at \* (N.D. Cal. Dec. 19, 2014) (certifying a class of  
10 student loan borrowers challenging late fee charges, finding commonality where plaintiffs were  
11 challenging the manner in which the defendant had set the late fee and the claims turned on  
12 standard documents). The Court here finds that the central legal determination under Section  
13 1671(d) – whether it is impracticable to determine actual damages from late payment of rent and  
14 whether the landlord made a reasonable endeavor to estimate fair compensation for any loss  
15 sustained – are common to all named plaintiffs and the classes they seek to represent. Here, the  
16 common questions of law and fact predominate over individual issues and are well suited to class  
17 treatment. The same analysis supports the certification of the Section 17200 unlawful claim as it  
18 would be premised upon the same underlying violations, if found. *See Hawk v. JP Morgan Chase*  
19 *Bank U.S.*, 552 F.3d 1114, 1122 (9th Cir. 2009); *see also O’Donovan v. CashCall, Inc.*, 278 F.R.D.  
20 479, 499 (N.D. Cal. 2011).

21 The Court also finds that a class action is superior to other available methods for fairly and  
22 efficiently adjudicating the controversy because the resolution of the liability issues share common  
23 issues and once the issue liability is determined, the remedial questions are conducive to class  
24 review in that Equity maintains the documentation and records of the late payments and fees  
25 assessment as well as actual costs incurred for late payment of rent and actual costs it incurred as a  
26 result of the late payments. *See, e.g., Leyva v. Medline Industries*, 716 F.3d 510, 515-16 (9th Cir.  
27 2013) (holding that defendants’ computerized time-keeping database could be queried to retrieve  
28 data, confirming that certification was manageable, and holding that the district court erred by

1 “ignoring the database’s potential to alleviate the burden of determining damages”). Also, the  
2 resolution of these issues by class action is superior because the individual restitutionary amounts at  
3 issue are relatively small and the class is large, making class resolution more efficient when  
4 individual class members would have little interest in pursuing separate, individual cases. *See*  
5 *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 617 (1997) (“The policy at the very core of the  
6 class action mechanism is to overcome the problem that small recoveries do not provide the  
7 incentive for any individual to bring a solo action prosecuting his or her rights”) (internal quotes  
8 omitted). In addition, there is no indication and the parties do not dispute that there is other  
9 pending litigation elsewhere concerning the controversy.<sup>1</sup> Further, concentration of the litigation in  
10 this forum is desirable because this Court has exercised management over the matter and overseen  
11 the parties’ disputes. The Court also finds, based upon the record presented, that the case will be  
12 manageable on a classwide basis. Plaintiffs have satisfied the Rule 23(b)(3) requirements with  
13 respect to the classes they seek to certify.

#### 14 CONCLUSION

15 For the foregoing reasons, the Court HEREBY GRANTS the motion to certify the Standard  
16 Late Fee Class and appoints David Bonfanti as the class representative, and appoints Goldstein,  
17 Borgen, Dardarian & Ho, Community Legal Services for East Palo Alto, and Nicholas &  
18 Tomasevic, LLP as Class Counsel for the Standard Late Fee Class.

19 For the foregoing reasons, the Court HEREBY GRANTS the motion to certify the  
20 Woodland Park Preexisting Lease Class, appoints Plaintiffs Javanni Munguia-Brown, Angelina  
21 Magana, and Norma Rodriguez as class representatives, and appoints Goldstein, Borgen, Dardarian  
22 & Ho, Community Legal Services for East Palo Alto, and Nicholas & Tomasevic, LLP as Class  
23 Counsel for the Woodland Park Preexisting Lease Class.

24 The Court orders that notice be provided to the two classes as follows:  
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27 <sup>1</sup> Whatever weight should be given to the uncontested order approving a settlement agreement  
28 in a lawsuit from 1998 approved the position that Equity’s late fee complied with Civil Code Section  
1671(d) is also a common question to be determined classwide. (*See* Dkt. No. 75-3, Declaration of  
Aaron Winn, Ex. 8.)

1 The Court hereby approves the Notice forms submitted by Plaintiffs (long-form notice,  
2 email notice, and postcard notice), copies of which are attached to Docket No. 64-7, Proposed  
3 Order Granting Plaintiffs' Motion for Class Certification) as Exhibit A (Standard Late Fee Class)  
4 and Exhibit B (Woodland Park Preexisting Lease Class).

5 Within 20 days of this Order, Defendants shall produce to Plaintiffs two lists, in Excel  
6 format, setting forth the names, last known addresses and email addresses, phone numbers, and  
7 dates and name and address of the Equity Residential property of residence of all of the members of  
8 each of the two classes.

9 Within 20 days of receipt of the two lists, Plaintiffs Counsel shall (1) email, via a third party  
10 administrator, a copy of the applicable Court-approved email notice to the Class Members for  
11 whom an email address is provided; (2) mail, by U.S. mail, a copy of the applicable Court-approved  
12 postcard notice, after running the addresses through the National Change of Address Database; and,  
13 (3) post the long-form notice on Class Counsel's websites. For Class Members whose emails are  
14 returned as undeliverable, the third party administrator shall promptly send a notice by U.S. mail.

15 The Class Members shall have 60 days from the initial date when notices are mailed and  
16 emailed to opt out of the class, as explained in detail in the applicable notices.

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**IT IS SO ORDERED.**

Dated: October 23, 2017

  
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JEFFREY S. WHITE  
UNITED STATES DISTRICT JUDGE