IN THE SUPREME COURT OF IOWA
No. 15-1348
(Johnson County District Court No. CVCV076909)

JOAN WALTON,

Plaintiff-Appellee,

vs.

MARTIN GAFFEY,

Defendant-Appellant.

APPEAL FROM THE DISTRICT COURT OF JOHNSON COUNTY
The Honorable Patrick R. Grady

Defendant-Appellant's Final Brief

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STATEMENT OF ISSUES PRESENTED FOR REVIEW

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Kucera v. Baldazo, 745 N.W.2d 481 (Iowa 2008)

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III. Whether the District Court abused its discretion in certifying the matter as a class action where it failed to adequately address the requirements of certification.

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Comes v. Microsoft Corp., 696 N.W.2d 318 (Iowa 2005)

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ROUTING STATEMENT

At the outset, this case involves the question of whether an allegedly harmed party has standing to pursue a claim when her claim is based solely on statutory penalties, rather than actual damages or more than a hypothetical dispute pertaining to lease rules. The appeal also presents issues of first impression before the Court in seeking interpretation of Iowa Code Chapter 562A, the Iowa Uniform Residential Landlord Tenant Act ("IURLTA. Several other appeals based on similar cases involving landlords and tenants have recently been certified to the Court as well. While these issues have arguably been addressed by the Iowa Court of Appeals in *Staley v. Barkalow*, No. 12-1031, 843 N.W.2d 873 (table), 2013 WL 2368825 (Iowa App. 2013), the case remains unpublished and nonbinding, and, Gaffey respectfully submits, was wrongly decided. For these reasons, the Iowa Supreme Court should retain this case. *See* Iowa R. App. P. 6.1101(2)(c), (d), (f).

STATEMENT OF THE CASE

I. Background

Defendant-Appellant Martin Gaffey is an Iowa City landlord, and Plaintiff-Appellee Joan Walton is an Iowa City resident. Walton, as tenant, and Gaffey, as landlord, entered into a Dwelling Lease Agreement on March 14, 2014.

II. Procedural History

Walton filed her Petition on December 1, 2014, alleging Gaffey violated Chapter 562A by using a lease with unconscionable and prohibited provisions. On the same day, Walton filed a First Motion for Summary and Declaratory Judgment and First Motion for Class Certification ("Motions") and supporting documents, seeking a summary judgment declaring Gaffey had violated the IURLTA by mere inclusion of the challenged provisions, absent proof of enforcement their enforcement or damages on her part, and requesting certification of a class under Iowa Rule of Civil Procedure 1.262. Gaffey filed an Answer on January 5, 2015, and sought additional time to respond to the Motions.

Walton filed a Supplement to her Motions on January 24, 2015. Gaffey filed a Brief in Support of Resistance to the Motions

on March 2, 2015, and the formal Resistance on March 27, 2015. Walton filed a Reply on March 9, 2015. Walton also filed a Notice of Additional Authority in Support of the Motions on April 8, 2015, and Gaffey filed a Response to that Notice on April 14, 2015.

The District Court filed its Ruling on July 12, 2015, finding in Walton's favor as to her request for a finding on the illegality of the challenged lease provisions, declaring the provisions "are illegal and should not have been included in the standard lease utilized by Defendant"; declining to find Gaffey willfully of included provisions he knew to be prohibited; and granting Walton's request for class certification, adopting the reasoning of Judge Douglas Russell's March 18, 2014 ruling in *Staley v. Barkalow*, LACV07382, which included Judge Russell's summary of the Iowa Court of Appeals's unpublished table decision in *Staley v. Barkalow*, No. 12-1031, 843 N.W.2d 873 (table), 2013 WL 2368825 (Iowa App.), without an independent analysis of the facts in this case or the applicable law. (Ruling at 10, Appendix ("app.") 136.) Gaffey filed a Notice of Appeal on August 10, 2015.

III. Similar Cases

Several similar cases have recently been appealed to this Court, including Kline, et al. v. Southgate Property Management, LLC, No. 15-1350, from Johnson County No. CVCV076694, and Conroy v. Apts. Downtown, No. 15-1335, Johnson County No. LACV072840, addressing similar issues of ripeness, interpretation of Chapter 562A of the Iowa Code, and class certification. For this reason, Gaffey's Brief will respectfully draw on and incorporate the arguments advanced in the appellate proceedings therein.

STATEMENT OF THE FACTS

Walton and Gaffey entered into a Residential Rental Lease on March 14, 2014, for an apartment in Coralville, Iowa (Residential Rental Lease, app. 19). Gaffey incorporates the Residential Unit Lease, app. 19, and Tenant Rules and Regulations, app. 28, into the rental agreements for a number of his tenants. (Plaintiff's First Request for Admission at 2, app. 59; Defendant's Response to First Request for Admission, app. 61.)

Before she signed the lease, Walton had adequate time to read the lease, and she did so before signing it. (Gaffey Affidavit at ¶ 4, app. 81.) She has not claimed she did not understand the

lease, or objected to any of its provisions at the time. (*Id.* at ¶¶ 6-7, app. 81.) She was not coerced, threatened, or misled into signing the lease. (*Id.* at ¶¶ 5, 8-9, app. 82.) Walton has not made any claim she has been assessed a nonsufficient funds (NSF) check fee or had delivery of possession of her unit delayed.

No portion of Walton's $500 security deposit has been withheld. When a fire broke out at the first apartment, relocated Walton to a more expensive apartment (with a rent of $650 per month, as opposed to $500, and a commensurate security deposit) without raising her rent or requiring an additional deposit. (*Id.* at ¶¶ 3, 14, app. 81-82.) Notably, Walton has made no assertions in this case she has personally suffered actual damages as a result of the lease she signed.

No court of record has ever found a provision of Gaffey's lease to be prohibited, or entered a money judgment against him for including such a provision in the lease. (*Id.* at ¶¶ 10-11, app. 82.)

Importantly, despite the provisions in the apartment rules incorporated in the lease, Gaffey does not in fact charge an auto-

matic carpet cleaning charge when tenants move out. (*contrast* Residential Rental Lease ¶ 29 "Vacating Premises", app. 25, and Tenant Rules and Regulations ¶ 5, p. 1, app. 32, *with* Gaffey Affidavit at ¶ 13, app. 82.)

ARGUMENT

I. The District Court erred in granting Walton's First Motion for Partial Summary and Declaratory Judgment because her claims are unripe and she cannot show proper standing.

a. Preservation of Error

Gaffey preserved error on this issue by resisting Walton's Motions. *See* Defendant's Brief in Support of Resistance to Plaintiff's Motions at 14-15, app. 75-76.

b. Standard of Review

District court decisions on standing are reviewed for the correction of errors at law. *Godfrey v. State*, 752 N.W.2d 413, 417 (Iowa 2008).

c. Walton's claim for declaratory judgment is unripe, and she has not suffered actual damages, leaving her without standing.

Here, Walton cannot demonstrate the presence of a justiciable controversy or a personal injury. Instead, her suit seeks only an advisory opinion regarding provisions of the lease that have not

been applied to her, asking the court find that, *had* these provisions been enforced, they *would* have constituted violations of the IURLTA. As such, her claim is unripe, and she lacks the standing to be a proper plaintiff. For these reasons, the district court incorrectly granted declaratory judgment, and its Ruling should be reversed on these grounds.

i. Walton has not demonstrated a justiciable controversy ripe for declaratory judgment.

Plaintiff sought, and received, declaratory judgment under Iowa Rule of Civil Procedure 1.1102, which provides in part that "[a]ny person interested in an oral or written contract . . . may have any question of the construction or validity thereof or arising thereunder determined, and obtain a declaration of rights, status or legal relations thereunder." As suggested by this Court's prior cases, however, "[t]he mere filing of a declaratory judgment action does not, in and of itself, create a justiciable controversy. . . . [E]ven in a declaratory judgment action there still must exist a justiciable controversy between the parties." *Greenbriar Grp., L.L.C. v. Haines*, 854 N.W.2d 46, 50-51 (Iowa App. 2014), *as amended* (Aug. 1, 2014).

Determining whether a claim presents a justiciable controversy ripe for review is particularly difficult in the declaratory judgment context. "[A] mere abstract question will not support an action for declaratory judgment." *Green v. Shama*, 217 N.W.2d 547, 551 (Iowa 1974) (collecting cases). To demonstrate the existence of a justiciable controversy, a plaintiff must allege facts indicating "a substantial controversy between parties having adverse legal interests of sufficient immediacy and reality to warrant a declaratory judgment." *Erickson v. Christensen*, 261 N.W.2d 171, 172 (Iowa 1978) (affirming dismissal of claim for declaratory judgment where there was mere possibility of future suit against party requesting declaratory judgment). The court "search[es], then, for an 'antagonistic assertion and denial of right' and, if found and other proper allegations appear, the court may then entertain the question of whether the plaintiffs' claim is proper and justified." *Citizens for Responsible Choices v. City of Shenandoah*, 686 N.W.2d 470, 475 (Iowa 2004) (quoting *Wesselink v. State Dep't of Health*, 80 N.W.2d 484, 486 (Iowa 1957)).

The "antagonistic assertion and denial of right" required for ripeness are absent here. Walton has made no claim any of the provisions of the lease have actually been used against her, or that she has suffered any immediate damages as a result of their inclusion. Until she can show actual use of these provisions and the effects thereof, her claim is unripe.

Further, this Court has never found that the mere inclusion of a prohibited provision in a lease (without actual or even attempted enforcement) violates the IURLTA. *Staley*, 2013 WL 2368825, and *Amor v. Houser*, No. 14-0866, 864 N.W.2d 553, 2015 WL 1546133 (Iowa App.) are both unpublished table opinions from the Iowa Court of Appeals. Pursuant to the Iowa Rules of Appellate Procedure, "[u]npublished opinions or decision shall not constitute controlling legal authority." Iowa R. App. P. 6.904(2)(c).

At the very least, the District Court's reliance on *Staley* overextended the holding of that case in applying it to the case at hand. There, the Iowa Court of Appeals held only that the district court had erroneously declined to address the issue of *whether* the provisions in question were prohibited, and whether the inclusion

was made willfully and knowingly. *Staley*, 2013 WL 2368825 at *13. That case did *not* direct the consideration of whether certain provisions in the lease were *unenforceable*, a separate category under the IURLTA. As such, the District Court's determination the provisions challenged by Walton were unenforceable—without enforcement—goes well beyond the holding in *Staley*, involving the resolution of hypotheticals.

Walton cannot show her claim is ripe, as she has cannot demonstrate the required "antagonistic assertion and denial of right". For these reasons, the District Court erred in granting declaratory judgment.

ii. Walton cannot demonstrate the actual injury required for standing in this case.

In addition to demonstrating a justiciable controversy, a party seeking declaratory judgment must also demonstrate its standing in the case, meaning "a party must have 'sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy.'" *Alons v. Iowa Dist. Court for Woodbury Cnty.*, 698 N.W.2d 858, 863-64 (Iowa 2005) (quoting *Citizens for Responsible Choices*, 686 N.W.2d at 475; citing *Sanchez v. State*, 692

N.W.2d 812, 821 (Iowa 2005)). The doctrine allows courts to "refuse to determine the merits of a legal controversy irrespective of its correctness, where the party advancing it is not properly situated to prosecute the action." *Alons*, 698 N.W.2d at 864 (quoting 59 Am. Jur. 2d *Parties* § 36, at 442 (2002). "In short, the focus is on the party, not on the claim." *Id.* (citing 13 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3531, at 339 (1984)).

This requires a party to 1) have a specific personal or legal interest in the litigation, and 2) be injuriously affected. *Citizens for Responsible Choices*, 686 N.W.2d at 475 (Iowa 2004) (citing *Birkhofer ex rel. Johannsen v. Brammeier*, 610 N.W.2d 844, 847 (Iowa 2000); *In re Marriage of Mitchell*, 531 N.W.2d 132, 134 (Iowa 1995); *Hawkeye Bancorporation v. Iowa College Aid Comm'n*, 360 N.W.2d 798, 801 (Iowa 1985)). This requires more than mere claims these requirements are met:

> First, the plaintiff must have suffered an "injury in fact" – an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not "conjectural" or "hypothetical." Second, there must be a causal connection between the injury and the conduct complained of – the injury has to be

> "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision."

Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1993); *see also Clapper v. Amnesty Int'l USA*, 113 S.Ct. 1138, 1147 (2013) (reiterating the *Lujan* factors and noting that to be "imminent" the injury must be "certainly impending", rather than merely a "possible future injury.").

In this case, Walton has not suffered any actual injury relating to her claims. In fact, her Petition makes no claims of actual, particularized damages whatsoever, merely reciting allegations Gaffey violated the IURLTA by including various provisions in his various lease*s*, rather than referring specifically to her own.

What has been made clear in this case, however, is the lack of actual damages to Walton. Before she signed the lease, she had adequate time to read the lease, and she did so before signing it. Gaffey Affidavit at ¶ 4, app. 81. She has not claimed she did not understand the lease, objected to any of its provisions at the time,

or was coerced, threatened, or misled into signing it. *Id.* at ¶¶ 5-9, app. 81-82.

Further, Walton cannot show she has been damaged by any of the specific lease provisions discussed in her Petition. She has not claimed she herself has been forced to pay for mandatory carpet cleaning (Petition ¶¶ 4(A), (D), app. 1); charged fees or damages other than Gaffey's actual damages (*Id.* at ¶¶ 4(C), (I), app. 1); had any portion of her security deposit withheld, in bad faith or otherwise (*Id.* at ¶ 4(E), app. 2); had any loss of her right to possession or rights relating thereto, or had her possession of the unit delayed (*Id.* at ¶ 4(F), app. 2); or had any repair or maintenance responsibilities shifted to her (*Id.* at ¶ 4(G), app. 2). She has also not made any claim she has been assessed a nonsufficient funds fee for a returned check.

Walton cannot show she has suffered any concrete, particularized invasion of her rights in this case. Instead, she seeks review of the lease in order to safeguard against hypothetical invasions of her rights. There is no causal connection between the lease provisions and her (lack of) injury, and a favorable decision

cannot redress a hypothetical injury. For these reasons, she lacked standing, and the District Court erred in granting declaratory judgment.

II. The District Court erred in granting Walton's First Motion for Partial Summary and Declaratory Judgment where the provisions do not violate the Iowa Code.

a. Preservation of Error

Gaffey preserved error on this issue by resisting Walton's Motions.

b. Standard of Review

The standard of review for declaratory judgment actions "is determined by the manner in which the action was tried to the district court." *Shelby Cnty. Cookers, L.L.C. v. Util. Consultants Int'l, Inc.*, 857 N.W.2d 186, 189 (Iowa 2014), *reh'g denied* (Jan. 15, 2015) (quotation omitted). When this review involves a summary judgment ruling, the review examines the propriety of the summary judgment ruling, not the declaratory judgment. *Id.* (citations omitted). Summary judgment rulings based on questions of statutory interpretation are reviewed for correction of errors at law. Iowa R. App. P. 6.907; *Nationwide Mut. Ins. Co. v. Kelly*, 687 N.W.2d 272, 274 (Iowa 2004). The record is viewed in the light

most favorable to the nonmoving party. *McKee v. Isle of Capri Casinos, Inc.*, 864 N.W.2d 518, 525 (Iowa 2015) (citing *Shelby Cnty. Cookers*, 857 N.W.2d at 189).

c. The lease provisions in question do not violate the Iowa Code.

i. *Staley v. Barkalow* was wrongly decided, and the District Court's Ruling cannot be affirmed to extent its reasoning was based on that case.

Because the arguments are largely identical, and in the interest of conserving space and judicial resources, Gaffey incorporates the arguments set forth at pp. 25-31 of Southgate Property Management, LLC's Brief in No. 15-1350, pertaining to the erroneous findings and conclusions in *Staley v. Barkalow*.

ii. The lease provisions relating to damages and fees are not prohibited, and the District Court erred in its interpretation of the relevant Iowa law.

Walton challenged, and the District Court granted summary and declaratory judgment on, a number of provisions contained in the lease, on the grounds they "have been set without any consideration of what the landlord's actual damages and fees would be in each situation":

a. $35 returned check fee (section 7)
b. $35 processing administrative fee for 3 day notice (section 8)

c. $40 administrative fee for failure to transfer utilities (section 12)
d. $40 administrative fee for not keeping utilities in tenant's name (section 13)
e. $500 fine for smoking (section 22)
f. $50 minimum trip charge (section 24)
f. [sic] $50 minimum service charge for lock outs (section 25)
g. $100 per occurrence for not informing landlord of additional occupants, $40 administrative fee for approved occupancy change (section 26)
h. $200 sublease fee (section 27)
i. $40 administrative fee for not keeping utilities in tenant's name (section 27(f))
j. $500 unauthorized animal fee (section 28)
k. $100 fee for additional move-out inspection due to tenant failure to vacate (section 37)
l. Various service charges on page 11 of the lease, including a $50 minimum trip charge for noise complaints, trash, parking or pet violations and posting notices

Ruling at 8, app. 43.

As discussed above, and at the outset, because none of the above provisions have been enforced against Walton, her claims are not ripe. As Gaffey pointed out in support of his Resistance to Walton's Motions, the IURLTA allows a landlord to seek actual damages, but does not prohibit a landlord and tenant from agreeing on liquidated damages provisions. As this Court has made clear, the legislature is aware of its power to prohibit various actions, and may set the breadth of its prohibitions. *See Kucera v.*

Baldazo, 745 N.W.2d 481, 487 (Iowa 2008). The legislature did not choose to prohibit such agreements between tenants and landlords; instead, the IURLTA encourages the parties to reach accord on lease terms pertaining to their rights and responsibilities, specifically authorizing written rules to "promote the convenience, safety, or welfare of the tenants." Iowa Code § 562A.18.

Both Walton and the District Court also relied on *D.R. Mobile Home Rentals v. Frost*, 545 N.W.2d 302, 306 (Iowa 1996), in arguing or finding these provisions were unenforceable. The District Court characterized the case as "holding that actual damage must be sustained in order for a landlord to recover". Ruling at 8, app. 43. This analysis is correct, but incomplete: while this Court explained there "the landlord is not entitled to recover if no evidence substantiates that actual damage has been sustained", it reversed the award in the landlord's favor because the landlord had not presented *any* evidence to support the value of damages, or even that any repairs were made. *See D.R. Mobile Home Rentals*, 545 N.W.2d at 306. This Court did *not* state the only permis-

sible award in the landlord's favor was the actual damages supported by the evidence.

Because the District Court granted summary and declaratory judgment on the provisions of the lease based on an erroneous interpretation of Iowa law, its Ruling on these matters should be reversed.

iii. The District Court also erred in granting summary and declaratory judgment on the carpet cleaning provisions.

The District Court granted summary and declaratory judgment in Walton's favor pertaining to sections of the lease regarding carpet cleaning once Walton had vacated the unit, finding the provisions "may not be included . . . because inclusion of these sections permits the landlord to avoid his obligations as defined by the Iowa Legislature in § 562A.12(3)." Ruling at 9, app. 44. Again, and as discussed above, because the actual application of these provisions to Walton has not yet been made clear, the grant of judgment in her favor was in error. In further support of this, Gaffey's Affidavit makes clear the actual situation at the future move-out time: Gaffey does not in fact charge an automatic carpet

cleaning charge when tenants move out, but makes a case-by-case determination of the need. *See* Gaffey Affidavit at ¶ 13, app. 82.

In any event, these provisions do not violate the Iowa Code. Section 562A.12 addresses only the return of a tenant's rental deposit upon termination of the tenancy, and does not prohibit a landlord from affirmatively charging a tenant for carpet cleaning so long as the proper statement is provided. Instead, the section allows thirty days for a landlord to return the rental deposit in full or furnish a written statement showing the grounds for the withholding, including a specification of the nature of the damage for any sums withheld for restoration of the unit. Iowa Code § 562A.12. The amount withheld must be limited to the amount reasonably necessary to restore the dwelling unit to its condition at the commencement of the tenancy and cannot be withheld to cover ordinary wear and tear. *Id.*

The IURLTA allows landlords and tenants to define for themselves their expectations of cleanliness when a new tenant arrives. If the parties agree the proper standard is "professionally cleaned", as they did here, that becomes the applicable standard.

See Castillo-Cullather v. Pollack, 685 N.E.2d 478, 482-83 (Ind. App. 1997) (explaining lease requirement tenants steam clean carpet "establishes an objective standard to determine the condition of the apartment upon termination of the lease"). Gaffey ensures professional cleaning of all carpets in his units to return them to their prior condition, ordinary wear and tear excepted, and this practice—and the attendant standard—is made clear by the lease itself. No tenant is required by the lease to do more than what he or she received at the beginning.

The provisions cited by the District Court also do not exempt Gaffey from giving the required written statement listing the grounds for any withholdings made from a tenant's rental deposit. Gaffey is thus not exempted by the carpet cleaning provisions from any requirements or liability imposed on landlords under the IURLTA.

Because the carpet cleaning provisions of the lease do not violate Iowa law, the District Court erred in granting summary and declaratory judgment in Walton's favor on them.

III. The District Court abused its discretion in certifying the matter as a class action where it failed to adequately address the requirements of certification.

a. Preservation of Error

Gaffey preserved error on this issue by resisting Walton's Motions. *See* Defendant's Brief in Support of Resistance to Plaintiff's Motions at 14-17, app. 75-78.

b. Standard of Review

A district court's ruling on class certification is reviewed for abuse of discretion. *Comes v. Microsoft Corp.*, 696 N.W.2d 318, 320 (Iowa 2005). The district court abuses its discretion when the grounds on which its ruling rests is clearly unreasonable. *Vos v. Farm Bureau Life Ins. Co.*, 667 N.W.2d 36, 44 (Iowa 2003).

c. The District Court abused its discretion in certifying the putative class because it failed to adequately consider the requirements of certification, adequately explain its decision, or adequately describe the class or subclasses it certified.

The District Court's brevity and failure to consider the required elements show the District Court abused its discretion in granting certification of the class at issue here. The District Court certified the class in this action by analogizing to *Staley*, finding the facts here are "nearly identical". Ruling at 10, app. 45. This

was the extent of the District Court's consideration of the matter. The District Court also gave little direction on the composition of the class it certified. Walton's request, at best, encompasses "the same lease and the same injury and the knowing and willful inclusion of prohibited clauses". Plaintiff's Motions at 12, app. 15. It remains unclear, however, what is meant by "the same lease"; is it all of Gaffey's tenants who signed an identical lease in 2014, whenever they join the class? If tenants from earlier years are included, how will the statute of limitations come into play? Is the class only those whose lease is identical in each respect on which the District Court granted partial summary and declaratory judgment, excluding those tenants whose leases have slightly different wording?

The Iowa Rules of Civil Procedure permit the certification of a class if the district court finds all of the following:

> a. The requirements of rule 1.261 [numerosity to the point of making joinder impracticable and a common question of law or fact] have been satisfied.
> b. A class action should be permitted for the fair and efficient adjudication of the controversy.
> c. The representative parties fairly and adequately will protect the interests of the class.

Iowa R. Civ. P. 1.262(2). The party seeking certification must establish each of these prerequisites. *Vos*, 667 N.W.2d at 45 (citing *City of Dubuque v. Iowa Trust*, 519 N.W.2d 786, 791 (Iowa 1994)).

Once the district court determines certification is appropriate, it "shall state the reasons for the court's ruling and its findings on the facts listed in rule 1.263(1)". Iowa R. Civ. P. 1.264(2). Additionally, it "shall describe the class" and state the relief sought, whether the action "is maintained with respect to particular claims or issues", and whether subclasses have been created. Iowa R. Civ. P. 1.264(1)(a)-(c). The district court's decision must "weigh and consider the factors and come to a reasoned conclusion as to whether a class action should be permitted for a fair adjudication of the controversy." *Luttenegger v. Conseco Fin. Serv. Corp.*, 671 N.W.2d 425, 437 (Iowa 2003).

Here, the District Court did none of these things; it merely analogized this case to *Staley*, without making findings on the individual requirements, or, of particular importance, describing the class or subclasses it certified. This leaves the parties without critical bases for their preparation of addressing the very real issues

of managing a sizable class action, and leaves up in the air precisely *whose* rights are being conclusively determined by further proceedings in this case, exposing both Gaffey and other prospective claimants to the risk of unnecessary litigation and inconsistent outcomes.

Additionally, a number of the class action factors weigh against certification, a fact the District Court failed to address when it merely incorporated without meaningful discussion the reasoning in *Staley*. Walton has suffered no actual damages, leaving the question of whether she has a common interest with other class members in question, and Gaffey at real risk of suffering inconsistent or varying adjudications regarding the applicable standard of conduct and damages. *See* Iowa R. Civ. P. 1.263(1)(a), (b), (c). Gaffey's actions depend on the facts of each case, meaning common questions of fact do not predominate over the various possible actions linked to the lease. *See id.* at 1.263(1)(d), (e). The District Court did not address whether Walton has a sufficiently substantial interest in addressing claims of actual (as opposed to statutory) damages to adequately protect other class members, or

whether her lack of standing compromises her ability to fairly and adequately represent the class. *See id.* at 1.263(1)(h); *Hammer v. Branstad*, 463 N.W.2d 86, 89 (Iowa 1990) (requiring "a class representative must be a member of the class sought to be represented. . . . If it is ultimately determined in the present litigation that [the representative] plaintiffs have not sustained the type of injury for which they are seeking relief on behalf of the class, they may no longer continue as class representatives."). There also exists a more practical means of addressing any individual complaints or actual damages of Gaffey's individual tenants and the individual defenses thereto: small claims court in Johnson County. *See* Iowa R. Civ. P. 1.263(1)(f).

Because the District Court failed to adequately consider the elements of class certification, failed to adequately explain its decision to certify the class, and failed to adequately describe the class or subclasses it certified, it abused its discretion in granting Walton's request for class certification, and this Court should overrule the District Court's Ruling on that issue and remand the case for further consideration.

CONCLUSION

The District Court erred in granting portions of Plaintiff-Appellee Joan Walton's First Motion for Partial Summary and Declaratory Judgment, as she has not suffered an actual injury and cannot display the ripeness required to properly stand before the court. The District Court also erred when it granted the portion of her Motion pertaining to the allegedly prohibited provisions contained in the lease. Further, the District Court abused its discretion when it certified the putative class in this case. For these reasons, Defendant-Appellant Martin Gaffey respectfully requests the Court overrule the indicated portions of the District Court's July 12, 2015 Ruling and remand the case for further proceedings in accordance with its opinion.

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REQUEST FOR ORAL ARGUMENT

Defendant-Appellant Martin Gaffey requests oral argument on this appeal.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, AND TYPE-STYLE REQUIREMENTS

1. This brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) or (2) because it contains 4,896 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(g)(1).

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/s/ Nicholas J. Kilburg — April 7, 2016
Signature — Date

CERTIFICATE OF FILING AND SERVICE

I certify the preceding Appellant's Final Brief was filed with the Supreme Court of Iowa and served on by electronically filing this document in accordance with the Chapter 16 Rules, which will provide notice and a copy to the following:

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