SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

PRESENT: **HON. SABRINA KRAUS** **PART** **57TR**

Justice

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THERESA MADDICKS, JOHN AMBROSIO, PAUL WILDER, SAMUEL WILDER, ALYSSA O'CONNELL, JOHANNA KARLIN, BRIAN WAGNER, TYLER STRICKLAND, DANIEL ROBLES, ELENA RICARDO, LIAM CUDMORE, JENNIFER MAK, JOSHUA BERG, ANISH JAIN, JOHN CURTIN, JONATHAN FIEWEGER, MARIA FUNCHEON, JORDANI SANCHEZ, MELLISA MICKENS, M.D. IVEY, DEVIN ELTING, SEMI PAK, KAITLIN CAMPBELL, SARAH NORRIS, MIKIALA JAMISON, SHERESA JENKINS-RISTEKI, YANIRA GOMEZ, KRISTEN PIRO

Plaintiffs,

- v -

106-108 CONVENT BCR, LLC,110 CONVENT BCR, LLC,408-412 PINEAPPLE, LLC,510-512 PINEAPPLE, LLC,535-539 WEST 155 BCR, LLC,3750 BROADWAY BCR, LLC,3660 BROADWAY BCR, LLC,605 WEST 151 BCR, LLC,545 EDGECOMBE BCR, LLC,

Defendants.

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INDEX NO. 656345/2016

MOTION DATE 6/8/2022

MOTION SEQ. NO. 008

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 008) 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 197, 198, 200, 201, 202

were read on this motion to/for CERTIFICATION OF A CPLR 906(1) CLASS.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiffs brought this lawsuit, on their own behalf and on behalf of a putative class of tenants to end the alleged illegal and fraudulent practices employed by Defendants 106-108 Convent BCR, LLC, 110 Convent BCR LLC, 408-412 Pineapple, LLC, 510-521 Pineapple, LLC, 535-539 West 155 BCR LLC, 3750 Broadway BCR, LLC, 3660 Broadway BCR, LLC, 605 West 151 BCR, LLC, and 545 Edgecombe BCR, LLC (Defendants) with respect to evasion of rent regulation as against tenants in the subject buildings.

On November 16, 2017, the court (Edwards, J) granted Defendants' motion to dismiss pursuant to CPLR §3211 [2017 NY Slip Op 32385(U)].

On July 26, 2018, the Appellate Division modified holding the trial court's motion to dismiss was premature (163 AD3d 501).

On November 18, 2019, the New York Court of Appeals affirmed the Appellate Division's ruling and remitted the matter to the Supreme Court.

PENDING MOTION

On May 14, 2021, plaintiffs moved for an order certifying a CPLR 906(1) class. The motion was fully submitted on June 22, 2021.

Subsequently, the action was reassigned to this Court. On June 8, 2022, the motion was marked submitted and decision was reserved.

For the reasons stated below, the motion is granted.

ALLEGED FACTS

Defendants are all single purpose entities (SPEs) that own and operate the following New York City buildings:106 Convent Avenue;110 Convent Avenue; 408 West 129th Street; 412 West 129th Street; 510 West 134th Street; 512 West 134th Street; 535 West 155th Street; 3750 Broadway; 555 West 151st Street (a/k/a 3660 Broadway); 605 West 151st Street; and 545 Edgecombe Avenue. These buildings are collectively referred to herein as the "Big City Portfolio." Each of the SPEs is owned by a single purpose LLC whose sole member is either Big City Realty, LLC (Big City Realty), or Magnolia Holdings, LLC (Magnolia Holdings). Both Big City Realty and Magnolia Holdings have, at times, had identical managers and corporate addresses, and Chaim Katzman is listed as a member of both entities. Each property in the Big City Portfolio is managed by a management entity under the control of Kobi Zamir.

Individual Plaintiffs' Claims

Plaintiffs allege Defendants improperly used preferential rents as to three tenants.

Theresa Maddicks lives in Apartment 14 at 106 Convent Avenue. Apartment 14 exited decontrol in June 2011. Upon decontrol, the apartment was allegedly impermissibly registered with a preferential rent of $1,100.00 and a legal regulated rent of $1,657.50. Defendants increased the preferential rent from $1,100 to $1,500.00 in 2015. Plaintiffs allege that increase was only possible because Defendants improperly utilized a preferential rent following a decontrol.

John Ambrosio lives in Apartment 17 at 106 Convent Avenue. Apartment 17 exited decontrol in June 2007. Upon decontrol, the apartment was allegedly impermissibly registered with a preferential rent of $1,250.00 and a legal regulated rent of $1,799.51. Defendants deregulated Apartment 17 in 2009, presumably as the result of a two-year vacancy increase of 20%, which would have taken the registered legal regulated rent above the then-extant deregulation threshold of $2,000.00. Plaintiffs allege that had the preferential rent been registered as the legal regulated rent, as legally required, the vacancy increase would not have led to a deregulation, but instead to a legal regulated rent of $1,500.00.

Johanna S. Karlin lives in Apartment 4 at 408 W. 129th Street. Apartment 4 was registered until 1993, then listed as vacant from 1994 to 2000. During the vacancy period, the rent increased 400%. It then went unregistered in 2001, was registered to a David Wilson for one (1) year in 2002, registered as vacant for 2003, then unregistered between 2004 and 2006. Apartment 4 returned to the registration rolls again in 2006, but only for two years. In 2010 and 2011, it was listed as temporarily exempt from rent-regulation and was never again registered. At the time she moved into her unit, Karlin was provided with a printout showing that her

predecessor had a legal regulated rent of $1,650.00, a figure that appears nowhere in her unit's rent history. Karlin was provided with a free-market lease. Plaintiffs allege that even if the legal regulated rent listed on her move-in printout was correct, she would still be entitled to a rent-stabilized lease.

The remaining Plaintiffs allege claims based on improper Individual Apartment Improvements (IAIs), failures to register or a combination of both.

Paul and Samuel Wilder reside in Apartment 1 at 110 Convent Avenue. Apartment 1 was last registered with a legal regulated rent of $1,209.44 and deregulated sometime between April 2010 and April 2011. In discovery, Defendants proffered a November 2010 lease for Apartment 1, which reflects that the last registered rent was $1,858.79. The DHCR Rent Registrations as of April are substantially higher than the $1,209.44 listed in the unit's DHCR Rent History. A 17.75% vacancy increase was then added to the $1,858.79 figure, as the alleged basis for deregulating the apartment. Plaintiffs allege that this deregulation, was based on a fictitious rent, and illegal.

Alyssa O'Connell resided in Apartment 11 at 110 Convent Avenue. Between 2009 and 2010, the legal regulated rent for Apartment 11 was increased by $935.12, and the new legal regulated rent was listed as $1,624.25. That increase would have required over $28,000.00 in IAIs. Plaintiffs allege the documentation Defendants provided to support the increases, fails to delineate between the work that supports an IAI and work that was for normal wear and tear. At the time O'Connell occupied her unit, she was given a printout, disclosing that her predecessor had a legal stabilized rent of $1,832.05. That figure appears nowhere in Apartment 1l's DHCR rent history. Prior to O'Connell's tenancy, Defendants allege they paid another company, Minaya, $15,000.00 in IAIs, to support an increase in the legal regulated rent to $2,416.00. The

Minaya apartment renovation contract, purporting to justify such IAIs, is also a lump-sum contract, which allegedly includes work which does not constitute IAIs, such as painting, plastering, and applying polyurethane to the floors. Further, Plaintiffs allege the purported IAIs are almost all entirely duplicative of the 2009 work, and as such, would not constitute improvements, but repairs. Finally, while the printout provided to O'Connell lists $15,000.00 in improvements, the check copies, indicate that only $13,000.00 was paid.

Paul and Samuel Wilder reside in Apartment 1 at 110 Convent Avenue. Apartment 1 was last registered with a legal regulated rent of $1,209.44 and deregulated sometime between April 2010 and April 2013. Defendants show a November 2010 lease for Apartment 1, which reflects that the last registered rent for Apartment 1 was $1,858.79. The DHCR Rent Registrations are substantially higher than the $1,209.44 listed in the unit's DHCR Rent History. A 17.75% vacancy increase was then added to the $1,858.79 figure, as the alleged basis for deregulating the apartment. Plaintiffs allege that said deregulation, was based on a fictitious rent.

Brian Wagner lives in Apartment 14 at 408 W. 129th Street. Between 2012 and 2013, the legal regulated rent for Apartment 14 was increased by $1,060.00 from the last registered rent. That 97% increase would have required over $45,800.00 in IAIs. Plaintiffs allege that Defendants have failed to present any documentary evidence sufficient to legally support this increase.

Tyler Strickland and Daniel Robles lived in Apartment 15 at 408 W. 129th Street. Between 2013 and 2014, the legal regulated rent for Apartment 15 was increased by $947.62. This increase would have required over $40,200.00 in IAIs. Again, Plaintiffs allege that Defendants have failed to present documentary evidence sufficient to legally support this increase.

Elena Ricardo lived in Apartment 20 at 408 W. 129th Street. Between 2013 and 2014, the legal regulated rent for Apartment 15 was increased by $968.84. This increase would have required over $43,686.00 in IAIs. Liam Cudmore lives in Apartment 28 at 408 W. 129th Street. Between 2009 and 2010, the legal regulated rent for Apartment 28 was increased by $1,054.89, requiring over $32,900 in IAIs. Plaintiffs allege that Defendants have not presented documents to legally support these increases.

Jennifer Mak lives in Apartment 4 at 412 W. 129th Street. In 2000, Apartment 4 was registered at a legal regulated rent of $281.49. Apartment 4 was unregistered in 2001, registered as vacant at a legal regulated rent of $1,200.00 in 2002, and not registered again until 2011, when it was registered at a legal regulated rent of $1573.65. Even though Mak's tenancy was registered with DHCR, she was provided with a deregulated lease.

Joshua Berg lives in Apartment 6 at 412 W. 129th Street. Apartment 6 was registered in 2002 with a legal regulated rent of $725.00, and then unregistered for nearly 10 years, until it was again registered with a legal regulated rent of $1,407.02. To date, Defendants have not proffered any documentary evidence with respect to Berg's apartment or explained the registration gap. In addition, between 2011 and 2012, the legal regulated rent increased $465.83, which would have required approximately $10,000 in IAIs. Plaintiffs allege Defendants have not presented documentation sufficient to legally support the increase.

Anish Jain and John Curtin lived in Apartment 11 at 412 W. 129th Street. Apartment 11 was registered in 2002 at a legal regulated rent of $836.16, then unregistered from 2003 to until 2011. In December 2011, three years of retroactive registrations were filed for Apartment 11, including a legal regulated rent of $1,600 in 2010. There were no further registrations. At the

time they first occupied their apartment, Jain and Curtin were provided with a free-market lease, and they subsequently received free-market renewals.

Jonathan Fieweger lives in Apartment 20 at 412 W. 129th Street. Maria Funcheon is a former resident of that unit. Apartment 20 was unregistered from 2002 to 2009 and from 2012 to 2015. At the time they first occupied their apartment, Fieweger and Funcheon were provided with a free-market lease, and subsequently received free-market renewals. Plaintiffs allege it is unclear when, or upon what grounds, Apartment 20 was deregulated, and that Defendants have proffered nothing in discovery that would support such deregulation.

Jordani Sanchez lives in Apartment 25 at 412 W. 129th Street. Apartment 25 was unregistered from 2003 to 2009. Subsequent registrations conflict with Sanchez's leases. For example, Sanchez's 2013 lease shows a legal regulated rent of $1,475.00, while the rent history for that year lists a legal regulated rent of $2,032.74. Plaintiffs allege the DHCR Rent History is fictitious.

Melissa Mickens lived in Apartment 33 at 510 W. 134th Street. Apartment 33 was registered as rent-stabilized in 1984, then not registered again until 2003, when it was listed as exempt from rent stabilization. From 2003 to 2011, Mickens' apartment was not registered, then it was retroactively registered in 2011, for the period from 2009 to 2011. It was then registered for one year in 2012 and listed as deregulated for a second time in 2013. Until June of 2017, 510 W. 134th Street received J-51 tax credits from New York City. Mickens did not receive a rent-stabilized lease, and Plaintiffs allege no leases for any predecessors were provided in discovery.

M.D. Ivey lived in Apartment 53 at 510 W. 134th Street. Apartment 53 was not registered from 1984 to 2002, and then was listed as permanently exempt in 2003. Apartment 53 continued to be listed as exempt until 2011, when Defendants' predecessors retroactively filed

registrations. Defendants' predecessors registered Apartment 53 from 2012 to 2014 as rent stabilized. However, the tenant in occupancy during that period was provided with a free-market lease, and not informed of the rent-stabilized status. In 2015, contrary to the requirements of the J-51 Program, and the Court of Appeals' *Roberts* ruling, Defendants for the second time deregulated Apartment 53. Even if those deregulations were proper, the rent regulations required Defendants to inform Plaintiff Ivey of the deregulation, via a deregulation rider, so that she could challenge the apartment's free-market status. Plaintiffs allege no such rider was ever provided to Ivey in her first lease, and that Defendants justified the illegal deregulation based upon a combination of a vacancy increase and IAIs. Plaintiffs allege the vacancy increase was improper, because Ivey's predecessor was not informed of that occupant's rent-stabilized status. The IAI proof for Apartment 53 consists of a proposal which commingles non-IAIs (painting and wood floor refinishing) with IAIs (new kitchen cabinets).

Devin Elting lives in Apartment 33 at 512 W. 134th Street. Apartment 33 was registered in 1984, then went unregistered for the years 1985 to 2002, and was subsequently registered as permanently exempt in 2003. Although the Building was in receipt of J-51 benefits, Apartment 33 continued to be listed as exempt until 2011, when Defendants' predecessors retroactively filed registrations. Defendants' predecessors registered Apartment 33 from 2008 to 2015 as rent stabilized. However, Plaintiffs allege that at least one tenant in occupancy during that period was provided with a free-market lease renewal, and neither informed of the apartment's status, nor notified of their entitlement to take one- or two-year lease renewals at RGB rates.

Plaintiffs further allege that Defendants appear to have created an illusory tenancy. A printout provided to Elting at the time of occupancy of the apartment notes that the immediate predecessor had a lease commencing November 20, 2014. No such lease appears in any

document provided by Defendants. In 2016, contrary to the requirements of the J-51 Program, and the Court of Appeals' *Roberts* ruling, Defendants deregulated Apartment 33, but failed to inform Elting of the deregulation, so that he could challenge the apartment's free-market status. In Elting's first lease, there is no rider. Defendants support the deregulation based in part upon a combination of a vacancy increase and IAIs. Part of the IAI proof is in the form of a check, from the owner of 510-512 West 134th Street to Big City Management, without any description or indication as to what that check is for, or if it is applicable to any IAIs performed in unit 33. Further, the IAI proof commingles non-IAIs with IAIs.

Semi Pak lived in Apartment 42 at 512 W. 134th Street. Apartment 42 was not registered from 1984 to 2002, and then was listed as permanently exempt in 2003. A 2001 free market lease proffered by Defendants notes that Apartment 42 was occupied by a Dena Saleh. Between 2001 and 2005, Saleh received renewal leases with rent increases in amounts that did not conform with RGB guidelines. In 2005, Defendants' predecessors provided Saleh with a rent-stabilized lease, but it does not appear that the unit was registered with DHCR. The DHCR rent history, shows Saleh living in the apartment from 2010 until 2013, although no leases were provided to Plaintiffs demonstrating such tenancy. Apartment 42 was deregulated for a second time in 2015, while the Building was in receipt of J-51 benefits. Pak's first lease had no rider regarding the deregulation. Defendants support the deregulation based upon a combination of a vacancy increase and IAIs. Plaintiffs allege Defendants' IAI proof for Apartment 42 is insufficient, because the only documentation provided were: copies of checks, which do not establish what work was performed, or, reference Apartment 42; in addition to a ledger sheet; an invoice for a countertop; and pictures of the unit.

Kaitlin Campbell lives in Apartment 41 at 535 W. 155th Street. Until June 2017, 535 W. 155th Street participated in the J-51 Program. The DHCR Rent History for Apartment 41 shows that it was unregistered from 2003 to 2005, and then retroactively registered in 2005. Apartment 41 was then unregistered in 2010, when it was re-registered in the amount of $2,733.83. Apartment 41 was registered for two years, then not registered again in 2012 and 2013. Apartment 41 was once again re-registered in 2014 at a legal regulated rent of $1,795.00. In 2015, the legal regulated rent increased by $405.00, requiring approximately $5,000.00 in IAIs. At the time she moved into her apartment, Campbell received a printout, indicating that Defendants allegedly performed $1,400.00 in IAIs for her apartment. Other than pictures of the apartment, no IAI proof was provided at in discovery. Campbell was provided with a free-market lease.

Sarah Norris lives in Apartment 63 at 3750 Broadway. From 1984 to 2008, Apartment 63 is registered as being occupied by Quisgueya Silvero. Silvero vacated in 2008, and the apartment was registered as vacant, with a legal regulated rent in the amount of $620.77. In 2011, the rent increased to $2,200.00. That increase required over $83,200.00 in IAIs. At the time she first occupied the apartment on January 1, 2012, Norris received a DHCR rider showing how her legal regulated rent was calculated. The portion of that rider disclosing IAI improvements for Apartment 63 was left blank. Defendants have provided no proof, that any IAIs were performed in Norris's apartment.

Mikiala Jamison lives in Apartment 3 at 555 W. 151St Street. Apartment 3 was registered from 1984 to 2011 when it was last registered at the amount of $1,111.00, with a preferential rent of $688.48. Apartment 3 was never registered again. When Jamison took occupancy in April 2016, she was provided with a free-market lease. It is unclear how Apartment 3 became

deregulated, and Defendants have provided no documentary evidence demonstrating such deregulation.

Sheresa Jenkins-Risteki lived in Apartment 31 at 555 W. 151st Street. Apartment 31 was registered as exempt, although the building was receiving J-51 tax benefits at that time. Apartment 31 was registered as exempt until 2013, when it was registered as vacant for one year at a legal regulated rent of $1,715.00. In 2014, Apartment 31 was again registered as exempt. According to a printout provided to Jenkins-Risteki in 2016, the prior tenant paid a legal regulated rent of $2,319.00, but no such amount appears in the rent history for Apartment 31. The 2014 increase would have required over $30,400.00 in IAIs. There is no evidence that IAIs in that amount were implemented in Apartment 31, other than a photograph. Plaintiffs allege Defendants failed to provide proof legally sufficient to support the IAIs.

Yanira Gomez lives in Apartment 24 at 605 W. 151th Street. Apartment 24 was registered as exempt. To support deregulation, the landlord was required to perform over $25,400.00 in IAIs. Defendants provided no IAI proof for Apartment 24, leading Plaintiffs to allege that no IAIs were performed.

Kristin Piro lives in Apartment 3A at 545 Edgecombe Avenue. Apartment 3A was deregulated in 2013. To support deregulation, the landlord was required to perform over $76,600.00 in IAIs. Other than a picture of Piro's apartment, dated November 2014, Defendants have provided no IAI proof whatsoever for Apartment 3A.

DISCUSSSION

Plaintiffs seek class certification under CPLR §906(1) which provides that "an action may be brought or maintained as a class action with respect to particular issues." CPLR §906 makes clear that the certification of a class action need not be an all-or-nothing proposition.

Subdivision (1) contemplates class treatment of particular issues, with the remainder of the case to consist of individualized adjudication. "CPLR 906 gives the court important tools to aid in the management of a class action. By certifying subclasses or isolating specific issues for class treatment, the court may be able to turn an otherwise unmanageable class action into one that is manageable [N.Y. C.P.L.R. 906 (McKinney)]."

CPLR §906(1) is identical to FRCP 23(c)(4)(a).

Most federal courts, including the Second Circuit Court of Appeals, hold that courts may use Rule 23(c)(4)(a) to single out issues for class treatment, even when the case as a whole may not satisfy the predominance test. (*In re Nassau County Strip Search Cases*, 461 F3d 219, 227 [2d Cir 2006] ["W]e hold that a court may employ subsection (c)(4) to certify a class as to liability regardless of whether the claim as a whole satisfies Rule 23(b)(3)'s predominance requirement."]; *see also, Gonzalez v Corning*, 885 F3d 185, 202 [3rd Cir 2018]; *Gunnells v Healthplan Servs., Inc*., 348 F3d 417, 439 [4th Cir 2003]; *Martin v Behr Dayton Thermal Products LLC*, 896 F3d 405 [6th Cir 2018]). Because CPLR article 9 "has much in common with Federal rule 23," New York courts have found that "federal jurisprudence is helpful" in analyzing New York's class action provisions (*Friar v Vanguard Holding Corp*., 78 AD2d 83, 96 [2d Dept 1980]).

Based on the foregoing, Plaintiffs must demonstrate numerosity, typicality, adequacy, and superiority, under CPLR 901(a). Then, with respect to CPLR 906, Plaintiffs must identify a common issue, or issues, for certification on a class-wide basis, rendering remaining issues to be decided on an individual-by-individual basis.

Class Certification

The State's rules on class actions, like their federal counterparts, "favor the maintenance of class actions" and support "a liberal interpretation" (*Pruitt v Rockefeller Ctr. Props.*, 167 AD2d 14, 20-21 [1st Dept 1991]; *see City of New York v Maul*, 14 NY3d 499, 509 [2010] [courts should broadly construe criteria set forth in CPLR 901 (a)]). In the context of rent-stabilization challenges against landlords who allegedly violated J-51, "CPLR 901 (b) permits . . . plaintiffs to utilize the class action mechanism to recover compensatory overcharges . . . even though the Rent Stabilization Law of 1969 . . . does not specifically authorize class action recovery" (*Borden v 400 E. 55th St. Assoc., L.P.*, 24 NY3d 382, 389-90 [2014]).

Courts liberally construe the criteria in part because "the Legislature intended article 9 to be a liberal substitute for the narrow class action legislation which preceded it" (*Maul*, 14 NY3d at 509 [citation and internal quotation marks omitted]). "The determination of whether . . . a matter qualifies as a class action . . . rests within the sound discretion of the motion court" (*Rabouin*, 25 AD3d at 350). However, the class representatives must satisfy an evidentiary burden, absent which the court denies certification. For example, "general and conclusory allegations in the affirmation of . . . counsel and the exhibits attached thereto" will not suffice (*Rallis v City of New York*, 3 AD3d 525, 526 [2d Dept 2004]).

Numerosity

Numerosity does not require a specific number, however Plaintiffs must establish that joinder would be "impracticable." CPLR §901(a). The Court of Appeals has held, in the rent overcharge context, that when the legislature adopted CPLR §901(a), it "contemplated classes involving as few as 18 members." (*Borden* at 382). The *Borden* Court noted that joinder is impracticable "where the members would have difficulty communicating with each other, such

as where barriers of distance, cost, language, income, education or lack of information prevent those who are aware of their rights from communicating with others similarly situated. Such reasoning would apply to the cases here, where tenants have moved out of the building." (*Id.*) In this case, there are 329 apartments at issue. Plaintiffs have stablished numerosity and this is not challenged by Defendants.

Typicality

The typicality requirement of CPLR §901(a)(3) is satisfied when the class representatives' claim "derives from the same practice or course of conduct that gave rise to the remaining class members and is based upon the same legal theory[.]" *Ramirez v Mansions Catering, Inc.*, 2009 NY Slip Op 31100U, at *12 [Sup Ct, NY County 2009] (finding that "the claims or defenses of the representative parties are typical of the claims or defenses of the class, in that they arise out of the same course of conduct as the class members' claims and are based on the same cause of action"). As they arise out of Defendants' failure to follow the strictures of the rental regulations, the proposed Lead Plaintiffs' claims are not merely typical of those of all other class members, they are identical to those of all other members. Proposed Lead Plaintiffs Ricardo and Piro both point to unperformed IAIs in their apartments. Maddicks' claim arises out of the impermissible use of a preferential rent. All three proposed Lead Plaintiffs contend that the failure to follow the rent regulations demonstrate a systemic evasion of the rent regulations, the same type of claim raised by the Class. Like all class members, Plaintiffs allege that they were not provided a rent-stabilized lease, were overcharged on rent, and are entitled to damages.

Moreover, those proposed Lead Plaintiffs who currently occupy units in the Big City Portfolio, such as Piro, seek a rent-stabilized lease with a monthly rent amount properly

calculated pursuant to New York's rent-stabilization laws. Since the claims of the Lead Plaintiffs are typical of the claims of the Class, certification is appropriate.

Defendants assert that Plaintiffs have failed to establish typicality and argue that that Maddicks (who asserts claims based on impermissible use of a preferential rent) cannot be typical with Gomez (who asserts claims based on unperformed IAIs).

However, typicality has never required that the claims be identical (*Super Glue Corp. v Avis Rent A Car Sys*., Inc., 132 AD2d 604, 607 [2d Dept 1987]. All that is required is that the representative's claims stem from "the same practice or course of conduct that gave rise to the remaining claims of other class members and is based upon the same legal theory[.]" (*Friar v Vanguard Holding Corp*. 78 AD2d 83, 99 [2d Dept 1980]).

Here, Plaintiffs have alleged in detail how they claim Defendants engaged in a methodical attempt to illegally inflate rents and evade the requirements of rent-stabilization. Since the same course of conduct affected Maddicks, Gomez, and the members of the class, typicality is established. As held by the First Department class certification is appropriate when tenants can point to a systematic effort to set improper rents and avoid compliance with the rent stabilization law. (*Maddicks*, 163 AD3d at 503]). And, the Court of Appeals held that class certification was appropriate where there was "a methodical attempt to illegally inflate rents." (*Maddicks*, 34 NY3d at 123).

Defendants also argue that because of their eviction proceeding against one named Plaintiff, class certification and relief, should be denied for every tenant. However, Gomez (against whom Defendants have asserted a non-payment proceeding) is not seeking lead plaintiff status, only Piro, Maddicks, and Ricardo are. CPLR §901(a) provides that the "claims or defenses of the representative parties are typical of the claims or defenses of the class. (CPLR

§901[a])." Defendants' citation to *Rife v Barnes Firm, P.C.,* (48 AD3d 1228 [4th Dept 2008]), supports Plaintiffs' position, and holds that "the defenses available to defendant for the representative plaintiffs are varied and individualized[.]" (*Id*. at 1229).

Nor would the statutory purpose be served for the class not to be certified merely because Defendants have filed a non-payment proceeding against a single non-Lead Plaintiff. The proposed Lead Plaintiffs each allege they were harmed by the same "methodical attempt to illegally inflate rents," that harmed the proposed class. Typicality has been established.

Adequacy

"The factors to be considered in determining adequacy of representation are whether any conflict exists between the representative and the class members, the representative's familiarity with the lawsuit and his or her financial resources, and the competence and experience of class counsel" (*Ackerman v Price Waterhouse*, 252 AD2d 179, 202 [1st Dept 1998]). The class representatives owe a fiduciary duty to the other members of the class, and therefore they must affirmatively secure their rights and oppose the arguments of adverse parties (*Cooper v Sleepy's, LLC*, 120 AD3d 742, 743 [2d Dept 2014]).

Plaintiffs submit affidavits of the proposed class representatives, which set forth that they have discussed the case with their counsel, verify that they have no known conflicts of interest with the other class members, and indicate that they understand the facts of the class action and are willing to undertake the responsibilities of representing the class. Plaintiffs further note that the named plaintiffs' financial circumstances are irrelevant because their attorneys represent them *pro bono* (*Wilder v May Dept. Stores Co.*, 23 AD3d 646, 648-649 [2d Dept 2005]; *see also Gudz v Jemrock Realty Co., LLC*, 105 AD3d 625, 626 [1st Dept 2013] [plaintiff's "financial

ability to adequately represent the class . . . was adequately shown by counsel's assumption of the risk of costs and expenses in the litigation"], *aff'd sub nom Borden*, 24 NY3d 382).

Further, the court finds, contrary to Defendants' arguments, that the law firm of Newman Ferrara LLP is competent, and the firm's attorneys have sufficient experience in both class action and landlord-tenant litigation.

Defendants argue that there is a "conflict of interest" because Ricardo is a former tenant, who seeks to represent current tenants. The court disagrees. As a former tenant, Ricardo has vested interest in prevailing in this litigation on her rent overcharge claims, an interest shared with both current and former tenants.

Defendants argue that the proposed Lead Plaintiffs are not adequate, because they are waiving the class members' ability to seek treble damages and/or proceed before DHCR. However, prospective class members may opt out and seek whatever remedies they wish, or to which they may be entitled. By choosing not to opt-out, after notice, each class member waives their ability to receive treble damages or proceed before DHCR.

Superiority

"In determining superiority, courts consider a number of factors, including the possibility of excessive costs and delays resulting from multiple lawsuits seeking the same or similar relief, inconsistent rulings, and whether the aggregation of the claims will allow individuals with small claims judicial relief that would otherwise be impractical" (*Onadia v City of New York*, 56 Misc 3d 309, 321-322 [Sup Ct, Bronx County 2017] [citing *Globe Surgical Supply v GEICO Ins. Co.*, 59 AD3d 129, 146-147 [2d Dept 2008]). Courts especially stress that where "the relatively insignificant amount of damages suffered by many members of the class makes individual actions cost prohibitive, and the large number of class members renders consolidation unworkable, a class

action [may be] not only superior but, indeed, the only practical method of adjudication" (*Pruitt*, 167 AD2d at 24). Further, courts acknowledge "the public benefit aspect of the class action," which can "induc[e] socially and ethically responsible behavior" in defendants who are wealthier and more powerful than the plaintiffs who seek redress (*id.* at 23).

Here, a class action is the best way to address the alleged wrongs regarding Defendants' failures to follow the rent-stabilization laws. Requiring each current and former tenant to individually bring their own claim would not only discourage tenants from seeking redress but would also strain an already overburdened court by requiring that identical claims be re-litigated over-and-over again; possibly resulting in inconsistent rulings. (*Gudz v Jemrock*, 2011 NY Slip Op 31647[U] [Sup Ct, NY County 201 l] at 12-13.

In opposition, Defendants argue that a class action is not the best method of litigating the claims of the proposed class. Instead, they maintain that Plaintiffs' cases are best suited to individual treatment before the DHCR.

The court concludes that a class action is the superior method of adjudication of this matter. "Under the facts alleged, the alternatives to a class action would be individual actions by tenants or administrative proceedings. It is clear that this class action lawsuit conserves judicial resources by avoiding a multiplicity of lawsuits involving the same basic facts" (*Casey v Whitehouse Estates, Inc.*, 36 Misc 3d 1225 [A], [Sup Ct, NY County 2012]).

As the Court of Appeals stated in *Pruitt*, where, as here, individual actions may be cost prohibitive to many of the class members, a class action is the most practical method of adjudication" (167 AD2d at 24; *see Jill & Phil's Family Pharm. v Aetna U.S. Healthcare*, 271 AD2d 281, 282 [1st Dept 2000]). As noted, there is also a public benefit to this class action in that it may induce more responsible behavior in landlords. The money it would cost to litigate the

proceedings individually also militates in favor of moving forward as a class (*Dugan*, 45 Misc 3d at 380).

In addition, as the court in *Dugan* stated, it is more efficient and apt to devise a uniform formula for calculating overcharges and determining other issues even if the use of a special master is necessary to make individualized assessments (*id.*).

Defendants' argument that a class action is an inferior method of adjudication ignores legal precedent. In *Borden*, the Court of Appeals held that "permitting plaintiffs to bring claims as a class accomplishes the purpose of CPLR 901 (b)" (*Borden*, 24 NY3d at 394). Further, the Court stated that "class certification is superior to having these claims adjudicated individually" from the standpoint of judicial economy (*id.* at 400).

Defendants' position that these matters should be adjudicated before DHCR also is inconsistent with the prevailing caselaw. In *Collazo v Netherland Prop. Assets LLC* (35 NY3d 987, 990 [2020]) the Court of Appeals found that, under the Housing Stability and Tenant Protection Act of 2019 (HSTPA), "'[t]he courts and [DHCR] shall have concurrent jurisdiction, subject to the tenant's choice of forum (L 2019, ch 36, Part F, §§ 1, 3).'" The Court concluded that "plaintiffs' choice of forum controls" (*Collazo*, 35 NY3d at 990).[1] Every one of the proposed Plaintiffs has the right to select the Supreme Court as their preferred forum, either on an individual basis or as part of the class action.

Certification of a CPLR 906 Class is Appropriate

CPLR §906 allows for actions to be partially conducted as class actions. It provides: "An action may be brought or maintained as a class action with respect to particular issues." (CPLR

[1] Justice Rivera, who dissenting in part, agreed with the majority on this issue (*see Collazo*, 35 NY3d at 991).

§906(1) Essentially, in an "issue" class action, a plaintiff meets four of the class action prerequisites of CPLR §901 (numerosity, typicality, adequacy and superiority), but does not have to show that common issues predominate over individual issues.

Plaintiffs allege that Defendants have engaged in a scheme designed to evade New York's rent-regulations, and that this scheme takes three forms: (a) failure to register apartments, in some instances, for a decade or more; (b) utilizing illegal first market rents on decontrolled apartments; and (c) taking credit for unperformed, or underperformed, IAI increases to justify increasing the legal regulated rent and/or deregulating units.

New York appellate courts have recognized the validity of class certification in cases involving systemic failures to follow the law, or corporate policies that cause individual harm. In *Maul*, the plaintiffs, representing at least 150 children with developmental disabilities, asserted that two New York State agencies failed to fulfill their statutory and regulatory duties with regard to foster care placement. (*Id*. at 505-506). The Appellate Division had qualified the lawsuit as a class action, and the Court of Appeals analyzed whether the class was correctly certified. In so doing, the Court held because a common practice was established, that class certification was appropriate.

In an earlier appeal in this case, the Court of Appeals found *Maul* "instructive," holding that "we conclude the allegations of misconduct here are of the same character as those at issue in *Maul*." (*Maddicks v Big City*, 34 NY3d 116, 124-125 [2019]).

In *Weinberg v Hertz Corp*., (116 AD2d 1, 2-3 [1st Dept 1986], affd, 69 NY2d 979 [1987]) the First Department held that:

> The statute clearly envisions authorization of class actions even where there are subsidiary questions of law or fact not common to the class.... It is undisputed that the various charges complained of were imposed by defendant. That individuals who are members of the class might have been subjected to less than all of the conduct

> complained of is not a ground for denying class action. Whatever differences there are do not override the common questions of law and fact. As noted, subclasses may be created to deal with the differences, if needed.

(Id. at 6).

There is also federal court precedent, in a case similar to the present action, *Charron*. If Rule 23(c)(4) was appropriate in that action, raising identical allegations, its New York equivalent, CPLR 906, can be utilized in similar fashion, especially given that Courts are to construe the CPLR Article 9 requirements in favor of class actions, and resolve any doubts by finding that certification is appropriate. (*Brandon v Chefetz*, 106 AD2d 162, 169 [1st Dept 1985].

Based on the foregoing the court finds CPLR 906 certification is appropriate on the issue of whether Defendants engaged in a common scheme to evade rent regulation by: failing to register apartments; (b) utilizing illegal first market rents on decontrolled apartments; and (c) taking credit for unperformed, or underperformed, IAI increases to justify increasing the legal regulated rent and/or deregulating units.

Plaintiffs Have Established the CPLR §902 Factors

In addition to the factors set forth in CPLR §901, courts also consider the following factors in determining whether class certification is appropriate:

1. The interest of the class members in individually controlling the prosecution or defense of the separate actions;

2. The impracticability or inefficiency of prosecuting or defending separate actions;

3. The extent and nature of any litigation concerning the controversy already commenced by or against members of the class;

4. The desirability or undesirability of concentrating the litigation of the claim in any particular forum; and

5. The difficulties likely to be encountered in the management of a class action.

(CPLR §902).

The first two factors, the putative class members' interest in maintaining separate actions, and the feasibility thereof, demonstrate class certification is appropriate. Here, class members have a minimal interest in controlling the litigation because the value of each claim is likely outweighed by the costs of separately litigating each class member's claim separately. (*Krebs v Canyon Club, Inc*., 880 NYS2d 873 [Sup Ct, Westchester County 2009]). With regard to the second factor, as previously noted, it would be inefficient, and a waste of judicial resources to individually bring each putative class member's claim in a separate action

With respect to the first factor, Defendants claim that class members might want to bring their own individual claims, because the alleged damages are substantial, and the tenants have no fear of retaliation. However, tenants with substantial claims retain the right to opt out, but may prefer not to have to retain, and pay, their own attorneys to litigate. Moreover, there could be fear of retaliation, where units are being deregulated and Defendants are taking the position that there is not right to a renewal.

The third and fourth factors listed in CPLR §902 are also met. No other pending litigation involving this controversy exists, other than the eviction proceeding, and, the Class members are all current or former New York County residents, and their claims arose out of their occupancy of buildings situated in New York County, rendering this forum appropriate.

Finally, Defendants contend with respect to the fifth prong, that the case is just "too difficult" to litigate as a class action. However, the types of computations required to ascertain damages are akin to analysis of claims in performing due diligence as part of the purchase of a portfolio of buildings in New York City. Having a special master, as Plaintiffs suggested, and was employed in the *Charron* litigation, is a viable option to address this issue.

Notice Requirement

Under CPLR § 904 (b), "reasonable notice of the commencement of a class action shall be given to the class in such manner as the court directs." Specifically, the court determines whether the notice is "reasonably calculated to reach the plaintiffs" (*Williams v Marvin Windows & Doors*, 15 AD3d 393, 396 [2d Dept 2005]). It must "provide the best notice practicable under the circumstances to class members" (*Drizin v Sprint Corp.*, 7 Misc 3d 1018 [A], 2005 NY Slip Op 50661 [U] at *2 [Sup Ct, NY County 2005]). The notice must be approved by the court (CPLR § 904 [c]). The court evaluates the cost of dissemination, the parties' resources, and "the stake of each represented member of the class, and the likelihood that significant numbers of represented members would desire to exclude themselves from the class or to appear individually" (*id.*).

Plaintiffs' proposed notice provides a clear, concise and balanced description of the claims in this case and class members' rights and options. (*Drizin v Sprint Corp.*, 801 NYS2d 233 [Sup Ct, NY County 2005]).

In order to identify class members and disseminate the Notice, Plaintiffs request that the Court compel Defendants to promptly produce the names of Class members. For existing residents of the Building, a current rent roll is sought, to allow Plaintiffs to disseminate notice through a mailing. For former Building residents, Plaintiffs seek full and complete names, and the last known work and home addresses of those Class members. There is sufficient precedent to grant these requests [*Hess v EDR Assets LLC* (2021 NY Slip Op 30739 [U] at *4 [Sup Ct, NY County 2021]); *Blubaum v 2680 30th St. LLC* (Sup Ct, Queens County, May 19, 2020, Sampson, J., index No. 700749/2019); *Leake v 56 Cooper Assoc., L.P.* (Sup Ct, NY County, Oct. 30, 2020, Marin, J., index No. 160549/2017)] and the court directs Defendants to provide the requested discovery.

Appointment of a Special Master or Referee

In their moving papers, Plaintiffs assert they will in the future move for the appointment of a Special Master or Referee pursuant to CPLR §§4201 and 4311. In their reply papers they imply that the court should grant this relief on the pending motion.

The court declines to grant said relief at this juncture, as it was not sought in the moving papers and the court deems it to be premature at this stage of the litigation.

CONCLUSION

Wherefore, it is hereby

ORDERED that the motion for class certification is granted; and it is further

ORDERED that issue certified is whether Defendants engaged in a fraudulent scheme to evade rent regulation by: failing to register apartments; utilizing illegal first market rents on decontrolled apartments; and taking credit for unperformed, or underperformed, IAI increases to justify increasing the legal regulated rent and/or deregulating units; and it is further

ORDERED that the class shall consist of all persons who were tenants in the buildings owned and operated by Defendants 106-108 Convent BCR, LLC, 110 Convent BCR, LLC, 408-412 Pineapple, LLC, 510- 512 Pineapple, LLC, 535-339 West 155 BCR, LLC, 3750 Broadway BCR, LLC, 3660 Broadway BCR, LLC, 605 West 151 BCR, LLC, and 545 Edgecombe BCR, LLC (the "Big City Portfolio") between December 6, 2012 and the present; and it is further

ORDERED that the Sub-Class shall consist of all current tenants of the Big City Portfolio who reside in rent-stabilized or de-regulated apartments; and it is further

ORDERED that Kristin Piro, Elena Ricardo, and Theresa Maddicks are the lead plaintiffs and class representatives; and it is further

ORDERED that Newman Ferrara LLP is appointed as class counsel; and it is further

ORDERED that, within 30 days of this order, Defendants shall provide Plaintiffs with copies of the rent rolls for the years in question, the rent roll for the current year, and a list of the names, phone numbers, email addresses, and last known work and home addresses of those class members who no longer reside in the Subject Buildings; and it is further

ORDERED that within 20 days of their receipt of this discovery, Plaintiffs shall serve notice of the class action in the form submitted as Exhibit 109 to the Sachar Affirmation, by first class mail to their current or last known addresses as well as by email, where this information is available; and it is further

ORDERED that, within 20 days from entry of this order, Plaintiffs shall serve a copy of this order with notice of entry on defendants and the Clerk of the General Clerk's Office (60 Centre Street, Room 119); and it is further

ORDERED that such service upon the Clerk shall be made in accordance with the procedures set forth in the *Protocol on Courthouse and County Clerk Procedures for Electronically Filed Cases* (accessible at the "E-Filing" page on the court's website at the address www.nycourts.gov/supctmanh); and it is further

This constitutes the decision and order of the court.

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8/12/2022
DATE

SABRINA KRAUS, J.S.C.

CHECK ONE:		**CASE DISPOSED**			X	**NON-FINAL DISPOSITION**	
	X	**GRANTED**		**DENIED**		**GRANTED IN PART**	**OTHER**
APPLICATION:		**SETTLE ORDER**				**SUBMIT ORDER**	
CHECK IF APPROPRIATE:		**INCLUDES TRANSFER/REASSIGN**				**FIDUCIARY APPOINTMENT**	**REFERENCE**