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Quinatoa v Hewlett Assoc., LP
2022 NY Slip Op 31304(U)
April 21, 2022
Supreme Court, New York County
Docket Number: Index No. 151132/2018
Judge: Sabrina Kraus
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SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

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

Justice

----------X

STELLA QUINATOA AND ANA CABRERA, ON BEHALF OF THEMSELVES AND OTHERS SIMILARLY SITUATED

Plaintiff,

- v -

HEWLETT ASSOCIATES, LP,

Defendant.

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INDEX NO. 151132/2018

MOTION DATE 06/28/2021

MOTION SEQ. NO. 005

DECISION + ORDER ON MOTION

The following e-filed documents, listed by NYSCEF document number (Motion 005) 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 244, 245, 246, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260

were read on this motion to/for ORDER MAINTAIN CLASS ACTION.

BACKGROUND

In this case alleging rent overcharge, plaintiffs Stella Quinatoa and Ana Cabrera currently move for class certification, with Quinatoa and Cabrera as lead plaintiffs and Milbank LLP (Milbank) and The Legal Aid Society (Legal Aid) as co-counsel for the class. In addition, plaintiffs seek approval of their proposed class notice and an order that directs defendant Hewlett Associates, LP (Hewlett) to provide them with contact information for the proposed class members. Hewlett opposes the motion. For the following reasons, the court grants the motion.

Plaintiffs Stella Quinatoa and Ana Cabrera reside in the Trafalgar Apartments (Trafalgar) in Flushing, Queens (NYSCEF Doc. No. 1 [complaint], ¶¶ 8-9). Hewlett Associates, LP (Hewlett)

is the owner and landlord of Trafalgar (*id.*, ¶ 10).[1] Plaintiffs allege that Hewlett violated Administrative Code § 11-243, commonly referred to as J-51 after its predecessor provision.[2] Under J-51, landlords who undertake major capital improvements on their buildings receive tax abatements. While they receive such abatements, all apartments in the buildings have rent-stabilized status, regardless of whether the apartments were stabilized before the building received the abatements. Where the cessation of benefits leads to the destabilization of an apartment, the landlord must notify the affected renter that the J-51 benefits are about to expire and that as a result the renters will lose their rent-stabilized status. If the landlord does not notify them in the proper manner, the apartment remains rent stabilized.

Trafalgar was built around 1973 and contains 113 rental units (NYSCEF Doc. No. 1, ¶ 36). Hewlett filed for J-51 benefits in 2006 (*see* NYSCEF Doc. No. 11), and it allegedly received the benefits commencing in 2008 (NYSCEF Doc. No. 1, ¶ 39). The complaint contends that, during this period, Hewlett "systematically violated [its] obligations under the Rent Stabilization Laws" (NYSCEF Doc. No. 1, ¶ 40) in that it did not treat all the apartments at Trafalgar as rent stabilized. For example, the complaint alleges that in 2017, only 14 of the units were listed as rent-stabilized although the building received J-51 benefits; the current motion papers assert that no more than 15 of the units were treated as rent stabilized between 2014 and 2018, which is the proposed class period. Also, the complaint asserts that Hewlett did not notify the tenants that their apartments were rent-stabilized and that Hewlett lied to tenants and others who asked about their units' rent-

[1] The court dismissed the case as against original co-defendants Kaled Management Corporation, City of New York, Maria Springer, and Jack Jiha (NYSCEF Doc. No. 83 at *20) and therefore limits its discussion to the allegations against Hewlett.
[2] The complaint alleges that Hewlett violated Section 421-a of the New York Real Property Tax Law (RPTL) (421-a), but the proposed class is limited to tenants who resided in the building while Hewlett received J-51 benefits.

stabilized status. Quinatoa and Cabrera allege that they were unaware of the rent-stabilized status of their respective apartments and that their lease increases exceeded the amount the Rent Guidelines Board allowed. As a result, plaintiffs claim that they sustained financial damages.

According to plaintiffs, Hewlett's actions also adversely affected the ability of Trafalgar's senior citizens residents to take advantage of RPTL 467-b, which is implemented in New York City under N.Y.C. Administrative Code § 26-509. This provision is known as SCRIE, a shorthand for "Senior Citizen Rent Increase Exemption." SCRIE freezes the rent of senior citizens over 62 who live in rent-stabilized housing and whose income falls below a specified level, so that the rent does not exceed the greater of 1) one-third of the household's aggregate disposable income or 2) the rent in effect immediately before the senior becomes eligible for the benefit. For the purpose of this law, the eligibility date is the date a qualified tenant applies for SCRIE (*see Nunez v Giuliani*, 91 NY2d 935 [1998]). Because of the misrepresentations, the complaint states, senior citizens who lived in Trafalgar did not apply for SCRIE when they first could have applied (NYSCEF Doc. No. 1, ¶¶ 40-48). Quinatoa alleges that she and her husband were eligible for SCRIE benefits.

In August 2017, Hewlett notified tenants, including the named plaintiffs, that they should have received leases for stabilized rents and that Hewlett had not provided notice of the apartments' statuses in the tenants' prior leases. However, the complaint, which is dated February 6, 2018, states that Hewlett misrepresented the true amount of back rent due to the tenants. Therefore, the checks did not fully reimburse these tenants. Moreover, the complaint says that those tenants who accepted the checks did not waive their right to full compensation (*id.*, ¶¶ 49-53). As relief, plaintiffs seek 1) full reimbursement of all overcharges, plus interest; 2) a declaratory judgment that all the rental units in the Trafalgar Apartments are subject to rent

stabilization, that all class members are entitled to rent-stabilized leases, that all leases that do not comply with the Division of Housing and Community Renewal (DHCR) requirements are invalid, and that the class members need not pay rent until Hewlett provides them with proper leases; 3) declaratory judgments from this court as to the legal regulated rent for each apartment; and 4) "a permanent injunction against additional violations . . . of the Rent Stabilization Laws," to be regulated by an entity which will "audit and undertake an accounting of every apartment" and reform leases accordingly (NYSCEF Doc. No. 1, ¶ 117). Plaintiffs also ask for 5) a permanent injunction against Hewlett which will prevent it "from charging any rent above the relevant SCRIE rent for units eligible for SCRIE and awarding damages in an amount no less than the difference between the rent paid by SCRIE-eligible tenants and the SCRIE rent for the entire period for which they would have been eligible for SCRIE."[3]

On May 1, 2018, Hewlett filed a motion to dismiss the complaint under CPLR § 3211 (NYSCEF Doc. No. 19 [notice of motion, motion sequence number 002]). Among other things, the motion argued that, as a matter of law, the complaint did not satisfy the prerequisites for a class action. As is relevant here, in its May 3, 2020 order, this court denied the motion as it pertained to Hewlett (NYSCEF Doc. No. 83 at *20). The court found, in particular, that the alleged class of over 100 tenants satisfied the numerosity requirement (*id.* at 16 [citing *Stecko v RLI Ins. Co.*, 121 AD3d 542, 542-43 (1st Dept 2014) (class of more than 50 workers established numerosity); *Casey v Whitehouse Estates, Inc.*, 36 Misc 3d 1225 (A), 2012 NY Slip Op 51471 (U) (Sup Ct, NY County 2012) (tenants residing in 72 apartments established numerosity)]). In finding a prima facie case on the issue of commonality, the court relied on *Maddicks v Big City Props., LLC*, 34 NY3d 116,

[3] The above paragraphs summarize the background section of the court's prior order (NYSCEF Doc. No. 383).

123-124 [2019]), which, like the case at hand, involved tenants who allegedly were the victims of a rent fraud scheme. The court rejected Hewlett's argument that, because Quinatoa also argued that she was deprived of the opportunity to apply for SCRIE benefits, typicality was not satisfied. In addition, the court found that a class action can be an appropriate method of litigating an overcharge case such as the one alleged. Finally, the court noted that New York courts have concurrent jurisdiction with the DHCR in rent overcharge matters (*id.* at *19 [citing *Collazo v Netherland Prop. Assets LLC*, 35 NY3d 987, 990 [2020]).

On May 15, 2020, Hewlett filed its answer to the complaint (NYSCEF Doc. No. 123). Simultaneously, it moved to reargue the court's order to the extent that the court denied Hewlett's motion to dismiss (NYSCEF Doc. No. 124). The court denied Hewlett's motion in an order dated March 24, 2021 (NYSCEF Doc. No. 197).[4]

PENDING MOTION

On May 11, 2011, plaintiffs brought the current motion to certify the class, obtain approval of their proposed class notice, and compel Hewlett to disclose the names, addresses or last known addresses, the email addresses, and the phone numbers of all past and current tenants in the proposed class.

DISCUSSION

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] [internal quotation marks and citation omitted]; *see City of New York v Maul*, 14 NY3d 499, 509 [2010] [*Maul*] [courts should broadly construe criteria set forth in CPLR

[4] Hewlett has appealed this motion to the First Department (NYSCEF Doc. No. 199).

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]). Although damages may vary among the class members, this "does not per se foreclose class certification" (*Andryeyeva v New York Health Care, Inc.*, 33 NY3d 152, 185 [2019]). It is appropriate to bring a class action with one or more representative plaintiffs if 1) the size of the class is so large that it is impracticable to include them all as named plaintiffs, 2) common questions of law or fact predominate over questions which only impact one or more class members, 3) the named plaintiffs assert claims which are typical of the claims of the class, 4) the representative plaintiffs are appropriate individuals who will fairly, adequately protect the class' interests, and 5) a class action is the best and most efficient way to proceed (CPLR 901 [a]). The court considers these five factors in its evaluation of whether a class action is appropriate (*Rabouin v Metropolitan Life Ins. Co.*, 25 AD3d 349, 350 [1st Dept 2006]).

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]).

In support of their motion, plaintiffs allege that they have satisfied the requirements for class certification in CPLR 901. The court need not address all of these requirements, as Hewlett's opposition does not challenge all five prongs. First, as plaintiffs note, Hewlett does not challenge numerosity. Further, in its opposition papers, Hewlett does not contest plaintiffs' argument that, under *Borden*, commonality is satisfied. There, as here, "the predominant legal question involves one that applies to the entire class—whether the apartments were unlawfully deregulated" while the owner received J-51 benefits" (*Borden*, 24 NY3d at 399).[5] As for typicality, plaintiffs correctly note that Hewlett did not move to dismiss based on this issue. This leaves the issues of adequacy and efficiency.

The court therefore turns to the disputed issue of 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 owes 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, both of which set forth the circumstances of their cases, state 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

[5] Moreover, in its opposition papers Hewlett does not contest the fact that Quinatoa's SCRIE claim does not defeat commonality.

representing the class (NYSCEF Doc. Nos. 238, 239). Plaintiffs further note that the named plaintiffs' financial circumstances are irrelevant because their attorneys represent them pro bono (citing *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). They assert that their counsel are qualified to represent them and the other class members. Finally, plaintiffs state that the court has accepted plaintiffs' earlier argument that a class action may be a superior method of litigation because it may be "more efficient and apt to devise a uniform formula for calculating overcharges and determining other issues" and "because it enables all class members to seek relief without the potentially prohibitive cost of an individual challenge" (NYSCEF Doc. No. 83 at *18).

In opposition on this issue, Hewlett does not challenge the competence of counsel and does not assert that conflicts of interest exist. Instead, Hewlett asserts that neither Quinatoa nor Cabrera are fair and adequate class representatives. Hewlett argues that the affidavits are general and conclusory. In addition, Hewlett stresses that the affidavits of the proposed named plaintiffs are largely identical and likely were prepared by the attorneys rather than the named individuals themselves (citing *Rallis*, 3 AD3d at 526). Thus, Hewlett contends that they do not speak to the question of whether Quinatoa and Cabrera understand the case. According to Hewlett, the affidavits also fail because they do not indicate whether Quinatoa and Cabrera have read the complaint or whether they grasp the legal claims and legal relief. Further, Hewlett states that the failure to mention the impact of *Matter of Regina Metro. Co., LLC v New York State Div. of Hous.*

& Community Renewal (35 NY3d 332 [2020])[6] or to acknowledge that Hewlett made supplemental payments following the issuance of that decision. Similarly, the affidavits do not describe legal developments that may impact plaintiffs' claims. The affidavits also do not specify the attorneys whom Quinatoa and Cabrera have contacted about the case, do not state how often they have spoken to counsel, and do not specify the frequency and regularity of such contact. Hewlett notes that Spanish is the native language of the two named plaintiffs, who apparently are not fluent in English. Absent a showing that all class members understand Spanish, this lack of proficiency is fatal to their status as named plaintiffs. Finally, Hewlett argues that because plaintiffs do not unconditionally waive treble damages and treble damages are not allowable in class actions, the two of them are not adequate class representatives (citing *Borden*, 24 NY3d at 398). Hewlett suggests that, as well, plaintiffs must show that the putative class members will waive treble damages.

In reply, plaintiffs argue that Hewlett has not rebutted their showing of adequacy with any evidence. Specifically, they contend that because Hewlett has not argued that a conflict exists between the interests of plaintiffs and the other class members, that plaintiffs' financial resources are inadequate, or that counsel is inadequate, Hewlett essentially concedes plaintiffs' adequacy (citing *Pruitt*, 167 AD2d at 24). Quoting *Borden v 400 E. 55th St.* (2012 NY Slip Op. 33712 [U] at *3 [Sup Ct, NY County 2012] [*Borden I*], *aff'd* 105 AD3d 630 [1st Dept 2013], *aff'd* 24 NY3d 382 [2014]), plaintiffs argue that Hewlett mistakenly expects the named plaintiffs to understand "every detail of the case," when the requirement is merely that they are generally familiar with the elements of the claim. They note that there is a presumption that the class representatives rely on

[6] *Regina* held that, "under pre-[Housing Stability and Tenant Protection Act of 2019] law, the four-year lookback rule and standard method of calculating legal regulated rent govern in [J-51] overcharge cases, absent fraud" (*Regina*, 35 NY3d at 361).

the expertise of their attorneys, who possess a more nuanced and detailed understanding. In light of these standards, plaintiffs assert that their affidavits include sufficient information about their understanding of the details of the case and their responsibilities as class representatives.

In further support of their contention that their affidavits contain enough details, plaintiffs annex several affidavits from the class representatives in other class actions that arise out of alleged J-51 violations (*see* NYSCEF Doc. Nos. 251-260). In addition, plaintiffs state that plaintiffs need not know everything about each member of the class, such as which tenants received supplemental checks from Hewlett (citing *Borden I*, 2012 NY Slip Op. 33712 [U] at *4). Indeed, plaintiffs quote the Court of Appeals in *Borden*, which stated that the numerosity requirement exists because in a large group "the members would have difficulty communicating with each other" (*Borden*, 24 NY3d at 399).

Plaintiffs reject Hewlett's suggestion that the court should refuse to certify the class because the native language of the proposed representatives is Spanish. Especially in a melting pot like New York City, they argue, this is a startling and troubling position. Moreover, they point out that this argument has been rejected by the First Department. In *Nawrocki v Proto Constr. & Dev. Corp.*, 82 AD3d 534, 535 [1st Dept 2011]), the First Department found that even though the affidavits of the proposed class representatives had to be translated, "a tenuous grasp of the English language is insufficient to render a putative class representative inadequate" (citing *Matter of Crazy Eddie Securities Litigation*, 135 FRD 39, 41 [ED NY 1991]).

Finally, plaintiffs note that they have waived their right to seek treble damages in the context of a class action. Plaintiffs point to *Yang v Creative Ind. Corp.* (2018 NY Slip Op. 33209 [U] [Sup Ct, NY County 2018]), in which the trial court found that an identical waiver was adequate to support certification. Specifically, the *Yang* Court stated the plaintiffs' affidavits

"demonstrate[ed] their understanding that, while they otherwise may be entitled to treble damages, they are, for purposes of class certification, and in prosecuting a class action, agreeing to relinquish the right to treble damages" and that the waiver was effective and "in harmony with CPLR 901" (*id.* at *2).

The court concludes that plaintiffs are adequate representatives of the class. As plaintiffs state, the affidavits include enough details to satisfy the legal standard. Both named plaintiffs explain that the basis of the lawsuit is Hewlett's improper treatment of their apartments as non-stabilized and the concomitant overcharges. The affidavits also show that the proposed named plaintiffs understand the scope of their responsibility to the class (*see Dugan v London Terrace Gardens, L.P.*, 45 Misc 3d 362, 378 [Sup Ct, NY County 2013] [affidavit itself considered "a demonstration of Doerr's willingness to take whatever action is necessary to represent the class"]).

Moreover, Hewlett's additional objections to plaintiffs' adequacy lack merit. It is not fatal that the attorneys prepared the affidavits in question. Indeed, attorneys commonly prepare their clients' affidavits. The critical requirement is that the attorneys confer with their clients so that the affidavits accurately reflect the clients' knowledge and understanding. As plaintiffs point out, *Rallis* is distinguishable in that the plaintiffs in *Rallis* did not submit their own sworn statements but relied solely on the conclusory affirmation of their attorney along with insufficient exhibits (*Rallis*, 3 AD3d at 526). Here, on the other hand, plaintiffs rely on their own affidavits along with supporting documents. The lack of discussion of new legal precedents in plaintiffs' affidavits is also immaterial where, as here, they are generally aware of the basis of the claims and their

attorneys have sufficient understanding of the law (*see Matter of HSBC Bank U.S.A.*, 135 AD3d 534, 534 [1st Dept 2016]; *Stecko v RLI Ins. Co.*, 121 AD3d 542, 543 [1st Dept 2014]).[7]

The court emphatically rejects Hewlett's argument that plaintiffs' use of a translator somehow shows that plaintiffs are not adequate class representatives. As plaintiffs point out, the First Department has expressly stated that the class representatives need not be proficient in English (*see Nawrocki*, 82 AD3d at 535). On the contrary, as the Court of Appeals noted, "the legislature contemplated classes . . . 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" (Borden, 24 NY3d at 399 [internal quotation marks and citation omitted]). The requirement, therefore, is that plaintiffs understand their duties to the class and grasp the basis of the lawsuit (*see Medrano v Mastro Concrete, Inc.*, 2018 NY Slip Op 30740[U] at *5 [Sup Ct, NY County 2018] [describing class representative's "difficulties conversing in English and his inability to read the English-language documents present to him" as "minor collateral issues" that did not prevent him from representing the class]). Hewlett does not present any evidence that plaintiffs lack such understanding. The court additionally notes that Hewlett presents no evidence concerning the native languages of the individuals likely to be part of the class. In a city as diverse as this one, there may be other class members whose native language is not English. Finally, the court concludes that the waiver of treble damages is adequate, as plaintiffs need not waive their

[7] *See also Quiroz v Revenue Prod. Mgmt.* (252 FRD 438, 443 [ND Ill 2008] [as persuasive authority] ["a class representative need not understand the larger legal theories upon which [the] case is based . . . as long as the named plaintiff[s have] some general knowledge and understanding of the issues"] [internal quotation marks and citation omitted]).

right to pursue treble damages in a lawsuit if class certification is denied (*see Yang*, 2018 NY Slip Op. 33209 [U] at *3).

Next, the court evaluates the question of the superiority of proceeding as a class action (CPLR 901 [a] [5]). "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).

Plaintiffs argue that the class action is superior to other methods for adjudicating the dispute fairly and efficiently. They quote *Friar v Vanguard Holding Corp.* (78 AD2d 83, 99 [2d Dept 1980] [internal quotation marks and citation omitted]), which states that class actions should be "available to assist small claimants in securing redress of their grievances." Plaintiffs contend that this reasoning supports certification here. Further, plaintiffs note that in *Borden*, the Court of

Appeals found that class certification is the best means of proceeding as it avoids the individual adjudication of claims (*Borden*, 24 NY3d at 400).[8]

In opposition, Hewlett argues 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. Specifically, Hewlett points to the fact that the complaint requests the "[a] permanent injunction against further violations by the Landlord . . . of the Rent Stabilization Laws" along with remedial measures including the "appointment of an independent individual or entity to audit and undertake an accounting of every apartment at the Trafalgar Apartments and reform[] leases to comply with the Rent Stabilization laws" (NYSCEF Doc. No. 1, ¶ E; *see id.*, ¶ 117). Additionally, Hewlett contends that discovery will be complicated in the courts, where the CPLR imposes constraints that are not present in administrative proceedings. Hewlett reiterates that the DHCR has expertise in the pertinent law and in the methods for computing rent and damages. Hewlett argues that plaintiffs' position that a class action prevents the waste of administrative resources overlooks the fact that court resources will be taxed if the court has to make individualized determinations concerning the class members' overcharge complaints. In reply, plaintiffs reiterate their earlier arguments.

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 [J-51 overcharge] 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], 2012 NY Slip Op 51471 [U] at *6 [Sup Ct, NY

[8] The court need not address plaintiffs' contention that this court's prior decision concluded that this case satisfied the superiority requirement. However, it notes that the standard of review in that motion differed from the standard of evaluation that applies here.

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 (*id.*). Furthermore, "[b]ecause these questions relating to liability are common and predominate for the entire class, a class action on liability conserves judicial resources even if . . . the use of subclasses or a special master" is necessary to make individualized assessments (*id.*).

Hewlett's argument that a class action is an inferior method of adjudication ignores binding legal precedent. In *Borden*, the Court of Appeals held the opposite, stating that "permitting plaintiffs to bring [J-51] 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). The Court also found that "the amount of damages suffered by each class member typically varies from individual to individual, but that fact will not prevent the suit from going forward as a class action if the important class action if the important legal or factual issues involving liability are common to the class" (*Borden*, 24 NY3d at 399 [internal quotation marks and citation omitted]; *see also Hess v EDR Assets LLC*, 171 AD3d 498, 498 [1st Dept 2019] [citing *Borden*]). More recently, in

Maddicks (34 NY3d 116), the Court of Appeals denied a motion to dismiss under CPLR § 3211, reaffirming that J-51 cases are amenable to class actions.[9]

Hewlett's 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).[10] Accordingly, Hewlett's opinion on the efficacy of litigation in the courts is irrelevant, as 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.

The court rejects, as irrelevant, Hewlett's argument that the court should not grant certification because it may be unfeasible and unwarranted for the court to monitor the building on an ongoing basis. Hewlett's argument challenges the relief requested in the complaint rather than the viability of the claims themselves. Therefore, it is not properly considered in a summary judgment motion.

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[9] The dissenting justices in *Maddicks* did not dispute this issue. In *Maddicks*, the plaintiffs lived in 20 different apartment buildings, and the allegations were that the landlords in those buildings charged inflated rents through more than one scheme. Some landlords allegedly did not provide rent-stabilized leases to tenants while they accepted J-51 benefits. Other landlords allegedly lied about the expenses they incurred in individual apartment improvements (IAIs). Another group of landlords allegedly inadequately registered the apartments in their buildings. Finally, a fourth group of landlords purportedly inflated fair market rents on apartments that previously were subject to rent control (Maddicks, 34 NY3d at 130-131). Thus, according to the dissent, there was not a single predominant legal issue. Here, on the other hand, the complaint involves one building and alleges one scheme.

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

In addition, plaintiffs contend that they have satisfied the factors set forth in CPLR 902, which a court considers if it determines that certification is appropriate under CPLR 901:

> 1. The interest of members of the class in individually controlling the prosecution or defense of 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 the particular forum;
> 5. The difficulties likely to be encountered in the management of a class action.

(CPLR 902). The court already has considered most of these factors. In addition, plaintiffs and their counsel have attested that they are unaware of the existence of other lawsuits related to this controversy. Hewlett does not raise arguments in opposition in addition to those it already has asserted. Therefore, further discussion is not necessary.

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 also ask that the court approve its proposed notice (NYSCEF Doc. No. 204). The notice is addressed to

> "every current and former tenant of the building located at 42-52 Union Street, Queens, NY 11355, known as the Trafalgar Apartments ('the Building'):
> (1) who is living in or previously lived in an apartment that was treated as deregulated during the period when J-51 tax benefits were being received by the owner of the building; and
> (2) who lived in such apartment at any time on or after February 6, 2014"

(*id.* at *1 [capitalization and boldface omitted]). The notice explains that "[a] class action is a lawsuit where one or more persons sue not only on their own behalf, but also on behalf of other people who have similar claims" (*id.* at *2). Further, the notice sets forth the basis of the lawsuit – specifically, the contentions "that Hewlett received J-51 tax benefits with respect to the Building from the City of New York during the period from 2008 to 2018," that the law required Hewlett to make all apartments in the building rent stabilized during this period, and that Hewlett violated the law in that it did not confer rent-stabilized status on all apartments (*id.*). It additionally defines SCRIE and explains that some tenants were deprived of the opportunity to apply for SCRIE benefits (*id.*). The notice explains that the class action will not allow for the reward of treble damages and states that those who wish to pursue treble damages must opt out of the class and commence their own actions (*id.* at *3).

In addition, the notice defines the class. It states that the class consists of

> All current and former tenants of 42-52 Union Street living, or who had lived, in apartments that were deregulated during the period when J-51 tax benefits were being received by the owner of 42-52 Union Street except that the class shall not include (i) any tenants who vacated such apartment prior to February 6, 2014; and (ii) tenants whose occupancy in any such apartment commenced after such J-51 benefits to the building ended on February 23, 2018 (the "Class")

(*id.*). The document indicates that Quinatoa and Cabrera are the named plaintiffs and that Milbank LLP and The Legal Aid Society will serve as co-counsel. The notice explains how a potential

plaintiff can opt out of the class (*id.* at *4), includes a form the individual can use (*id.* at *6), notifies the potential class members that Hewlett is prohibited from retaliating against them (*id.* at *4), and provides contact information for those who seek further explanation (*id.* at *5).

Plaintiffs argue that the above information is reasonable within the meaning of CPLR § 904. They state that the notice is clear and provides a concise, balanced summary of the pertinent issues and information (citing *Drizin*, 7 Misc 3d 1018 [A], 2005 NY Slip Op 50661 [U] at *1). It cites a number of cases in which similar language was found to be adequate. Plaintiffs request that they be permitted to provide notice by mail at the individuals' last known addresses, and they cite cases in which regular and/or certified mailing was approved. Finally, in order to identify and reach as many class members as possible, plaintiffs seek an order that compels Hewlett to produce the rent rolls for every year of the period in question, including a current rent roll, and a complete list of the names, phone numbers, email addresses, and last known work and home addresses of those class members who no longer live at Trafalgar. In support, plaintiffs cite *Hess v EDR Assets LLC* (2021 NY Slip Op 30739 [U] at *4 [Sup Ct, NY County 2021]), in which the court directed the defendant to provide the plaintiffs with the current rent roll for the building at issue; and both *Blubaum v 2680 30th St. LLC* (Sup Ct, Queens County, May 19, 2020, Sampson, J., index No. 700749/2019) and *Leake v 56 Cooper Assoc., L.P.* (Sup Ct, NY County, Oct. 30, 2020, Marin, J., index No. 160549/2017), where the courts directed the defendants to produce the names and addresses, or the last known addresses or contact information, of the class members.

In opposition, Hewlett argues that the notice is deficient. It contends that the notice is not balanced because it does not even mention Hewlett's 14 affirmative defenses. It states that the notice must be provided in Spanish as well as English, especially as the two named plaintiffs' native language is Spanish. Further, Hewlett contends that plaintiffs' request for the rent rolls is

merely a fishing expedition, and – pointing to *Leake* and *Blubaum* – states that discovery should be limited to the names and addresses or last known addresses of the class members.

In response, plaintiffs state that they will provide a copy of the notice in Spanish. They assert that they are not obliged to list the affirmative defenses. They point out that they acknowledge that Hewlett denies their allegations and asserts affirmative defenses suffices. They point out that in *Emilio v Robison Oil Corp.* (Sup Ct, Westchester County, July 16, 2010, at *1, Scheinkman, J., index No. 1412/03), the court ordered the defendant to provide "identifying information for all such customers including name, most recent address and phone number, email address if available, and Robison electric supply service account number, for the purpose of mailing to these customers notice of the class action." Plaintiffs also point to *Moran v JLJ IV Enter., Inc.* (2020 NY Slip Op 31924 [U] at *1 [Sup Ct, NY County 2020]), in which the court granted plaintiffs' request for "the potential class members' full name, last known address, telephone number, email address, employment dates and job title so that these individuals can receive the proper notice."[11]

After careful consideration, the court concludes that the class notice clearly explains the lawsuit and informs the class members of the benefits of a class action, as well as the loss of the potential right to obtain treble damages. Hewlett's argument that the notice should set forth all of its affirmative defenses lacks merit. Instead, the notice is adequate in that it informs the class members that Hewlett has challenged plaintiffs' contentions and asserted defenses. The court notes that the notice also provides contact information to the class members in case they have further questions. However, as Hewlett notes and plaintiffs concede, the notice must be provided in both

[11] The court denied the plaintiffs' request for the social security numbers of the potential class members.

English and Spanish. Further, plaintiffs should replace the statement, at page 3, that "Apart from this opportunity to opt-out, Class Members will be bound by the Court's determination of the Class' claims" with the more explicit statement, "If you decide to remain a member of this class, you will lose the right to sue on your own and you will be bound by the Court's determination whether favorable or not" (*see Vickers v Home Fed. Sav. & Loan Assn. of E. Rochester*, 56 AD2d 62, 67 [4th Dept 1977]).

Finally, the court directs Hewlett to provide the requested discovery. Hewlett does not argue that the proposed discovery is burdensome and does not articulate any other objection. Instead, it merely states that it should not have to provide more than the names and addresses or last known addresses. Moreover, plaintiffs have pointed to cases which have allowed for the discovery at issue. However, plaintiffs do not state that they intend to use the additional contact information in an effort to reach the potential class members. Plaintiffs are directed to add service by email, where such information is available.

CONCLUSION

Wherefore, it is hereby

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

ORDERED that the class shall consist of those individuals who had lived in apartments that were deregulated during the period when J-51 tax benefits were being received by the owner of 42-52 Union Street except that the class shall not include (i) any tenants who vacated such apartment prior to February 6, 2014; and (ii) tenants whose occupancy in any such apartment commenced after such J-51 benefits to the building ended on February 23, 2018 (the "Class"); and it is further

ORDERED that Stella Quinatoa and Ana Cabrera are the lead plaintiffs and class representatives; and it is further

ORDERED that Milbank and Legal Aid are appointed as class co-counsel; and it is further

ORDERED that, within 30 days of this order, Hewlett 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 live at Trafalgar; 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 B (NYSCEF Doc. No. 204), with the change noted above, 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, plaintiff 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.

4/21/2022
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

151132/2018 STELLA QUINATOA AND ANA vs. HEWLETT ASSOCIATES, LP
Motion No. 005