Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
Case Type: Other Civil

Barry Sewall, Shamika Gregory, and Jerome Gregory, each individually and on behalf of all others similarly situated,

Plaintiffs,

v.

Home Partners Holdings LLC, SFR Acquisitions I LLC, and OPVHHJV LLC, d/b/a Pathlight Property Management,

Defendants.

Court File No.: 27-cv-22-10389
Judge Christian Sande

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS REPRESENTATIVES AND CLASS COUNSEL

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

TABLE OF CONTENTS

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

I. INTRODUCTION

Since 2015, Defendants Home Partners Holdings LLC ("Home Partners") and its wholly owned subsidiary, Pathlight Property Management ("Pathlight") (together "Defendants") have leased single family homes in Minnesota. Defendants' form leases include misleading and unenforceable provisions which misrepresent tenants' legal rights, deceptively shift the burden of maintenance and repair to tenants, and illegally charge property management and lease administration fees to tenants. Courts and legal scholars have long recognized the perils inherent in non-negotiable form leases like Defendants': Sophisticated corporate landlords intentionally include unenforceable or misleading clauses in their leases "trusting they could profit from inserting such terms. [These clauses] are likely to mislead tenants into believing that they reflect the legal state-of-affairs."[1] This is precisely what Defendants do here.

The Named Plaintiffs and the class they seek to represent all entered Defendants' misleading form leases, and they all suffered damage from Defendants' illegal lease provisions and illegal shifting of repair and maintenance costs without consideration. Plaintiffs now move for certification of a Rule 23.02(c) Damages Class and a Rule 23.02(b) Injunctive Class on their claims under the Consumer Fraud Act, the Deceptive Trade Practices Act, the Landlord-Tenant Act, and Minnesota common law, and for appointment of Class Representatives and Class Counsel. These claims can all be determined on a classwide basis because the threshold issue underlying all claims turns on common evidence—Defendants' form lease which all plaintiffs signed, common marketing materials, and centralized policies and procedures which Defendants' representatives

[1] Meirav Furth-Matzkin, *Unenforceable and Misleading Clauses in Consumer Contracts: Evidence from the Residential Real Estate Market*, June 2015, John M. Olin Center for Law, Economics, and Business Fellows, *available at* http://law.harvard.edu/programs/olin_center/; *see also* Furth-Matzkin, *On the Unexpected Use of Unenforceable Contract Terms: Evidence from the Residential Real Estate Market*, 9 Journal of Legal Analysis 1 (2017).

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

use to carry out the lease terms. Defendants mislead all of their Minnesota tenants with their common form lease and through uniform omissions and misrepresentations in materials provided to prospective and current tenants regarding the scope of the maintenance and repair obligations they are required to undertake. Defendants use the same form contracts of adhesion for all putative class members, and therefore a class action is the most appropriate way to rectify Defendants' wrongful actions and provide relief to Minnesota tenants who have suffered the same harm.

Because Plaintiffs' proposed Class meets the Rule 23.01 prerequisites, as well as the conditions of Rule 23.02(b) and 23.02(c), Plaintiffs respectfully request this Court grant their motion for class certification.

II. STATEMENT OF COMMON FACTS

Defendants[2] are a national real estate investment and property management conglomerate that has purchased over 1,900 single family homes and entered into over 2,000 leases with tenants in the greater Twin Cities Metropolitan area since 2015. (Declaration of Anne T. Regan, Ex. 24). As of 2021, Defendants were the second largest owner and investor of single family residences in Minnesota. (Regan Decl., Ex. 1). Defendants are absentee landlords, with no office and very few employees in Minnesota, operating instead out of Chicago, Illinois and Plano, Texas, and through a remote call center and centralized web portal. (Regan Decl. Ex. 2; Ex. 37, 30.02(f) Dep. at 28:16-31:15; Ex. 39, Schenck Dep. at 22:22-25:25, 100:7-16).

Defendants operate two rental programs within Minnesota. The first, which Defendants have called a "lease-to-purchase", "lease purchase," or "right to purchase" program (hereafter referred to as "LTP"), is the means through which Defendants acquire single family homes for

[2] Defendant Pathlight Property Management is a wholly owned subsidiary of Defendant Home Partners Holdings, LLC. SFR Acquisitions I, LLC is one of the many "special-purpose" entities wholly owned by Home Partners that obtains financing for Home Partners' homes and is the title owner of these homes. (Regan Decl. Exs. 3, 25).

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

purposes of rental and later re-sale. (Regan Decl. Exs. 26; 40, Slankard Dep. at 23:7-11). In the LTP program, Defendants work through affiliated local real estate agents to reach prospective customers contemplating purchasing a house, but who are not ready to buy. (Regan Decl. Ex. 37, 30.02(f) Dep. at 132:21 – 136:12). Defendants make cash offers on homes chosen by the prospective customers, and then lease the property to the customer under a lease that is renewable for up to five years. (Regan Decl. Ex. 37, 30.02(f) Dep. at 135:9-25; Ex. 40, Slankard Dep. at 23:7-11). The second program is a non-right-to-purchase (NRTP) one-year rental program, where tenants re-lease one of Defendants' previously acquired properties, after an LTP participant has terminated the lease. (Regan Decl. Ex. 37, 30.02(f) Dep. at 60:10-19).

A. Defendants' Practice of Using Illegal Leases

Defendants use form contracts of adhesion in leasing their properties. (Regan Decl. Exs. 4, 5). The lease is written in 8-point font, and contains over 40 separate paragraphs, as well as numerous addenda. (*See* Regan Decl. Ex. 4 at DEFS_00005618-5628; Ex. 5 at DEFS_00002823-2841). These contracts signed by all putative class members throughout the class period are the same in all material respects. (*Compare* Regan Decl. Ex. 4 *with* Ex. 5).

Defendants intend for tenants to depend and rely on the leases to determine their rights and obligations under the leases. (Regan Decl. Ex. 37, 30.02(f) Dep. at 252:10-20). Defendants also intend for their employees and vendors to rely on the leases as a source to understand Defendants' obligations to the tenants. (*Id.* at 252:21-253:3). But since at least 2015, Defendants have included numerous unenforceable or misleading lease provisions that violate Minnesota law, including but not limited to:

- Several disclaimers of the statutory covenant of habitability, in violation of Minn. Stat. § 504B.161, subd. 1(b), which require the tenant to take the property in its "AS-IS, WHERE-IS, WITH ALL FAULTS' condition," and which further disclaim any "fitness for any particular purposes, …habitability or any other

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

warranty…." (*see, e.g.,* Regan Decl. Ex. 4, at DEFS_00005605 ¶ 9; Ex. 5, at DEFS_00002809 ¶ 10);

- Paragraphs that shift the burden of maintenance and repair onto a tenant without consideration, and without specifying the repairs or maintenance a tenant must undertake, as required by Minn. Stat. § 504B.161, subd. 2 (Ex. 4 at DEFS_00005608 ¶ 15; Ex. 5 at DEFS_00002811 ¶ 16).

- Sections that require the tenant to procure renters' insurance that will cover casualty and other damage to Defendants' property (Ex. 5, DEFS_00002810 at ¶ 12);

- Clauses that presume that any property damage during the tenancy is caused by the tenant, irrespective of the statutory requirement that the landlord has the burden of proving that any alleged damage is "willful or malicious," Minn. Stat. § 504B.165(a), or that any alleged damage is non-ordinary wear and tear damage, Minn. Stat. § 504B.165, subd. 3(c) (*see* Ex. 4 at DEFS_00005609 ¶ 16, Ex. 5, at DEFS_00002813 ¶ 17).

- Clauses indicating an intent to withhold all security deposit interest, in violation of Minn. Stat. § 504B.178;

- Clauses requiring the tenant to pay damages caused by criminal activity of third parties, not occupants or occupants' guests (Ex. 4 at DEFS_00005602 ¶ 1.Q; Ex. 5 at DEFS_00002809 at ¶ 11).

- Clauses requiring the tenant to pay for cleaning and other lease termination fees regardless of whether the alleged "damage" is caused by ordinary wear and tear (Ex. 5 at DEFS_00002816 ¶ 28).

In sum, the lease acts to insulate and insure Defendants – the landlord- against the risks of property ownership and transfer that risk to the tenant, while providing none of the benefits of home ownership to the tenant. A summary chart of these misleading or *per se* unenforceable clauses is attached as Ex. 6 to the Declaration of Anne T. Regan.

In addition to these misleading or *per se* unenforceable clauses, the leases illegally shift the costs of lease administration and property management to the tenants by requiring tenants to pay, in addition to their monthly base rent, (1) a "pay-to-pay" utility billing service fee ("UBSF") in the amount of $9.95 for utilities or services like water, trash, and sewer that must be kept in the landlord's name and which must be paid by the landlord (Ex. 5, at DEFS_00002808 ¶ 6); (2) a $15

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

monthly "HVAC Filter Fee" "designed to ensure that the air quality in your home is safe, and that your system is functioning properly" (Ex. 5, at DEFS_00002841); (3) Defendants' "Master Resident Liability Program" insurance, providing coverage of $100,000 in property damage to Defendants' property, for $13 a month, but no coverage for the tenant's personal property, unless tenants provide their own excess renters' insurance; (4) cumulative late fees in amounts exceeding the statutory cap of 8 percent in Minnesota (Ex. 4 at DEFS_00005603 ¶ 3; Ex. 5 at DEFS_00002806 ¶ 4); and (5) attorneys' fees for instances where Defendants' attorneys review a tenant's file for potential action, but do not in fact prevail in an action, which violates Minnesota law permitting fee shifting only where the landlord has been deemed a prevailing party (Ex. 4 at DEFS_00005612 ¶ 29; Ex. 5 at DEFS_00002817 ¶ 30).

None of these fees benefit Class members. Instead, these fees, as well as monthly rents that are **not** reduced to reflect an agreement to maintain or repair (despite the false representation to the contrary in the lease), allow Defendants to offset customary property management expenses and operate their single-family home rental scheme profitably for their REIT investors, despite long-standing real estate industry knowledge that:

> Single-family homes aren't a good long-term investment for landlords because upkeep expenses and renovations for new tenants cut into profits, [Lew] Ranieri said last year. "Because a house was never built to be rented, the wear and tear on the house makes it prohibitive to keep renting over a period of time because the cost of the rehab becomes overwhelming," the mortgage-bond pioneer said in an October 2013 interview.

(Regan Decl. Ex. 7; *see also* Ex. 28 [redacted] The quoted mortgage-bond pioneer, Lew Lanieri, was one of Home Partners' original investors. (*Id.*)

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

B. Defendants Unilaterally Set the Monthly Rent.

In every lease, Defendants state that the "**amount of rent was negotiated**…" or the "**amount of rent was agreed to with the express understanding that Tenant will be responsible for the maintenance needs of the Premises as provided in this Lease and in the absence of Tenant's agreement to maintain the Premises at its cost in accordance with the terms of this Lease, Landlord would have charged a higher amount.**" (Regan Decl. Ex. 4 at DEFS_00005608 ¶ 15; Ex. 5 at DEFS_00002811-12 ¶ 16) (emphasis in original). This statement is patently false as to all Class members. Under Defendants' uniform practice, no negotiation or agreement about the amount of rent (or any other contract term) takes place. (Regan Decl. Ex. 37, 30.02(f) Dep. at 247:20-249:5; Ex. 41, Polanzi Dep. at 93:6-11, 111:4-13; Sewall Decl. Ex. 3 at 18; Gregory Decl. ¶ 13).

Rather, Defendants calculate rental rates using software that applies a proprietary algorithm to derive the rental rate and a "rent yield" for a given property—even before Home Partners makes an offer on the house. (Ex. 26 at DEFS00265781; Ex. 40, Slankard Dep. at 74:18-76:15; 84:5-88:15; Ex. 41, Polanzi Dep. at 72:19-74:22). There is no evidence that Defendants adjust or discount the monthly rental rate to compensate the tenants for the alleged agreement to maintain and repair. (Ex. 37, 30.02(f) Dep. at 248:2-11; Ex. 41, Polanzi. Dep at 89:18-91:14). This centralized methodology for setting rental rates constitutes common, classwide evidence relevant to liability and damages to the putative Class.

C. Defendants Enforce the Illegal Lease Provisions Through Common Policies and Procedures.

Under the lease terms and Defendants' common policies and procedures, Defendants require tenants to maintain or repair a vast array of both non-wear-and-tear and ordinary wear-and-tear items, irrespective of whether the tenant caused any damage or necessitated the repair.

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

[redacted] (Ex. 30 at DEFS00004998; *see also* Exs. 29; 31 at DEFS_00005344 – 5346).

This list is not provided to tenants; rather, it is maintained by Defendants to ensure that Defendants' employees and agents uniformly approve or disapprove maintenance requests consistent with Defendants' form lease and centralized policies. Regan Decl. Ex. 38, Wood Dep. at 74:5-75:4.[3] Defendants then use their centralized "resident portal" to convey to tenants which repair and maintenance items will be landlord responsibility and will be repaired, or which are allegedly "resident responsibility." (Ex. 37, 30.02(f) Dep. at 28:16-31:19; Ex. 38, Wood Dep. at 60:19-61:5).

Defendants' "resident responsibility" items include but are not limited to:

- [redacted]

[3] Since 2016, the categories of repair items that are resident responsibility have not changed, but Defendants have refined their [redacted] (Ex. 37, 30.02(f) Dep. at 192:1-17).

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

[redacted]

Defendants have enforced their policies throughout the Class Period. Evidence of the common impact of these policies on the Class exists in spades. In this litigation, Defendants produced a "Repair and Maintenance Report" (RMR), compiling data from three separate property management databases in an Excel sheet. The RMR purports to show maintenance or repair requests submitted by Minnesota tenants since March 2016. (Regan Decl. ¶¶ 44-45; Ex. 8; Ex. 37, 30.02(f) Dep. at 74:14-79:11). These data show that in multiple categories of maintenance and repair, Plaintiffs and Class members have been uniformly impacted by Defendants' leases and policies and procedures. *See* Declaration of Robert Kneuper at 12 – 16.

The dozens of rent escrow actions filed against Defendants since 2016 further evince Defendants' enforcement of their "resident responsibility" policy. One Plymouth, Minnesota couple attempted to have a non-operable dishwasher repaired but was told the same day that "[d]ue to the fact that your homes (*sic*) are rented 'as is,' we are going to proceed to close out this work order." (*See* Regan Decl. Ex. 9, *Bussier* Affidavit of Rent Escrow, No. 27-CV-HC-20-757, at p. 7). The corresponding entry on the RMR says the work order was "resolved without dispatch." (Regan Decl. ¶ 48). Pathlight told the same couple, after their report of major hail damage and a power outage to the home, that it would not fix a microwave and oven range that the couple reported as "dangerously spark[ing]" because "it is not considered a landlord obligation per the terms of your lease." (Regan Decl. Ex. 9, *Bussier* Affidavit of Rent Escrow, at p. 9). The

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

corresponding entry on the RMR states that the couple's request was "unreasonable." (Regan Decl. ¶ 48).

Similarly, another Prior Lake, Minnesota tenant filed a case after Pathlight declined to address a bed bug infestation, which Pathlight had stated was a "tenant responsibility under the lease." (Regan Decl. Ex. 10, *Lang*, Order for Judgment, No. 70-CV-19-3974, at p. 2). The district court, after an evidentiary hearing, held that the infestation was Defendants' responsibility because Defendants could not prove the infestation was "caused by the willful, malicious, or irresponsible conduct of the tenant." (*Id.* at pp. 4-6).

Defendants not only enforce these policies and procedures during the tenancy but also after, when tenants vacate the property. Defendants have produced 936 security deposit disposition letters sent to Class members. (Declaration of Lindsey L. Larson ¶ 4). Defendants have routinely charged past tenants for items such as "basic plumbing," pest control, carpet replacement, carpet cleaning, HVAC filter replacement, "replacing valve," unspecified "damag[e]," re-painting (despite the fact the lease prohibits tenants from painting), chimney sweeping, fireplace servicing, adding salt to a water softener, unclogging a water softener, repairing a "toilet float," landscaping, and for allegedly failing to clear gutters. (Larson Decl. Ex. 1). Only 70 of 936 letters provide a full return of the tenant's deposit, minus any alleged unpaid utilities or rent at the end of the tenancy. (*Id.* ¶ 5). Only 62 letters contain a line item crediting the return of security deposit interest, in violation of the statutory requirements. (*Id.* ¶ 5). Sewall's security deposit disposition letter also did not credit statutory interest. (*Id.* Ex.1). None of the letters provide documentation in the form of photographs, bills, or invoices, that the items Pathlight is charging for are damage as opposed to "ordinary wear and tear." Minn. Stat. § 504B.178, subd. 3(b)(2).

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

The RMR data, rent escrow actions, and security deposit letters all constitute representative classwide evidence of Defendants' illegal shifting of costs without consideration and Defendants' enforcement of illegal terms in the lease.

D. Defendants Induce Plaintiffs to Enter Into a Lease With False Promises and Misleading Omissions.

Defendants market their rental programs nationally through a network of real estate brokerages, over 80,000 realtors, and their own web sites. Regan Decl. Ex. 37, 30.02(f) Dep. at 217:14-218:7; Ex. 40 at 22:5-24:1; Ex. 41 at 11:15-13:4; Ex. 28 at p. 3).[4] Home Partners represents that the homes it has purchased are "qualified" for its program and meet its rigorous inspection and purchase criteria. (Regan Decl. Ex. 11; Ex. 33 [redacted] Pathlight, in turn, represents the homes it leases are "high quality" and "[p]rofessionally managed …, offering excellent customer service, 24/7 emergency maintenance service, online application and payments, and pet-friendly options." (Regan Decl. Ex. 12; Declaration of Akshay Rao ¶¶ 18, 29, 39).

While Defendants provide multiple assurances that their homes and property management service will be high quality, Defendants' pre-lease and move-in representations have never disclosed the full nature or extent of Plaintiffs' maintenance and repair obligations *after* they become tenants. (*Compare* Sewall Decl. Ex. 1 at DEFS_00000666, Ex. 2 at DEFS_00000603; Gregory Decl. Ex. 1 at DEFS_00003249, Ex. 2 at DEFS_00002879; Regan Decl. Ex. 13 *with* Regan Decl. Ex. 31 at DEFS_00005344 - 5346 and Regan Decl. Ex. 33 at DEFS_00004348 [redacted] *see also* Declaration of Akshay

[4] Real estate agents who bring an LTP client to Home Partners act as Home Partners' buyer's agent in the sale transaction, and have the opportunity to earn a "full sales commission," as opposed to the typically lower rental commission which is typically lower. (Regan Decl. Ex. 41, Polanzi Dep. 103:16-108:3; Ex. 33 at DEFS_00004344).

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

Rao, ¶¶ 39-42). As noted above, Defendants' leases and policies and procedures in fact make tenants responsible for far more than what Defendants represent before Plaintiffs enter the lease. Defendants also fail to disclose that Minnesota tenants are not required to "perform specified repairs or maintenance" without being provided "adequate consideration." Minn. Stat. § 504B.161, Subd. 2.

E. Plaintiffs Have Been Damaged by Defendants' Misconduct.

Plaintiffs leased with Defendants through the LTP Program. (Sewall Decl. ¶ 4; Gregory Decl. ¶ 5). Plaintiffs chose their homes from available for-sale houses in their desired location. (Sewall Decl. ¶ 4; Gregory Decl. at ¶ 6). Defendants unilaterally determined the rental rate for the homes and did not negotiate the rental rate with Plaintiffs. (Sewall Decl. ¶ 29, Ex. 3; Gregory Decl. ¶ 13). Defendants provided these terms to Plaintiffs through an "anticipated terms" document. (Sewall Decl. ¶ 9, Ex. 1; Gregory Decl. ¶ 8, Ex. 1).

Before Plaintiffs moved in, Defendants inspected the homes using their third-party inspectors and proceeded to make the homes ready for occupancy. (Regan Decl. Exs. 34, 35). Sewall's home had preexisting damage that Defendants knew about but elected not to repair. (Regan Decl. Exs. 14, 34, 36). The Gregorys' home was in a state of renovation when they toured it. (Gregory Decl. ¶ 7). The Gregorys could not move into their home on the anticipated date because Pathlight had not obtained a rental license from the City of Brooklyn Center. (Gregory Decl. ¶ 14). Pathlight's failure to obtain a rental license delayed the Gregorys move in by 14 days and caused them to have to live out of a hotel during that time. (*Id.* at ¶ 17).

None of the Plaintiffs received a copy of the inspection report or were aware of the work done on the home before they moved in. (Sewall Decl. ¶ 12; Gregory Decl. ¶ 18). Per policy, Defendants do not disclose the results of any pre-home inspection and exercise discretion about whether to make any needed repairs. (Regan Decl. Exs. 14, 36; Ex. 38, Wood Dep. at 51:13-25).

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

After moving into the home, Sewall reported items of damage to Defendants. (Sewall Decl. ¶¶ 17-26). During his tenancy he made repeated maintenance requests concerning moisture and wetness around the house including near the equipment room, storage room, and garage, and an improperly draining shower requiring Defendants' plumber to cut a hole in the ceiling. (*Id.* at ¶¶ 18, 21, 22, 24, 26). Other problems continued to appear, including an ice dam and standing water in the garage, which persisted throughout his tenancy. (*Id.* at ¶¶ 18, 21, 26, 51). Defendants never addressed the standing water in the garage and were unable to fix the improperly draining shower. (*Id.* ¶¶ 23, 26).

In late August 2021, Sewall moved out of his home. (*Id.* ¶¶ 30-34). Though he attempted to contact Defendants regarding the move-out process on multiple occasions, Defendants did not respond. (*Id.* ¶¶ 27-31). In a letter dated Monday, September 20, 2021, subsequently mailed on September 22, 2021, Defendants sent Sewall a Security Deposit Disposition purporting to charge Sewall $15,000 for "Remediation and Buildback." (*Id.* ¶ 36). Defendants did not substantiate the charge. (*Id.* ¶¶ 37-38).

For their part, the Gregorys have also made repeat maintenance requests, necessitated by the condition of the home. (Gregory Decl. ¶¶ 19-40). The home was not "move in ready" as promised, and within the first two months the Gregorys reported a field mice infestation that Pathlight said was their "responsibility." (*Id.* ¶ 22). The Gregorys did not have a refrigerator for approximately two months, did not have an operable washer and dryer, and had to live in the home while Defendants' vendors repaired their flooring and subflooring, which took more than 3 months. (*Id.* ¶¶ 24-25). In addition, the City of Brooklyn Center issued rental correction notices, which went unaddressed. (*Id.* ¶ 35). Since approximately January 2022, the Gregorys have communicated their repair and maintenance requests through counsel. (Gregory Decl. Ex. 17).

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

Defendants continue to assert that many of the maintenance items, including pest control, are the Gregorys' responsibility. (Regan Decl. Exs. 15, 16, 17).

The Gregorys have also been charged numerous non-rent fees, including Defendants' attorneys' fees for "review" of their file, late fees, HVAC filter fees, and the $13 per month "resident liability program" charge—despite the fact they provided proof of renter's insurance. (Regan Decl. Ex. 18).

III. THE PROPOSED CLASSES

Plaintiffs seek certification of the following classes, whose members are ascertainable from Defendants' records, to adjudicate Defendants' wrongful conduct. First, Plaintiffs seek certification of a Damages Class, pursuant to Rule 23.02(c), comprising:

> All persons within the State of Minnesota who, since March 1, 2016, paid rent or other fees to Defendants pursuant to a lease.

Second, Plaintiffs seek certification of an Injunctive Class, pursuant to Rule 23.02(b), comprising:

> All persons within the State of Minnesota who, since March 1, 2016, have or will enter into a lease with Defendants within the State of Minnesota and who pay rent and other fees to Defendants pursuant to a lease.

On behalf of the Injunctive Class, Plaintiffs seek injunctive and declaratory relief requiring that: (1) Defendants cease use of leases containing clauses that mislead tenants regarding their rights or obligations under Minnesota law, or which are unenforceable *per se*; (2) calculate late fees solely in accordance with Minn. Stat. § 504B.177; (3) cease assessing attorneys' fees to tenants, unless Defendants have been found to be the prevailing party in an action against the tenant under Minn. Stat. § 504B.177; (4) cease charging tenants for the $9.95 UBSF; and (5) cease charging tenants for HVAC filters.

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

IV. ARGUMENT

Under Minnesota Rule of Civil Procedure 23, a class may be certified when it meets all of the elements of Rule 23.01—numerosity, commonality, typicality, and adequacy of representation—and one of the sections of Rule 23.02. *Lewy 1990 Trust ex rel. Lewy v. Inv. Advisors, Inc.*, 650 N.W.2d 445, 451 (Minn. Ct. App. 2002), *review denied* (Minn. Nov. 19, 2002). "[F]ederal precedent is instructive" but not binding "in interpreting our rule." *Id.* at 452.

A. Plaintiffs Meet the Requirements of Rule 23.01.

1. Numerosity Exists.

The Class is so numerous that joinder is impracticable. Minn. R. Civ. P. 23.01. Putative class sizes of over forty members generally suffice. *Portz v. St. Cloud State Univ.*, 297 F. Supp. 3d 929, 944 (D. Minn. 2018). Since 2015, Defendants have entered into over 2,000 form leases with Minnesota residents. (*See* Regan Decl. Ex. 24; Ex. 3, Defs.' Answer to Interrogatory No. 2). Defendants continue to operate in Minnesota, using the same form leases, likewise making the Injunctive Class sufficiently numerous.

2. Common Questions of Law and Fact Exist.

Class members' claims present common questions of law and fact, for which a "prima facie case can be established through common evidence." *See In re Zurn Pex Plumbing Prods. Liab. Litig.*, 644 F.3d 604, 618 (8th Cir. 2011); *see also* Minn. R. Civ. P. 23.01(b). "The threshold for commonality is not high and requires only that the resolution of common questions affect all or a substantial number of class members." *Streich v. Am. Mut. Ins. Co.*, 399 N.W.2d 210, 214 (Minn. Ct. App. 1987) (citation omitted).

In this case, common evidence will be used to prove that Defendants mislead tenants regarding their rights and obligations as tenants. All putative Class members have leased Defendants' properties under Defendants' form lease, have been subject to the same material lease

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

terms, and have been subject to the same policies and procedures governing the shifting of repair and maintenance and other costs to tenants, and used the centralized maintenance and accounting systems. Under Defendants' centralized policy, no Class member was provided an opportunity to negotiate their rent nor any consideration in exchange for any alleged agreement to take on maintenance and repair. In addition, no Class member was provided a full and fair disclosure of the repair and maintenance obligations set forth in the leases. As a result of Defendants' uniform misrepresentations and omissions, all Class members effectively became live-in property managers, without the benefits provided to the typical live-in property manager, such as reduced rent or payment for time spent managing the property.

In turn, the common questions underlying this litigation focus solely on Defendants' uniform course of conduct rather than the conduct of any individual Class member. Defendants' conduct can be evaluated under common legal questions, including:

- Whether the lease as written is unenforceable under Minnesota law;
- Whether the lease provisions are false, misleading, unfair or deceptive;
- Whether Defendants' pre-lease representations were false, misleading, unfair, or deceptive;
- Whether Defendants failed to comply with Minnesota landlord-tenant laws;
- Whether Defendants illegally charge the UBSF, insurance, late, and attorneys' fees;
- Whether Defendants breached the duty of good faith and fair dealing;
- Whether Plaintiffs and the proposed Damages Class are entitled to compensatory damages or equitable monetary remedies, like recission, restitution, or disgorgement; and
- Whether the Injunctive Class is entitled to injunctive or declaratory relief.

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

3. Plaintiffs' Claims Are Typical.

Rule 23.01(c) requires that the claims and defenses of the representative parties must be "typical of the claims or defenses of the class." Minn. R. Civ. P. 23.01(c). The typicality requirement is met when the claims of the named plaintiffs arise from the same event or are based on the same legal theory as the claims of the class members. *Lewy,* 650 N.W.2d at 453. In assessing typicality, the court must "determine if the proposed class members had a similar enough experience with Defendant." *Mitchell v. Chicago Title Ins. Co*., No. CT 02-017299, 2003 WL 23786983, at *7 (Minn. Dist. Ct. Dec. 22, 2003). A "strong similarity of legal theories" satisfies the typicality requirement even if substantial factual differences exist. *Lockwood Motors, Inc. v. Gen. Motors Corp*., 162 F.R.D. 569, 575 (D. Minn. 1995). The existence of potential defenses unique to a named plaintiff does not automatically preclude a finding of typicality. *See In re Select Comfort Corp. Sec. Litig*., 202 F.R.D. 598, 608 (D. Minn. 2001).

Here, Plaintiffs' claims are typical because they are based on identical legal theories, specifically violations of the CFA, DTPA, various provisions of the Landlord Tenant Act, and Minnesota common law. These claims turn on the common question of whether the lease terms are enforceable or void. In addition, Plaintiffs' claims share a common nucleus of operative fact, which requires the Court to determine whether Defendants wrongfully shifted the burden of maintenance and repair either unlawfully or without consideration, and misrepresented the nature of tenants' obligations under the leases. Finally, Plaintiffs seek remedies that apply to the entire class—including monetary, equitable and declaratory relief. *Lewy*, 650 N.W.2d at 453–54.

4. Plaintiffs Have and Will Continue to Protect the Class's Interests.

Rule 23.01(d) requires that the "representative parties will fairly and adequately protect the interests of the class." Minn. R. Civ. P. 23.01(d). Factors to consider in determining if representation is adequate include: (1) whether the representatives' interests are "sufficiently

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

identical" to those of absent class members so that the representatives will vigorously prosecute the suit on their behalf; (2) "whether the attorneys are qualified, experienced, and capable of conducting the litigation" and (3) "whether the representatives have any interests that conflict with the objective of the class they represent." *Lewy*, 650 N.W. 2d at 454. Class representatives "need not have … personal knowledge of the facts needed to make out a prima facie case," *Gentry v. C & D Oil Co.*, 102 F.R.D. 490, 495 (W.D. Ark. 1984), and "the depth of a named representative's knowledge is irrelevant." *In re Workers' Comp.*, 130 F.R.D. 99, 108 (D. Minn. 1990). The fact that some representatives may face an additional defense does not defeat their ability to adequately represent the class. *In re Workers Comp.*, 130 F.R.D. at 107.

Plaintiffs and their counsel have shown they will pursue the claims of the Class, and no intra-class conflict exists. Each Plaintiff has responded to numerous documents requests and interrogatories, and sat for deposition. *See* Sewall Decl. ¶ 14; Gregory Decl. ¶ 20. As evidenced by Plaintiffs' filing and conscientious prosecution of this action, Plaintiffs have actively represented and will continue to represent the Class's interests, and they should be appointed as class representatives.

Moreover, Plaintiffs have retained experienced counsel to prosecute the interests of the Class. Hellmuth & Johnson, Lockridge Grindal Nauen and Milberg LLP are qualified to serve as counsel for the Class. All firms have substantial experience in handling class actions and other complex litigation. These firms have committed the financial resources needed to represent the Class. *See* Regan Decl. Exs. 19, 20, 21 (firm resumes of proposed Class Counsel). Thus, Plaintiff's Counsel satisfies Rule 23.01(d). For these reasons, they should be appointed as Class Counsel.

B. The Damages Class Meets the Requirements of Rule 23.02(c).

Rule 23.02(c) requires a finding "that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

action is superior to other available methods for fairly and efficiently adjudicating the controversy." "No bright-line rules determine whether common questions predominate." *Lewy,* 650 N.W.2d at 455. Rather, certification is appropriate if "the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *Tyson Foods, Inc. v. Bouaphakeo*,--- U.S.---, 136 S.Ct. 1036, 1045 (2016). A class may be certified based on common issues "even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Id.* Thus, a class action is appropriate when common questions representing a significant issue in a case can be resolved in a single action. *Lewy,* 650 N.W.2d at 455. Determining whether common questions of law or fact predominate "begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co*., 563 U.S. 804, 809 (2011).

1. Common Questions Predominate Regarding Defendants' Compliance with Minn. Stat §§ 504B.161, 504B.177, and 504B.178 (Counts III, IV, V).

Common questions predominate regarding Defendants' liability under the Minnesota Landlord-Tenant Act ("LTA"), Minn Stat. §§ 504B.161, 504B.172,[5] 504B.177, 504B.178. Specifically, Plaintiffs can present common evidence that:

- Defendants' form lease impermissibly waives the statutory covenant of habitability contained in Minn. Stat. § 504B.161, subd. 1, by requiring the tenants to take the property on an "AS-IS, WHERE-IS, WITH ALL FAULTS' condition," and further disclaiming any "fitness for any particular purposes, …habitability or any other warranty…." *See* Regan Decl. Ex. 4, at DEFS_00005605 ¶ 9; Ex. 5, DEFS_00002809 ¶ 10.

- Defendants' form lease does not comply with the statutory requirement that any agreement "to perform specified repairs or maintenance" must be supported by

[5] Although no separate cause of action is provided, Minn. Stat. § 504B. 172 prohibits recovery of attorneys' fees under a residential lease except in "an action between the landlord and tenant…the tenant is entitled to attorney fees if the tenant prevails in the same type of action, under the same circumstances, and to the same extent as specified in the lease for the landlord."

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

"adequate consideration and set forth in a conspicuous writing. No such agreement, however, may waive the provisions of subdivision 1 or relieve the landlord or licensor of the duty to maintain common areas of the premises." Minn. Stat. § 504B.161,subd. 2.

- Defendants' repair and maintenance policies and procedures fail to ensure compliance with the statutory requirement that Defendants keep the property "in reasonable repair" and in a manner "fit for its intended use," § 504B.161, subd. 1, *see* Section B1, *supra*;

- Defendants' lease provides for recovery of Defendants' attorneys fees even where it has not been deemed the prevailing party in a legal action (*see* Regal Decl. Ex 5, at DEFS_00002817 ¶ 30), and Defendants have enforced these provisions (Regan Decl. Ex. 18).

- Defendants' lease calculates and assesses cumulative late fees in a manner that violates Minn. Stat. § 504B.178 because the lease allows for late fees in excess of 8 percent of the amount of base rent owed (*see* Ex. 4 at DEFS_00005603 ¶ 3; Ex. 5 at DEFS_00002806 ¶ 4); and Defendants have enforced these provisions (Regan Decl. Ex. 18).

- Defendants fail to fully credit security deposit interest in the statutorily-required written statement at the end of tenancy and unreasonably shift ordinary wear and tear or other repairs and maintenance to tenants through security deposit deductions (Larson Decl. Ex. 1).

The Court will decide as a matter of law whether Defendants' inclusion of these illegal provisions voids the contract as a matter of law or whether they are otherwise unenforceable. *See Love v. Amsler*, 441 N.W.2d 555, 559 (Minn. Ct. App. 1989) ("These [covenants of habitability] may not be waived or modified"); *De Stefano v. Apts. Downtown, Inc.*, 879 N.W.2d 155, 175 (Iowa 2016) ("[T]he majority of courts refuse to allow 'as is' transactions in a residential lease as contrary to the implied warranty of habitability."); *Baierl v. McTaggart,* 2001 WI 107, ¶ 14, 629 N.W.2d 277, 281 (holding that inclusion of prohibited clauses in leases constituted an unfair trade practice and that lease was unenforceable and void); *see also Wardin v. Manski*, No. C4-97-2245, 1998 WL 481917, at *3 (Minn. Ct. App. Aug. 18, 1998) (lease provision providing that the tenants would "maintain mechanical systems" was neither specific nor conspicuous where it "appear[ed]

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

on page three of a six-page form lease and is written in the same typeface as the rest of the lease" and was not enforceable); Regan Decl. Ex. 22, *In the Matter of Housing Hub, LLC*, No. 62-CV-23-1273, Assurance of Discontinuance, Mar. 21, 2023 (requiring property manager to cease charging tenants for carpet cleaning, battery, lightbulb and filter replacement upon move out because they were ordinary wear and tear); Regan Decl. Ex. 23, Minn. Op. Att'y Gen. 430, at p. 4 (June 30, 2021) (landlord may not charge a late fee of 8 percent "when the total includes an overdue rent payment for which a late fee has already been assessed").

Similarly, the Court will decide whether Defendants' conduct has also violated the LTA. The common evidence of this conduct includes Defendants' leases; policies and procedures; communications with tenants; internal communications; and security deposit disposition letters. *See Peviani v. Arbors at California Oaks Prop. Owner, LLC*, 277 Cal. Rptr. 3d 223, 245 (2021), *reh'g denied* (Apr. 29, 2021), *review denied* (July 14, 2021) (certifying habitability, nuisance and other statutory claims, noting that landlord's defenses did not turn on individualized issues).

Accordingly, common questions predominate on Plaintiffs' LTA claims.

2. Common Questions Predominate on the Consumer Fraud Claims (Counts I, II).

The Court should certify the claims under the Prevention of Consumer Fraud Act, Minn. Stat. § 325F.68, et seq. ("CFA"), and the Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.43, et seq. ("DTPA").

"Under Minnesota's Private Attorney Statute [Minn. Stat. § 8.31, subd. 3a]... any person injured by a violation of the laws entrusted to the Minnesota Attorney General to investigate and enforce –including the [CFA and DTPA] – may file a lawsuit and recover damages as well as costs and fees." *In re Levaquin Prod. Liab. Litig.*, 752 F. Supp. 2d 1071, 1076 (D. Minn. 2010). The DTPA permits any person likely to be damaged by deceptive trade practices to seek injunctive

relief from future damage. *Id.* These statutes are designed "to address the unequal bargaining power often present in consumer transactions," *Ly v. Nystrom*, 615 N.W.2d 302, 308 (Minn. 2000), and must be "liberally construed." *Meyer v. Dygert,* 156 F. Supp. 2d 1081, 1086 (D. Minn. 2001). Violations of other state or federal statutes, even those that do not themselves create a private cause of action, may be the subject of a consumer fraud claim. *Thompson v. St. Anthony Leased Hous. Assocs. II, LP*, 979 N.W.2d 1, 7 (Minn. 2022).

Deceptive contractual provisions may form the basis of a consumer fraud violation. *City of Farmington Hills Emps. Ret. Sys. v. Wells Fargo Bank, N.A.*, 281 F.R.D. 347, 355–56 (D. Minn. 2012) (holding that common questions predominated where contract class members signed contained the same alleged misrepresentation); *see also Lerado v. Brown*, 394 Mass. 151, 157 (Mass. 1985) (holding that lease provision suggesting to tenants that they have waived their rights to habitable housing is deceptive and "a clear and calculated effort to…mislead tenants"); *Commw. v. Chatham Development Co., Inc.*, 49 731 N.E.2d 89, 90-91 (Mass. App. Ct. 2000) (illegal fee in residential lease is "deceptive" practice in violation of Massachusetts's consumer protection statutes); *Consumer Fin. Prot. Bureau v. CashCall, Inc.*, Case No. 15-7522, 2016 WL 4820635, at *10 (C.D. Cal. Aug. 31, 2016) (consumer contracts with unenforceable provisions give false "net impression" of enforceability and are "likely to mislead consumers").

Although the CFA generally requires a causal nexus between the prohibited conduct and the claimed damages, proof of causation is relaxed and is satisfied by common, circumstantial evidence of causation rather than by a showing of individual reliance. *Grp. Health Plan, Inc. v. Philip Morris Inc.*, 621 N.W.2d 2, 14-15 (Minn. 2001) (holding misrepresentation in sales claims do not require a showing of individual reliance). A defendants' own intent to influence consumer behavior may be important and "decisive" evidence. *State v. Minnesota Sch. of Bus., Inc.*, 935

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

N.W.2d 124, 136 (Minn. 2019) (citing *In re Lutheran Bhd. Variable Ins. Prods. Co. Sales Practices Litig.*, No. 99-MD-1309, 2004 WL 909741, at *4 (D. Minn. Apr. 28, 2004) ("Evidence of what the defendant knew or thought about the sales practice involved is evidence that the sales statements were misleading"). The Court can also presume causation where a representation is not merely deceptive but actually false and material. *PPX Enters., Inc. v. Audiofidelity Enters., Inc.*, 818 F.2d 266, 273 (2d. Cir. 1987) (cited by *Grp. Health Plan*, 621 N.W.2d at 15, n.11 as a case that properly sets forth the causation standard in consumer fraud cases).

Here, common questions predominate on the CFA claim because common evidence shows that Defendants explicitly intend for prospective and current tenants to rely on the statements in their leases, their web sites, and the anticipated terms provided prior to leasing, in order to determine their rights and obligations under the leases. (Ex. 37, 30.02(f) Dep. at 252:21-253:3; Ex. 40, Slankard Dep. at 105:3-106:3; *see also* Declaration of Akshay Rao ¶¶ 22-38). Each lease sets forth the obligations of the tenants, and includes either the statement that "amount of rent was negotiated…" or that the "amount of rent was agreed to ….".

These statements are false. Defendants unilaterally set the rent based on their own proprietary methods and without consideration of the value of a tenant's agreement to take on maintenance and repair costs. *See* Section II. A, *supra*. Defendants uniformly misrepresent what a tenant is responsible for, including their responsibility to pay for Defendants' liability "waiver"; the "pay-to-pay" UBSF fee; cumulative late fees in excess of 8 percent; and Defendants' attorneys' fees, regardless of whether Defendant has been found to be a prevailing party in a legal action.

In addition, Defendants intend for prospective tenants to rely on the statements in their marketing materials and leases to determine their liability for maintenance and repair and other obligations during the lease. (Ex. 37, 30.02(f) Dep. at 252:15-253:3). Common questions thus also

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

predominate regarding whether these misrepresentations have the capacity to deceive tenants regarding their legal rights and obligations after they have entered the leases. *See Mooney v. Allianz Life Ins. Co.*, Civ. No. 06–545, 2008 WL 2952055, at *2–3 (D. Minn. Jul. 28, 2008) (certifying class where each member of the putative class had received the alleged misrepresentation, and determining that the plaintiffs could "prove a causal nexus on a class-wide basis through direct and circumstantial evidence that policyholders were misled to their detriment").

Plaintiffs' CFA ant DTPA claims may be certified under Rule 23.02(c).

3. Common Questions Predominate Regarding Defendants' Breach of Good Faith and Fair Dealing (Count VI).

A duty of good faith and fair dealing is read into every contract in Minnesota, *In re Hennepin Cnty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 502 (Minn. 1995), and is applicable to the exercise of discretion in contract performance. *White Stone Partners, LP. v. Piper Jaffray Cos., Inc.*, 978 F.Supp. 878, 881 (D. Minn. 1997). In the context of landlord-tenant law, a failure to comply with a statute's requirements can form the basis of a breach of good faith and fair dealing claim. *See generally Thompson*, 979 N.W.2d at 7.

Here, the same common evidence supporting Plaintiffs' statutory consumer fraud and LTA claims, including Defendants' use of their leases to require tenants to take on repair and maintenance burdens, and pay force-placed insurance, UBSF, and HVAC and other lease fees, supports their breach of good faith and fair dealing claims. *See Ellsworth v. U.S. Bank*, No. C 12-02506, 2014 WL 2734953, at *8-10 (N.D. Cal. June 13, 2014) (certifying breach of good faith and fair dealing claims of borrowers who were force-placed into flood insurance); *Peviani,* 277 Cal. Rptr. 3d at 245. For those reasons, class certification should be granted for the breach of good faith and fair dealing claim.

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

4. Common Questions Predominate Regarding Whether Defendants Were Unjustly Enriched or Whether Plaintiffs Are Entitled to Rescission (Counts VII, VIII).

To prevail on a claim of unjust enrichment under Minnesota law, Plaintiffs must prove that Defendants "knowingly received something of value it was not entitled to and under circumstances that would make it unjust for that person to retain the benefit." *Schumacher v. Schumacher*, 627 N.W.2d 725, 729 (Minn. Ct. App. 2001). "Unjust" can mean illegal or unlawful, or that it is morally wrong to allow one party to benefit at the expense of another. *Id.*

Here, Plaintiffs' rescission and unjust enrichment claims are premised on the same legal theory and facts as their claims under the LTA and consumer fraud laws. Because Plaintiffs' claims arise out of the same conduct as their statutory and common law claims, class issues will also predominate. *See Khoday v. Symantec Corp.*, No. 11-180, 2014 WL 1281600, at *31 (D. Minn. Mar. 13, 2014) (certifying unjust enrichment claims premised on CFA violations); *Drs. Hosp. Surgery Ctr., L.P. v. Webb*, 704 S.E.2d 185, 188 (Ga. 2010) (holding breach of contract and rescission claims were susceptible of "class action treatment because the [plaintiffs] are typical members of the class for purposes of questions such as payment for an allegedly flawed service, and the liability for breach of contract and rescission can readily be proven based on general contractual concepts applicable across the class").

5. Monetary Relief Can Be Calculated Classwide.

A class action is appropriate here because monetary relief—either damages or equitable remedies—can be calculated as to the Class. Plaintiffs need only show that damages or equitable remedies can be assessed on a classwide basis. *Rupp v. Thompson*, No. C5-03-347, 2004 WL 3563775, at *9 (Minn. Dist. Ct. Mar. 17, 2004) (recognizing that "[t]he same general evidence will also be used to prove damages" as well as to prove defendant's misconduct). Individualized issues

as to damages will not, alone, prevent class certification. *In re Lutheran Bhd.*, 2004 WL 909741, at *3.

Plaintiffs are entitled to out-of-pocket damages under the CFA, the LTA, and state contract law, and to restitution and disgorgement under the CFA. *See Minnesota Sch. of Bus.,* 935 N.W.2d at 138–39. These damages are ascertainable using a common methodology. *See* Declaration of Robert Kneuper, at pp. 16-19. Plaintiffs seek monetary relief under three theories—all of which can be established using classwide evidence without regard to individual issues among Class members.

First, Plaintiffs will show that their leases are unenforceable or void, and therefore Defendants cannot legally require them to pay amounts due. Thus, Plaintiffs are entitled to 100% of the amount they paid to Defendants. Plaintiffs can provide those figures on a classwide basis based on their review of Defendants' data and receipt of rents from tenants.

Second, if the fact finder concludes that the leases still provide value to the tenants (even though they are void or unenforceable), Plaintiffs will be able to demonstrate the overcharge, or loss of value to tenants, on a classwide basis. Plaintiffs will present expert testimony from economist Robert (Rob) Kneuper, who will use a well-accepted damages methodology of comparing economic outcomes that actually occurred to those that would have occurred "but for" the Defendants' illegal conduct to demonstrate that the but-for rent, or overpayment, may be determined classwide under a commonly applied formula. Because this damages calculation determines the overpayment at the time of the hypothetical negotiation in the but-for world, the same formula can determine damages both for the class as a whole and for all individual class members. Any individualized questions about which repairs and maintenance were in fact performed on which properties does not alter the damages calculation or the fact of injury by all

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

class members. *See, e.g.*, *Nguyen v. Nissan N. Am., Inc.*, 932 F.3d 811, 822 (9th Cir. 2019) ("Plaintiff's theory of liability—that Nissan's manufacture and concealment of a defective clutch system injured class members at the time of sale—is consistent with his proposed recovery based on the benefit of the bargain."); *Victorino v. FCA US LLC*, No. 16CV1617, 2021 WL 662264, at *6 (S.D. Cal. Feb. 19, 2021) ("Further, all class members have sufficiently alleged injury because they were denied the benefit-of-the-bargain at the time of purchase.").

Finally, Plaintiffs seek restitution or disgorgement of profits under the CFA and their unjust enrichment and rescission claims. These equitable claims and remedies allow Plaintiffs to recover the amount Defendants gains financially from their use of illegal leases. *Minn. Sch. of Bus.,* 935 N.W.2d at 133–34; *United Prairie Bank-Mountain Lake v. Haugen Nutrition & Equipment, LLC*, 813 N.W.2d 49 (Minn. 2012) ("Restitution measures the remedy by the defendant's gain and seeks to force disgorgement of that gain."). Again, Plaintiffs can monetize these gains based on Defendants' own data and publicly available sources. *See* Declaration of Robert Kneuper, at p. 19.

6. A Class Action Is a Superior Means to Other Available Methods for the Fair and Efficient Adjudication of this Controversy.

Plaintiffs also satisfy Rule 23.02(c)'s superiority requirement. "Factors to consider in the superiority analysis include 'manageability, fairness, efficiency, and available alternatives." *Lewy,* 650 N.W.2d at 457; Minn. R. Civ. P. 23.02(c). Class certification is appropriate where it "(1) allows the issues raised to be given a meaningful hearing; (2) allows the common issues to be tried efficiently in a single action; and (3) avoids inundating the district courts with individual lawsuits that would burden the state's judicial resources." *Cavanaugh v. Hometown Am., LLC,* No. A05-595, 2006 WL 696259, at *3 (Minn. Ct. App. Mar. 21, 2006).

Applying these factors, a class action is the superior form of adjudication. First, there are no anticipated difficulties in the management of this action as a class action. Class actions of

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

substantially greater size or complexity are often certified. *See, e.g.*, *In re McDonnell Douglas Corp. Sec. Litig.*, 98 F.R.D. 613, 621 (E.D. Mo. 1982) (finding that even an alleged "Frankenstein Monster" class action was manageable).

Second, Plaintiffs are aware of no other individual or collective case in Minnesota seeking the same relief and challenging the scope of conduct in this case. The questions presented by this case, many of which turn on pure issues of law regarding Defendants' compliance with Minnesota statutes, can be determined efficiently through summary and declaratory judgment and trial proceedings.

Third, the questions in this case will prevent re-litigation of similar issues in the state district conciliation and housing courts, which "would burden the state's judicial resources." *Cavanaugh,* 2006 WL 696259, at *3. Many of Defendants' current and former tenants have had to resort to conciliation or housing courts to vindicate their rights, but the majority of these tenants pursue their claims without legal representation and likely do not have the resources to hire an attorney. Moreover, the administrative burdens of a class action are outweighed by the benefits to the parties and the courts. Here, the scope of litigation is relatively narrow, focusing on Defendants' use of their leases, so all liability issues could be decided in one proceeding. A class action is the superior method to adjudicate these claims.

C. Defendants Have Acted on Grounds Generally Applicable to the Class, Warranting Certification of Plaintiffs' DTPA, Declaratory Judgment and Injunctive Relief Claims Under Rule 23.02(b) (Counts II, IX, X).

In addition to the Damages Class described above, Plaintiffs seek certification of an Injunctive Class under Rule 23.02(b) because Defendants have "acted … on grounds that apply generally to the class, so that that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Minn. R. Civ. P. 23.02(b). Rule 23.02(b) does not contain the predominance and superiority requirements that 23.02(c)) does, but "class claims

thereunder still must be cohesive." *Vogt v. State Farm Life Ins.*, No. 2:16-CV-04170, 2018 WL 1955425, at *7 (W.D. Mo. Apr. 24, 2018), *aff'd*, 963 F.3d 753 (8th Cir. 2020). If Rule 23.01 prerequisites are met and injunctive or declaratory relief are requests, certification under Rule 23.02(b) is appropriate. *See Vogt*, 2018 WL 1955425, at *7 (citing *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1175 (8th Cir. 1995)).

Defendants, through misleading or unenforceable leases and policies and procedures, have acted on grounds that apply generally to all Class members—all tenants are subject to the same lease terms, which uniformly misrepresent the tenants' obligations to maintain and repair, and which shift numerous property management and lease responsibilities onto them. Class members are also subject to Defendants' policies and procedures. Injunctive and declaratory relief therefore is appropriate on a classwide basis. When "[t]he terms of the [contract] are the same for all potential class members, the interpretation will result in one declaratory judgment applicable to all class members." *See id.* at *7; *see also Bond v. Liberty Ins.*, No. 2:15-CV-04236, 2017 WL 1628956, at *11 (W.D. Mo. May 1, 2017) ("Because the litigation involves a form contract, the interpretation will result in one declaratory judgment and/or injunction applicable to all class members, not numerous individual judgments."). Some potential variations in contracts do not defeat cohesiveness. *Bond*, 2017 WL 1628956, at *12-14; *see also In re Hartford Sales Practices Litig.*, 192 F.R.D. 592, 606 (D. Minn. 1999).

As described above, Plaintiffs will use classwide evidence to show that Defendants violated state statutory and common laws "on grounds that apply generally to the class" by misleading its insureds in the same way. Minn. R. Civ. P. 23.02(b).

V. CONCLUSION

Plaintiffs respectfully request this Court GRANT their motion for class certification.

Filed in District Court
State of Minnesota
5/15/2023 4:51 PM

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