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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

XIN CHEN, an individual; and BRIAN CHIANG, an individual; individually and on behalf of all others similarly situated;

Plaintiffs,

vs.

GHP MANAGEMENT CORPORATION, a California corporation, *et al.*

Defendants.

Case No.: BC 713402

(Related Case No. 19STCV03833)

Assigned for All Purposes to:
The Hon. Elihu M. Berle, Dept. 6

~~[PROPOSED]~~ ORDER GRANTING PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL

Date: August 4, 2021
Time: 10:00 a.m.
Dept. SS-6

Action Filed: July 13, 2018
Trial Date: None Set

The Motions of Plaintiffs Xin Chen and Brian Chiang, and Plaintiff Kierney Waldron in the related action *Waldron v. GHP Management Corporation, et al.*, Case No. 19STCV03833 (collectively, "Plaintiffs"), for Class Certification and Appointment of Class Counsel (the "Motions") came before the Court for hearing on August 4, 2021 at 10:00 a.m. in Department 6 of the above-entitled Court.

Having considered the moving, opposing, and reply papers, the evidence submitted, the Supplemental Declaration of Dalena Ngo, the arguments of all counsel, and the

records and files in this matter, the Court GRANTS Plaintiffs' Motions as follows.

I. APPEARANCES AND COUNSEL

The following counsel appeared at the hearing on the Motions.

1. Damion D. D. Robinson (argued) of Affeld Grivakes LLP for Plaintiffs Xin Chen and Brian Chiang.
2. Jimmie Davis Parker of Law Offices of Jimmie Davis Parker, APC and Richard Scott Lysle of Law Offices of Richard Scott Lysle for Plaintiff Kierney Waldron.
3. Jason L Haas (argued) and Siobhan Amin of Ervin Cohen & Jessup LLP and Robert A. Latham III of Freeman Mathis & Gary, LLP for Defendants GHP Management Corporation, et al. ("Defendants").

II. FINDINGS

In support of its order, the Court finds as follows.

A. Background.

Defendants own and operate approximately two dozen apartment complexes in Southern California.

Plaintiffs Xin Chen and Brian Chiang (the "Chen Plaintiffs") lived in the Orsini apartment complex in Downtown Los Angeles, which is owned and managed by Defendants. When the Chen Plaintiffs moved out of their apartments at the Orsini complex, they allege that Defendants failed to provide them the mandatory disclosures required by Civil Code § 1950.5, but that Defendants nonetheless withheld their entire security deposits. They also allege that Defendants claimed additional amounts for move-out charges in excess of their deposits. The Chen Plaintiffs are represented by David W. Affeld, Damion Robinson, and David Markevitch of Affeld Grivakes LLP and Edward L. Wei, Esq. in this action.

Plaintiff Kierney Waldron ("Waldron") lived in the DaVinci apartment complex in Downtown Los Angeles, which is owned and managed by Defendants. When Waldron moved out of her apartment at the DaVinci complex, she alleges that Defendants failed to provide her the mandatory disclosures required by Civil Code § 1950.5, but that Defendants

nonetheless withheld a portion of her security deposit. Waldron is represented in this action by Jimmie Davis Parker of Law Offices of Jimmie Davis Parker, APC and Richard Scott Lysle of Law Offices of Richard Scott Lysle.

The thrust of Plaintiffs' cases is Defendants' alleged uniform, systematic, unlawful, and bad faith retention of tenant security deposits. Plaintiffs assert causes of action for violation of Civil Code § 1950.5, breach of contract, conversion, and unfair business practices under Business & Professions Code § 17200. Each of Plaintiffs' causes of action depends on an alleged violation of Civil Code § 1950.5.

Plaintiffs seek certification of a main class and two sub-classes as follows:

Main Class: All former tenants of Defendants who moved out of Defendants' apartment complexes between July 13 of 2014 and the present and from whom Defendants withheld more than $125 of their security deposits.

Invoice Subclass: Members of the Main Class from whom Defendants withheld their security deposits, in whole or in part, for labor performed by outside vendors.

Maintenance Subclass: Members of the Main Class from whom Defendants withheld their security deposits, in whole or in part, for in-house labor.

Plaintiffs' theory of liability is twofold. *First*, Plaintiffs allege that Defendants did not provide tenants any of the supporting vendor invoices required by Civil Code § 1950.5. In other words, Defendants were required to send vendor invoices to departing tenants for all outside work done by vendors, but Plaintiffs allege that Defendants consistently failed to do so.

Second, Plaintiffs allege that Defendants' itemized statements sent to former tenants failed to "reasonably describe the work performed" by in-house staff, *see* Civ. Code § 1950.5(g)(2)(A), by including generic descriptions such as "maintenance" or "in-house labor" without elaboration.

Code of Civil Procedure § 382 authorizes class actions "when the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." As the California Supreme Court set forth in *Sav-On Drug Stores v. Superior Court* (2004) 34 Cal.4th 319, 326,

> the party seeking certification has the burden to establish the existence of both an ascertainable class and a well-defined community of interest among class members. The "community of interest" requirement embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.
>
> The certification question is "essentially a procedural one that does not ask whether an action is legally or factually meritorious." A trial court ruling on a certification motion determines "whether ... the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants."

(Citations omitted; modifications in original). The California Supreme Court continues,

> the focus in a certification dispute is on what type of questions—common or individual—are likely to arise in the action, rather than on the merits of the case, in determining whether there is substantial evidence to support a trial court's certification order, we consider whether the theory of recovery advanced by the proponents of certification is, as an analytical matter, likely to prove amenable to class treatment. "Reviewing courts consistently look to the allegations of the complaint and the declarations of attorneys representing the plaintiff class to resolve this question."

Id. at p. 327 (citations omitted).

A. Numerosity and Ascertainability.

Numerosity and ascertainability are satisfied. Defendants do not contest numerosity or ascertainability. Class members can be identified through the class definition proposed and Defendants have contact information for class members. The parties agree that the class size is around 15,000 former tenants.

B. Community of Interest

1. Predominant Common Issues

The central issue in class certification is whether the questions that will arise in the action are common or individual. *Sav-On, supra.* Those issues "must be of such a nature that [they are] capable of classwide resolution—which means that the determination of [their] truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes* (2011) 564 U.S. 338, 350. To make this determination, the Court "must evaluate whether the theory of recovery advanced by the plaintiff is likely to prove amenable to class treatment." *Jaimez v. Daiohs USA, Inc.* (201) 181 Cal.App.4th 1286,

1298 (quoting *Ghazaryan v. Diva Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1531, overruled on other grounds in *Noel v. Thrifty Payless, Inc.* (2019) 7 Cal.5th 955).

A class action is "not permitted if each member is required to 'litigate substantial and numerous factually unique questions' before recovery may be allowed." *Arenas v. El Torito* (2010) 183 Cal.App.4th 723, 732 (quoting *Acree v. General Motors Accept. Corp.* (2001) 92 Cal.App.4th 385, 397). If a class action is split into individual trials, common questions do not predominate and litigation in a class format is inappropriate.

Plaintiffs did not move and Defendants did not oppose on the grounds that predominance is a factor with respect to each discrete cause of action. Instead, the Motion and the Opposition agree that the thrust of the putative class action is built around Defendants' alleged violation of Civil Code § 1950.5.[1] Each of Plaintiffs' causes of action turns on an alleged violation of section 1950.5. Thus, certification ultimately hinges on whether common questions of fact and law predominate as to the violation of section 1950.5.

a. Legal Framework for Security Deposits

Section 1950.5(e) allows a landlord to withhold from a tenant's security deposit "only those amounts as are reasonably necessary" to compensate for, among other things, repair of the premises, excluding ordinary wear and tear, and cleaning of the premises to return the unit to the same level of cleanliness as it was in at the inception of the tenancy. *See also* Civ. Code § 1950.5(b).

Section 1950.5 further provides:

> No later than 21 calendar days after the tenant has vacated the premises ... the landlord shall furnish the tenant, by personal delivery or by first-class mail, postage prepaid, a copy of an itemized statement indicating the basis for, and the amount of, any security received and the disposition of the security, and shall return any remaining portion of the security to the tenant.

Civ. Code § 1950.5(g)(1). The California Supreme Court considered section 1950.5 in *Granberry v. Islay Investments* (1995) 9 Cal.4th 738, 744-45, noting:

> From the plain language of the statute we conclude that a landlord (1) must return a tenant's security deposit within the specified period after the termination of the tenancy, (2) may retain all or part of the security deposit as compensation for unpaid

[1] Unless otherwise specified, section references herein are to the Civil Code.

> rent, repairs, and cleaning, and (3) must provide a written accounting of any amounts retained within the specified period. If, within the specified period, the landlord has not provided the tenant with a written accounting of the portion of the security deposit he plans to retain, the right to retain all or part of the security deposit under section 1950.5, subdivision (f), has not been perfected, and he must return the entire deposit to the tenant.

In 2003, the California Legislature expanded on the portion of section 1950.5 discussed in *Granberry* by requiring the landlord to include copies of documents showing charges incurred and deducted, as follows: (1) "[i]f the landlord or the landlord's employee did the work, the itemized statement shall reasonably describe the work performed"; and (2) "[i]f the landlord or landlord's employee did not do the work, the landlord shall provide the tenant a copy of the bill, invoice, or receipt supplied by the person or entity performing the work." Civ. Code § 1950.5(g)(2)(A) and (B). "The landlord need not comply" with these requirements if the "deductions for repairs and cleaning together do not exceed one hundred twenty-five dollars." *Id.*, subd. (g)(4).

Although the version of section 1950.5 in effect when *Granberry* was decided did not include the specific disclosures required by subdivisions (g)(2)(A) and (B), the amended language of section 1950.5(g) simply parses out the disclosure requirements based on whether repairs or cleaning were accomplished by in-house employees or by outside vendors. At its core, the new language simply adds requirements that the landlord must also provide supporting information and documentation of the itemized deductions. Because the amended language simply expands on the original requirements, the reasons set forth in the *Granberry* decision logically apply by extension.

Plaintiffs' theory of liability rests mostly on the notion that Defendants failed to perfect Defendants' right to retain all or part of the security deposits by failing to provide the disclosures required under section 1950.5(g)(2)(A) and (B). Plaintiffs contend that Defendants' failure to provide those disclosures makes their retention of the security deposits unlawful under section 1950.5, and also a breach of contract, conversion, and/or unfair business practices.

b. Plaintiffs' Showing of Predominant Common Questions

Based on the disclosure requirements of section 1950.5(g) and *Granberry*, *supra*, the primary question on Plaintiffs' Motion is whether common evidence predominates on the

issues of whether Defendants made the required disclosures and withheld their security deposits. Plaintiffs allege that Defendants uniformly failed to make the disclosures as a matter of policy and practice.

In support of their argument that Defendants' statutory violations are based on companywide policies and/or practices, Plaintiffs submit, among other things, the following: (a) evidence of Defendants' written policies; (b) Person Most Qualified ("PMQ") deposition testimony of three of Defendants' employees Ambar Reyes (community manager), Lawrence Hall (regional manager), and Ashley Barrientos (community manager); (c) Plaintiffs' declarations and those of 16 putative class members; and (d) the declaration of statistician and statistical consultant Colleen Kelly, Ph.D. Plaintiffs' evidence, described in more detail below, is sufficient at this stage to show that Defendants' alleged failure to provide required disclosures could be established with common proof of a classwide policy and/or practice.

This evidence shows that Defendants administered security deposits at all complexes under a uniform policy, and had two sets of written policies and procedures during the class period (one from approximately 2014 to 2018, and another adopted in early 2019). These policies applied to all of Defendants' complexes. In addition, the management of the complexes and administration of security deposits and security-deposit disclosures was centralized with GHP Management Corporation, which set policies and provided all employee training.

With respect to the lack of invoices, Plaintiffs elicited testimony from Defendants' PMQ, Ms. Barrientos, that if invoices did not appear in the tenant files, then they were not mailed out to tenants. Barrientos Depo. at p. 89. Plaintiffs have submitted evidence that a significant number of tenant files do not contain the required invoices. A logical inference is that the invoices were not mailed out to tenants.

Plaintiffs also submit evidence that nonspecific language like the word "maintenance" or its functional equivalent appears in itemized statements in Defendants' records as the description of work performed. When a manager of Defendants was presented with records describing the work as "maintenance" only, and asked if she could ascertain what labor

was performed, she was unable to do so, even in some instances with reference to irrelevant factors. Such testimony of Defendants' PMQs and/or corporate employees with knowledge illustrates common proof applicable to the entire class.

Plaintiffs have also submitted numerous declarations from Plaintiffs and putative class members confirming Defendants' uniform practices. These declarations and the attached documents show that Defendants failed to provide invoices or otherwise simply provided itemized statements describing charges as "maintenance" or the functional equivalent. The Plaintiffs and class declarants represent a wide array of Defendants' complexes, including the Orsini, DaVinci, Piero, Skyline Terrace, Paseos, Riverpark, Colony Townhomes, and Medici.

Finally, Plaintiffs submit expert analysis of a sampling of 450 of Defendant's tenant files by Colleen Kelly, Ph.D., a statistician with 30 years of consulting experience and a former tenured professor at San Diego State University. Dr. Kelly appropriately did not render any legal opinion on the validity or completeness of Defendants' disclosures, but gave a statistical assessment of the rates of non-compliance based on counsel's legal assessment. She determined that incomplete "maintenance" descriptions appeared in 54.9% of files with a 95% confidence interval between 44.9% and 59.9%. She further determined that the files missing invoices represented 44.4% of the sample with a 95% confidence interval of 39.0% to 49.9%. Combined, Dr. Kelly determined that files with either an incomplete "maintenance" description and/or missing invoice(s) represent 75% of the sample, with a 95% confidence interval between 71% and 80.3%. Extrapolating for the entire class period, Dr. Kelly's analysis suggests non-compliant files for approximately 13,563 former tenants.

Plaintiffs also rely on *Peviani v. Arbors at California Oaks Property Owner LLC* (2021) 62 Cal.App.5th 874, which was also a case by residential tenants alleging, among other things, bad faith retention of security deposits in violation of section 1950.5 and unfair competition. The trial court denied class certification, finding that individualized issues predominated, including regarding the reasonableness of deductions. The Court of Appeal reversed concluding, among other things, that lack of commonality was not a ground to deny certification. It reasoned that the defendants had options for proving the reasonableness of

deductions on a classwide basis, and were not required to prove reasonableness unit-by-unit.

c. Defendants' Arguments

Defendants argued that *Peviani* was wrongly decided and subject to review by the California Supreme Court. Since the filing of Defendants' Opposition, the California Supreme Court denied review, so *Peviani* remains good law and the Court is bound to follow it.

Defendants also argue that *Peviani* is distinguishable because it involved only a single complex with a single manager, but Defendants have approximately two dozen complexes with 150 managers. But, the size of Defendants' business does not bear on the legal principles applicable in *Peviani*. This is particularly true where, despite its size and multiple locations, Defendants' business is operated pursuant to common leadership, central administration, and universal written policies.

Defendants also argue that trying Plaintiffs' claims on a classwide basis through sampling would violate Defendants' due process rights, citing *Duran v. U.S. Bank National Association* (2014) 59 Cal.4th 1. In *Duran*, the trial court determined that a class of 260 employees had been misclassified based on a sampling, but the California Supreme Court reversed the judgment, in part, because the sampling was inadequate. However, *Duran* did not hold that a class cannot be certified if it would rely on statistical analysis to establish liability. Instead, the court in *Duran*, *supra*, at p. 38, expressly stated, "no case, to our knowledge, holds that a defendant has a due process right to litigate an affirmative defense as to each individual class member."

Here, Defendants' contention that the charges imposed on particular units is an affirmative defense, likely going to damages. The reasonableness of the charges is not part of Plaintiffs' theory of liability, which focuses on noncompliance with the provisions of section 1950.5 requiring invoicing and descriptions of the work performed. Furthermore, courts have allowed statistical sampling in the liability context, not just for damages, where there is "some glue" that binds the class together apart from statistical evidence. *Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 952. The testimony of Defendants' PMQs / managers, along with written policies, constitute the "glue" that binds class members together separate and apart from

statistical evidence.

Defendants also argue that changes in their policies and practices over time, or improved knowledge of the written policies around the end of 2018, present individualized questions. Leaving aside the clear negative implication, *i.e.*, that there was substantial room for improvement in knowledge and compliance with move-out policies, this fails to negate any commonality finding because the evidence would still be common. That the policies may have changed midstream does not make those policies and/or practices less applicable on a classwide basis. The revised policies would still be evidence of a uniform practice.

c. Conclusion: Common Questions Predominate.

In sum, the Court finds that the deposition testimony from the PMQs along with the expert analysis and tenant records operate as common proof which could be used to establish unlawful policies and practices which are universally applicable. This is further substantiated through multiple declarations of former tenants and Plaintiffs' own declarations.

Given (a) the similarity of conduct by Defendants regarding the administration of the move-out disclosures and security-deposit withholdings; (b) Defendants' policies and procedures; and (c) the universal legal theory advanced by Plaintiffs and the facts being established classwide through multiple means, the Court finds that the claims are amenable to being established through common proof, such that common questions of fact and law will predominate over individualized questions.

C. Typicality

Plaintiffs contend that their claims are typical of the class. They set forth evidence that they, like the other class members, moved out from Defendants' complexes. Defendants withheld all or significant portions of each of their deposits. Plaintiffs have set forth evidence that Defendants violated section 1950.5 in the same manner as alleged with respect to the class as a whole, *i.e.*, that no invoices were provided to them and/or the itemized statements contained inadequate descriptions of the work.

Defendants do not reasonably challenge typicality.

Accordingly, the Court finds that Plaintiffs' claims are typical of the class.

D. Adequacy.

"The primary criterion for determining whether a class representative has adequately represented a class is whether the representative, through qualified counsel, 'vigorously and tenaciously protected the interests of the class.'" *Simons v. Horowitz* (1984) 151 Cal.App.3d 834, 846 (quoting *Gonzalez v. Cassidy* (5th Cir. 1973) 474 F.2d 67, 75).

Defendants have not raised any question about the ability or willingness of the Plaintiffs or their counsel to litigate this case. The Court finds proposed class counsel to be qualified and experienced to do so. Accordingly, the standard for adequacy is met.

Defendants' only argument against adequacy is that they may be able to pursue former tenants for the costs of repair and maintenance in excess of the withheld security deposits. Defendants state that they will file a cross-complaint against all class members who still owe money and seek an affirmative judgment. Defendants claim that the risk of a judgment against many class members creates a conflict of interest with the class representatives, ~~even though Plaintiff Chen faced the same risk~~. The Court considers this argument tenuous.

~~As an initial matter, Defendant cannot reasonably suggest that they are acting in the best interest of class members~~. ~~Defendants oppose certification because it is not in Defendants' interest, and it is not logical that Defendants can pursue their own interests and those of class members at the same time. Moreover,~~ Defendants fail to cite any California authority remotely suggesting that a vague threat of counter-litigation bears on the adequacy analysis, much less on class certification as a whole. Defendants offer only abstractions as to what risk class members actually bear, and have not taken any steps to pursue the threatened counter-litigation. Importantly, Plaintiffs are similarly situated, including Plaintiffs Chen and Chiang against whom Defendants assessed charges in excess of their deposits.

E. Superiority / Substantial Benefits

Finally, the Court must carefully weigh the respective benefits and burdens of certification and to allow maintenance of a class action only where substantial benefits exist both for litigants and the Court. Courts must pay careful attention to manageability concerns. *Duran*, *supra*, 59 Cal.4th at p. 29. "In considering whether a class action is a superior device for

resolving a controversy, the manageability of individual issues is just as important as the existence of common questions uniting the proposed class." *Id.*

Courts consider many factors in determining whether a class action is a superior method of resolving litigation, including, but not limited to: (a) whether the alleged claims would not be pursued except by way of a class action or whether multiple lawsuits are likely without certification; (b) whether individual rights can be adequately protected in a class action; and (c) whether class treatment is more efficient and economical than adjudicating the potential number of individual cases. Based on these factors, the Court finds that class litigation would provide a substantial benefit to the litigants and the Court, and that a class action is a superior method of handling this case.

In a case, such as this one, where Defendants' alleged unlawful conduct is uniformly applicable to class members, there are significant common questions. The typical amounts withheld are, at most, the full amount of the deposit of around $500.00, and sometimes less. These amounts are unlikely to warrant individual litigation. In addition, litigating whether Defendants' uniform policies and/or practices relating to move-out disclosures are unlawful a single time on behalf of over 10,000 potential claimants is particularly preferable.

Plaintiffs have proposed a reasonable trial plan at this stage. They propose a two-phase trial with a first liability phase on whether Defendants failed to provide mandatory disclosures under Civil Code § 1950.5 and whether that failure was in bad faith. At this phase, Plaintiffs would present the types of evidence described above, as well as testimony from Defendants' employees, non-cumulative testimony from tenants, and a statistical sampling, which may be larger than the current sampling. Plaintiffs have also represented that they may put on testimony from vendors and former employees about Defendants' alleged bad faith, including charging for expenses not incurred by Defendants and fabricating invoices.

~~If the jury at the first phase finds bad faith, no second phase will be necessary. If a jury finds that Defendants did not act in bad faith a second trial phase will be necessary.~~ Plaintiffs propose a second phase trial, trying classwide equitable defenses to Defendants' claims of offset, including laches and unclean hands, to narrow the scope of offsets that Defendants can assert. Plaintiffs

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request that any surviving offset claims be addressed by a special master.

Defendants suggest some deficiencies with Plaintiffs' expert declaration and argue that class treatment is not appropriate under *Duran*. The Court does not find the asserted deficiencies sufficient to preclude certification. *Duran* does not require Plaintiffs to present a perfect statistical model or complete their statistical analysis at the early class-certification stage. Plaintiffs' trial plan passes muster at this stage of the proceeding.

The Court is mindful of the manageability concerns raised by Defendants, and will not allow the matter to proceed to trial unless there is a manageable trial plan proposed, including an appropriate statistical model under *Duran* if Plaintiffs intend to rely on this method of proof. The trial plan must describe the theories of the case, outline the elements, and indicate the specifics of how Plaintiffs intend to prove each element. Plaintiffs must also be prepared to address how they plan to handle individual claims if necessary, including through statistical analysis or a special master. The parties can address manageability issues with the Court at future conferences.

As it stands at this stage, judicial economy weighs in favor of this case being brought as a class action with respect to Civil Code § 1950.5 violations and derivative claims.

III. ORDER

Based on the foregoing, the Court ORDERS as follows:

1. Plaintiffs' Motions are GRANTED.

2. The Main Class and Sub-Classes set forth in Plaintiffs' Motions are CERTIFIED;

3. Affeld Grivakes LLP and Law Offices of Jimmie Davis Parker, APC are APPOINTED as co-lead counsel for the Class.

The Court sets a further Status Conference in this matter on October 6, 2021 at 9:00 a.m. regarding class notice. All parties are ordered to confer on class notice and to submit a Joint Report not later than September 27, 2021 attaching a proposed notice. If the parties are unable to agree upon a proposed notice, each side may submit its own notice and the parties shall submit a redlined copy reflecting the differences in the proposed notices.

It is SO ORDERED.

Dated: 9/13/21

The Honorable Elihu M. Berle
JUDGE OF THE SUPERIOR COURT