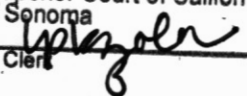


1 THE HONORABLE PATRICK M. BRODERICK
2 SUPERIOR COURT OF CALIFORNIA
3 COUNTY OF SONOMA
4 3035 Cleveland Avenue
5 Santa Rosa, CA 95403
6 Telephone: (707) 521-6729

FILED

AUG 07 2024
Clerk of Superior Court of California,
County of Sonoma
By 
Deputy Clerk

7 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

8 Felker,

Case No. SCV-267587

9 Plaintiff,

ORDER AND RULING ON MATTER
UNDER SUBMISSION 05-08-24

10 vs.

11 JRK Residential Group, Inc,

12 Defendant
13
14 _____ /

15 Plaintiff's motion for order granting class certification came on regularly for
16 hearing on the May 08, 2024, Law and Motion calendar, the Honorable Patrick Broderick,
17 presiding. Appearing at the proceedings were Todd Espinosa, Kevin Osborne, and Joshua
18 Katz for Plaintiffs, and Mark Rackers, Jeremy Smith, and Theana Evangelis for
19 Defendants.

20 After hearing oral argument from both parties, the Court took the matter under
21 submission for a written ruling.

22 The Court now issues its Ruling and Order after the May 08, 2024, hearing.
23 Plaintiffs Sharon Felker, Herman Grishaver, Edgar Cruz Soriano, and Jeanace Zetino ("Plaintiffs")
24 move for an order granting class certification. **The motion is GRANTED.**

25 a. Legal Standards

26
27 "[W]hen the question is one of a common or general interest, of many persons, or when the parties
28 are numerous, and it is impracticable to bring them all before the court, one or more may sue or

1 defend for the benefit of all.” (Code Civ. Proc., § 382.)

2
3 In a class action, “[t]he party advocating class treatment must demonstrate the existence of an
4 ascertainable and sufficiently numerous class, a well-defined community of interest, and
5 substantial benefits from certification that render proceeding as a class superior to the alternatives.
6 [Citations.] ‘In turn, the “community of interest requirement embodies three factors: (1)
7 predominant common questions of law or fact; (2) class representatives with claims or defenses
8 typical of the class; and (3) class representatives who can adequately represent the class.” ’ ”
9 (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1021.)

10 Regarding the factor of predominant common questions, the question that must be answered is
11 “whether ‘the issues which may be jointly tried, when compared with those requiring separate
12 adjudication, are so numerous or substantial that the maintenance of a class action would be
13 advantageous to the judicial process and to the litigants.’ [Citations.] The answer hinges on
14 ‘whether the theory of recovery advanced by the proponents of certification is, as an analytical
15 matter, likely to prove amenable to class treatment.’ [Citation.] A court must examine the
16 allegations of the complaint and supporting declarations [citation] and consider whether the legal
17 and factual issues they present are such that their resolution in a single class proceeding would be
18 both desirable and feasible. ‘As a general rule if the defendant’s liability can be determined by
19 facts common to all members of the class, a class will be certified even if the members must
20 individually prove their damages.’ ” (*Brinker, supra*, 53 Cal.4th at pp. 1021-1022.)

21 b. Allegations

22
23 Plaintiffs state that JRK Residential group, Inc. and JRK Property Holdings, Inc. (“JRK
24 Residential Group” and “JRK Property Holdings,” respectively, and “JRK” or “Defendants”
25 collectively) own 80,000 residential units across 30 states worth more than \$15 billion. JRK
26 Residential Group manages the properties in the JRK portfolio and employs property managers.
27 JRK Residential Group enters standard property management agreements with the JRK-affiliated
28 limited liability companies and limited partnerships that hold title to various properties and receive

1 payments from tenants.

2
3 Plaintiffs state that during the period from June 2016 to the present, JRK has operated fourteen
4 apartment properties in California comprising over 4,000 rental units. These are located across
5 nine counties, including 492 units in JRK's Vineyard Luxury Apartments in Sonoma County.

6 c. Proposed Classes

7 Plaintiffs propose four classes: (1) Late Fee Class: All tenants whose leases provide for a late
8 charge and who were charged that late charge; (2) RINCO (Renters Insurance Compliance) Class:
9 All tenants whose leases require a fee for a missing renter's liability insurance policy and who
10 were charged that fee; (3) Price Gauging Class: All tenants with initial lease terms of no longer
11 than one year who were charged rental price increases of more than 10 percent in Los Angeles,
12 Sonoma, or Ventura Counties during Wildfire Price Gouging Protection Periods in those counties;
13 and, (4) the TPA Class: All tenants who on January 1, 2020 or thereafter were charged rent
14 increases based on gross rental rates excluding discounts, incentives, concessions or credits that
15 exceeded the Rental Rate Caps. Excluded from this class are tenants of Parkside Glen Apartment
16 Homes, Somerset Glen Senior Apartments, The Harrison Glendale, and Duo Apartments. Also
17 excluded from this class are tenants of the Serenade at RiverPark whose rents increased in excess
18 of the Rental Rate Caps before the Serenade TPA Dates.

19
20 i. Late Fee and RINCO classes

21 Plaintiffs argue that provisions in JRK's leases specifying charges for late payment of rent and
22 failure to maintain renter's liability insurance are liquidated damage provisions that are void under
23 Civil Code section 1671(d). Plaintiffs state that JRK uses software to track late fees and Renters
24 Insurance Compliance ("RINCO") fines.

25
26 ii. Price Gouging

27 Penal Code section 396 makes it unlawful for any business or other entity to rent or offer housing
28 with an initial lease term of no longer than one year for a price more than 10 percent greater than

1 the price charged immediately prior to the emergency proclamation. Plaintiffs allege that JRK
2 violated price gouging protections during wildfire emergency proclamations in 2017 through 2021
3 in Los Angeles, Sonoma, and Ventura Counties. There are four separate periods at issue for Los
4 Angeles County and one each for Sonoma and Ventura Counties.

5 iii. Tenant Protection Act (“TPA”)
6

7 Plaintiffs allege that JRK violated the TPA, which took effect January 1, 2020. The TPA caps rent
8 increases for most housing on a statewide basis. Under the law, annual increases are capped at
9 either 5 percent plus the percentage change in a government-determined consumer price index or
10 10 percent, whichever is lower. Plaintiffs state that its expert can identify all instances where JRK
11 rent hikes violated the TPA through the creation of a database.

12 d. Ascertainable and sufficiently numerous class
13

14 The proposed Class is sufficiently numerous as it is calculated to involve thousands of individuals.
15 In addition, JRK’s arguments that the 396 and TPA classes are not ascertainable are unconvincing.
16 The court finds that the classes are ascertainable and sufficiently numerous.

17 e. Community of interest
18

19 i. predominant common questions of law or fact

20 In deciding whether the common questions “predominate,” courts must do three things: “identify
21 the common and individual issues”; “consider the manageability of those issues”; and “taking into
22 account the available management tools, weigh the common against the individual issues to
23 determine which of them predominate.” (*Dunbar v. Albertson's, Inc.* (2006) 141 Cal.App.4th 1422,
24 1432.) Class treatment of a claim is appropriate if the facts necessary to establish liability are
25 capable of common proof, including the so-called “ ‘fact of damage,’ ” that is, the existence of
26 harm establishing an entitlement to damages. (*Id.*, at 1154.) If the defendant's liability can be
27 determined “ ‘by facts common to all members of the class,’ ” a class may be certified even
28 though class members must individually establish the amount of their restitution. (*Ibid.*)

1 Generally, the fact of damage is suitable for class treatment only when the class members have
2 sustained the same or similar damage. (*Id.*, at 1158.) To determine whether common issues
3 predominate, the court must ask whether the issues framed by the pleadings and the law applicable
4 to the causes of action alleged are susceptible of common proof for all members of the proposed
5 class or whether the class members will be required to litigate numerous and substantial questions
6 determining their individual right to recover. (*Brinker, supra*, at 1024; *Duran v. U.S. Bank*
7 *National Assn.* (2014) 59 Cal.4th 1, 28.) The predominance inquiry focuses on the facts and the
8 elements necessary to establish the defendant's liability. (*Ibid.*)

9
10 Plaintiffs allege two or three causes of action for each of the proposed classes. They allege causes
11 of action for unfair competition under business and professions code section 17200 et seq. and the
12 Consumer Legal Remedies Act under civil code section 1750 et seq. based upon alleged rental
13 price gouging under Penal Code section 396. Plaintiffs allege that Defendants advertised, offered,
14 or charged members of the Price Gouging Class increased rental prices for housing in Los
15 Angeles, Sonoma, and Ventura Counties greater than 10 percent during proclaimed emergencies.
16 Restitution and injunctive relief are the only remedies available under the unfair business practices
17 law.

18 Two additional causes of action are for violation of Business and Professions code section 17200
19 et seq. and Civil Code section 1750 et seq. based upon allegations that Defendants charged
20 members of the Rent Cap Class increased rental prices based on gross rental rates excluding
21 discounts, incentives, concessions or credits that exceeded the rental rate caps in January 2020 and
22 thereafter.

23 Two additional causes of action allege violations of Business and Professions code section 17200
24 et seq. and Civil Code section 1750 et seq., as well as a cause of action for violation of Civil Code
25 section 1671, based upon allegations that Defendants required members of the Renter's Liability
26 Insurance Fine Class to purchase and maintain renter's liability insurance policies and charged fees
27 based upon voidable liquidated damage provisions if class members breached those requirements.
28

1 Two additional causes of action are for violation of Business and Professions code section 17200
2 et seq. and Civil Code section 1750 et seq., as well as two causes of action for violation of Civil
3 Code section 1671, based upon allegations that Defendants' leases contain void liquidated
4 damages clauses.

5 Plaintiffs state they will use common evidence to establish JRK's liability with respect to late fees
6 and RINCO classes because the relevant documents bearing on that issue—lease agreements—are
7 form contracts with nearly identical provisions. The common issues include: (1) whether the late
8 fee provisions are void under Civil Code section 1671; (2) whether the renter's insurance
9 provisions are void under section 1671; (3) whether it would be impracticable or extremely
10 difficult to determine the actual damages caused by a breach of the late payment or insurance
11 requirements; (4) whether JRK made a reasonable endeavor to determine the actual damages it
12 would incur as a consequence of a breach of the late payments or insurance requirements; (5)
13 whether either the late fee or insurance requirement constitutes an unlawful business act or practice
14 in violation of the UCL; (6) whether either of the provisions constitutes an unfair method of
15 competition or unfair act or practice under the CLRA; (7) whether JRK apartment housing is a
16 "good or service" under the CLRA; and (8) whether the members of the classes are entitled to
17 recover restitution and damages available under the UCL and CLRA.

18
19 With respect to the price gouging and TPA allegations, Plaintiffs state that the common questions
20 include: (1) the timing of the price gouging periods in Los Angeles, Sonoma, and Ventura
21 Counties; (2) whether JRK offered for rent or rented housing for a price more than 10 percent
22 greater than the price charged prior to the emergency proclamation; (3) whether JRK's price
23 increases of over 10 percent violated section 396(b) and were, therefore, an unlawful business
24 practice in violation of the UCL; (4) whether JRK'S rent increases constitute an unfair method of
25 competition or unfair act or practice under the CLRA; (5) whether JRK apartment housing is a
26 "good or service" under the CLRA; and (6) whether the class members are entitled to restitution
27 and damages for such overcharges.

28 JRK argues that in order to determine the section 369 price gouging issues, the class action will

1 splinter into individual trials. It argues for this issue alone there are seven separate questions that
2 need to be answered in each individual case. These are whether the lease comes within the
3 definition of “housing,” whether there was a rental price increase of 10% during an emergency
4 period, whether the excess of 10% was attributable to permissible costs, whether the tenant entered
5 into the lease prior to the declaration of a state of emergency, whether the relevant rental price
6 increase occurred when section 396 protections were in place; whether someone else paid the rent;
7 and whether the rental price increased more than 10% because of the length of the rental term. JRK
8 names two plaintiffs arguing they cannot state a price-gouging claim and that each class member’s
9 case will have to be evaluated individually. With respect to the rents over 10%, JRK argues that it
10 was able to recoup the substantial amounts of money it put into renovating four properties;
11 specifically: The Vineyard; Serenade; Rancho Solana; The Harrison, and The Somerset Glen. JRK
12 names two plaintiffs arguing they cannot state a price-gouging claim and that each class member’s
13 case will have to be evaluated individually.

14 JRK argues that determining whether the fees reflected a reasonable estimate of the damages is
15 incompatible with class treatment because, for example, the amount of late fees varied due to
16 different individual situations and different properties, the res judicata effect based upon unlawful
17 detainer actions that were brought against it and lost, fees that were not actually paid, or whether
18 tenants paid fees with “full knowledge” of the facts precluding recovery.

19
20 JRK also argues that starting in May 2021, it included an arbitration waiver addendum in all of its
21 leases which governs “any and all” claims. However, the merits of affirmative defenses are not
22 considered in deciding class certification. (*Hendershot v. Ready to Roll Transportation, Inc.* (2014)
23 228 Cal.App.4th 1213, 1223.) In addition, that some potential class members may be precluded
24 does not support denying class certification for those not subject to arbitration.

25 In reply, Plaintiffs argue that the context is what is important in this case—which is the same for
26 all tenants. Plaintiffs argue that case law such as *Jack v. Sinsheimer* (1899) 125 Cal. 563, has
27 already determined that it would *not* be extremely difficult to fix or impracticable to estimate
28 damages in the rental context. Plaintiffs also argue that the amount charged is irrelevant as

1 Plaintiffs' theory of recovery is that the purpose of these fines was to penalize tenants not to
2 compensate for breach-related losses.

3
4 While there will have to be a determination regarding whether or not each issue is true for each
5 class member, the issues are the same. There are predominant common legal issues and
6 predominant issues which will rely upon common evidence.

7 Legal issues include whether leases come within the definition of "housing." This is a binary issue,
8 likely covering the vast majority of plaintiffs. Whether an emergency period was in effect is a
9 common legal issue for all plaintiffs, broken down into subgroups of affected counties. Whether
10 someone else paying rent can be a defense is a common legal issue. Whether late fees were
11 appropriately charged is a common issue which likely relies upon JRK's common practices and
12 common evidence. It is far better to litigate these issues for all class plaintiffs instead of having
13 numerous judges and courts deal with the same legal issue, which may result in inconsistent
14 rulings.

15 Common evidence also predominates. Whether the 10% increase is attributable to permissible
16 costs will likely have common evidence as JRK likely did the same or similar remodeling in
17 apartments. Whether late fees were appropriately charged likely relies upon JRK's common
18 practices. Plaintiffs plan to argue that the property management structure is such that the same fees
19 were collected despite the actual costs of collection. Numerous issues are based upon common
20 lease provisions and specific timeframes regarding emergency proclamations.

21
22 Overall, common legal and factual issues predominate and the resolution of these issues is easier
23 by going systematically through them in one action rather than bringing numerous actions and
24 relitigating common issues.

25 e. in support of each potential class member—consisting of thousands of individuals—to
26 determine JRK's liability to each.
27
28

1 ii. class representatives with claims or defenses typical of the class and who
2 can adequately represent the class.

3
4 “Typicality refers to the nature of the claim or defense of the class representative, and not to the
5 specific facts from which it arose or the relief sought.” (*Martinez v. Joe ’s Crab Shack Holdings*
6 (2014) 231 Cal.App.4th 362, 375, as modified on denial of reh’g.)

7 JRK argues that specific plaintiffs are not adequate representatives because they have no claim for
8 some of the issues or property locations. Overall, Plaintiffs’ claims arise under each of the
9 proposed classes. There is no evidence that they cannot adequately represent the class.

10 f. Substantial benefits from certification that render proceeding as a class superior to the
11 alternatives

12
13 “A class action also must be the superior means of resolving the litigation, for both the parties and
14 the court. [Citation.] ‘Generally, a class suit is appropriate “when numerous parties suffer injury of
15 insufficient size to warrant individual action and when denial of class relief would result in unjust
16 advantage to the wrongdoer.” [Citations.]’ [Citation.] ‘[R]elevant considerations include the
17 probability that each class member will come forward ultimately to prove his or her separate claim
18 to a portion of the total recovery and whether the class approach would actually serve to deter and
19 redress the alleged wrongdoing.’ [Citation.] ‘[B]ecause group action also has the potential to create
20 injustice, trial courts are required to “ ‘carefully weigh respective benefits and burdens and to
21 allow maintenance of the class action only where substantial benefits accrue both to litigants and
22 the courts.’ ” [Citations.]’ ” (*Harper v. 24 Hour Fitness, Inc.* (2008) 167 Cal.App.4th 966, 974.)

23 In the case at hand, there are numerous parties whose claims are not sufficiently significant to
24 warrant taking on the burden of filing a complaint. Therefore, bringing suit as a class action to
25 redress grievances of potentially insignificant value is the superior method to redress the subject
26 grievances. In addition, the same discovery requests would be required for each individual case.
27 Conducting bulk discovery and confining all claims to one action reduces costs and the burden on
28 the court.

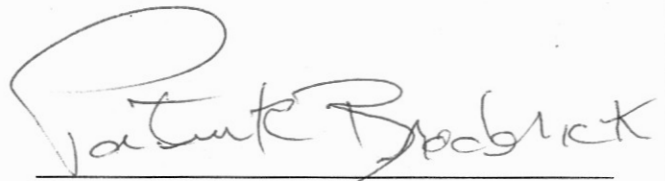
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1. Conclusion and Order

The motion is GRANTED.

IT IS SO ORDERED.

Dated: 8/7/2024



PATRICK M. BRODERICK
Superior Court Judge

PROOF OF SERVICE BY MAIL

I certify that I am an employee of the Superior Court of California, County of Sonoma, and that my business address is 3055 Cleveland Ave, Santa Rosa, California, 95403; that I am not a party to this case; that I am over the age of 18; that I am readily familiar with this office's practice for collection and processing of correspondence for mailing with the United States Postal Service; and that on the date shown below I placed a true copy of

Orders on MTUS: 05-08-24 & 07-31-24

in an envelope, sealed and addressed as shown below, for collection and mailing at Santa Rosa, California, first class, postage fully prepaid, following ordinary business practices.

Date: August 07, 2024

Robert Oliver
Clerk of the Court

By: Lauren Plazola
Lauren Plazola, Deputy Clerk

-ADDRESSEES-

JOSHUA KATZ
Law Office of Joshua Katz
144 South E Street #206
Santa Rosa CA 95404

Mark Gerard Rackers
Sheppard Mullin Richter & Hampton LLP
501 West Broadway 19th Flr
San Diego CA 92101

Todd Isaac Espinosa
2000 Broadway St
Redwood City CA 94063

Jeremy Sokol Smith
333 S Grand Ave
Los Angeles CA 90071

Daniel J Wilson
Abbey Weitzenber Warren & Emery
100 Stony Point Rd Ste 200
Santa Rosa CA 95401