UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

EDWIN BARTOK, et al.,	)	
Plaintiffs,	)	
v.	)	Civil No. 21-10790-LTS
HOMETOWN AMERICA, LLC, et al.,	)	
Defendants.	)	

ORDER ON PLAINTIFFS' RENEWED MOTIONS FOR CLASS CERTIFICATION (DOC. NOS. 222, 231) AND DEFENDANTS' MOTION TO STRIKE (DOC. NO. 228)

January 8, 2026

SOROKIN, J.

Pending before the Court are Plaintiffs' renewed motions to certify three classes (Doc. Nos. 222, 231) and Defendants' motion to strike Plaintiffs' expert report (Doc. No. 228). These motions are fully briefed. The Court held a hearing on December 19, 2025. After careful consideration and for the reasons explained herein, the Court ALLOWS IN PART the class-certification motions and DENIES the motion to strike.

I. BACKGROUND

A. Facts

This case involves two manufactured home communities ("MHCs") currently owned and operated by Defendants.[1] The Oak Point community, located in Middleborough, Massachusetts,

[1] The defendants are Hometown America, LLC, Hometown America Management, LLC, Hometown Oak Point I, LLC, Hometown Oak Point II, LLC, Miller's Woods MHC, LLC, and River Bend MHC, LLC. This Order refers to them collectively at "Hometown" or "Defendants."

was founded in 1998 by Saxon Partners. Doc. No. 227-1 ¶ 6.[2] Saxon Partners "adopted a policy and practice" of offering lifetime leases, structured as a five-year term with the option to remain indefinitely, for which rent changed annually based on the consumer price index ("CPI").[3] Id. Defendants acquired Oak Point from Saxon Partners in 2011, and they "continued this policy and practice," offering lifetime leases with "different base rents for incoming tenants generally according to the tenant's year of entry," id. ¶¶ 6, 9, based on Defendants' assessment of market-rate rent, Doc. No. 222-6 at 2–7. The lifetime lease agreement Defendants offered at Oak Point provides that a tenant's "Annual Base Rent shall be increased or decreased by the annual percentage change in [CPI]." Doc. No. 227-2 at 5–6. Aside from an annual license fee set by the town, the CPI increases are the only annual changes in rent for which the Oak Point lease agreement provides.[4] Id. Since 2021, Oak Point has offered only five-year leases, following the "policy" of setting the base rent for incoming tenants to the "highest rent then being paid by existing tenants" and thereafter increasing by the CPI.[5] Doc. No. 227-1 ¶¶ 10–11. Oak Point now has approximately 975 home sites. Doc. No. 223 at 5. Named plaintiff Barbara Lee entered into her Oak Point lifetime lease and began paying rent in June 2017. Id. at 6; Doc. No. 227-2 at 5. Like Lee, about 80% of current Oak Point tenants have lifetime leases. Doc. No. 227-1 ¶ 14.

[2] Citations to "Doc. No. __" refer to documents appearing on the court's electronic docketing system ("ECF"); pincites are to the page numbers in the ECF header or to paragraph numbers where applicable.

[3] The Court acknowledges that the terms "tenant" and "resident" have different meanings. Those differences are not pertinent here, and the Court uses the term "tenant" for convenience.

[4] The lease agreement reserves to Oak Point the right to increase rent if Oak Point's costs increase more than seven percent in a given year due to causes outside of Oak Point's control. Doc. No. 227-2 at 8. No party cites this provision as the basis for a change in rent or any other issue pertinent to this litigation.

[5] In 2021, the five-year leases were pegged to Defendants' assessment of market rate. Doc. No. 222-6 at 7–8. Since 2021, the five-year leases have been tied to the rent paid by tenants who entered in 2021 (i.e., the CPI-adjusted 2021 rent). Id. at 8–11.

The Manufactured Home Federation of Massachusetts, Inc. ("MFM") is a "membership-based nonprofit organization" that is "dedicated to protecting the rights of manufactured housing residents in Massachusetts." Doc. No. 231-2 ¶ 1. Twenty MFM members, including Lee, are residents of Oak Point. Id. ¶ 8. MFM has previously been involved in legal proceedings involving rent policies in MHCs, including as amicus in Blake v. Hometown America Communities, Inc., a 2020 case before the Massachusetts Supreme Judicial Court. Id. ¶¶ 10–15.

Defendants also own and operate the Miller's Woods and River Bend MHC ("Miller's Woods") in Athol, Massachusetts. The prior owners "charged different base rents for incoming tenants than existing tenants generally according to the tenant's year of entry," and when Defendants acquired Miller's Woods in 2007, they continued this practice. Doc. No. 227-1 ¶ 2. Prior to 2021, Defendants offered five-year leases with the option to renew or to convert to a tenancy-at-will. Id. ¶ 3. Almost all tenants chose not to renew and became tenants at will. Id. Miller's Woods tenants' rents were initially set to Defendants' assessment of market rate, Doc. No. 222-7 at 2–6, and thereafter annually adjusted based on the CPI, Doc. No. 227-1 ¶ 3. Beginning in 2021, Miller's Woods implemented a several-year "transition plan" to reach rent uniformity by gradually adjusting all rents that were below or above the target rate. Doc. No. 222-7 at 7–11; Doc. No. 227-1 ¶ 3. As of January 1, 2025, all Miller's Woods tenants pay the same monthly rental rate. Doc. No. 227-1 ¶ 4. Miller's Woods has about 140 home sites. Doc. No. 223 at 6. Named plaintiff Alan Dernalowicz entered into his Miller's Woods lease and began paying rent in February 2018. Id. at 7.

B. Procedural History

Plaintiffs filed this putative class action on April 16, 2021.[6] Doc. No. 1-1 at 24. Plaintiffs allege that the rent structures implemented at Oak Point and Miller's Woods are unfair business practices proscribed by Massachusetts law. Doc. No. 130. Specifically, Plaintiffs argue that Defendants' assessment of nonuniform rents at these MHCs violates the Massachusetts Manufactured Housing Act, which provides in part, "Any rule or change in rent which does not apply uniformly to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair." Mass. Gen. Laws ch. 140, § 32L(2); see also Doc. No. 130 at 22–26. A violation of § 32L(2) is an "unfair or deceptive practice" within the meaning of the Massachusetts Consumer Protection Act ("Chapter 93A"). Mass. Gen. Laws ch. 140, § 32L(7) (citing Mass. Gen. Laws ch. 93A, § 2(a)). Plaintiffs therefore seek damages and injunctive relief under Chapter 93A. Doc. No. 130 at 22–26 (citing Mass. Gen. Laws ch. 93A, § 9(1)).

On March 30, 2022, the Court denied without prejudice Plaintiffs' original motion for class certification and directed the parties to proceed to discovery, determining that a "fuller factual record . . . would allow the Court to conduct a rigorous analysis into the Rule 23 requirements." Doc. No. 83 at 8. The Court subsequently ordered that all discovery (including merits discovery) be complete prior to the Court's consideration of renewed motions for class certification. Doc. No. 128.

Discovery is now complete, and Plaintiffs have renewed their motions to certify the following three classes:

[6] Plaintiffs filed suit in state court. Defendants removed, invoking federal jurisdiction under the Class Action Fairness Act. Doc. No. 1.

(1) a Rule 23(b)(3) class of persons who have paid home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts at any time since June 16, 2015 ("Oak Point Class"), represented by Lee;

(2) a Rule 23(b)(3) class of persons who have paid home-site rent to the Miller's Woods and River Bend Manufactured Housing Community located in Athol, Massachusetts at any time from June 16, 2015 to December 31, 2024 ("Miller's Woods Class"), represented by Dernalowicz; and

(3) a Rule 23(b)(2) class of persons who are paying or will pay home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts ("Oak Point Rent-Payer Class"), represented by Lee and MFM.

See Doc. No. 222 at 5; Doc. No. 231 at 4. Attorney Horowitz would serve as class counsel for all three classes.

II. LEGAL STANDARD

A. Class Certification

The Court may certify a class under Federal Rule of Civil Procedure 23 if it determines, after a "rigorous analysis," that all the requirements of Rule 23(a) are met and classwide adjudication is appropriate under Rule 23(b). Smilow v. Sw. Bell Mobile Sys., 323 F.3d 32, 38 (1st Cir. 2003) (citing Gen. Tel. Co. v. Falcon, 457 U.S. 147, 161 (1982)). In conducting this analysis, the Court "may look behind the pleadings, predict how specific issues will become relevant to facts in dispute and conduct a merits inquiry only to the extent that the merits overlap with the Rule 23 criteria." In re Ranbaxy Generic Drug Application Antitrust Litig., 338 F.R.D. 294, 300 (D. Mass. 2021) (citing In re New Motor Vehicles Canadian Exp. Antitrust Litig., 522 F.3d 6 (1st Cir. 2008)).

As the parties seeking class certification, Lee, Dernalowicz, and MFM bear the burden of "affirmatively demonstrat[ing]" that their respective proposed classes "in fact" meet all the requirements of Rule 23. Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338, 350 (2011) (emphasis omitted). Specifically, this Court must perform a rigorous analysis to determine whether

Plaintiffs have proven that each putative class satisfies the four "threshold" requirements of Rule 23(a)—numerosity, commonality, typicality, and adequacy of representation. In re Nexium Antitrust Litig., 777 F.3d 9, 17 (1st Cir. 2015). With respect to the proposed damages classes, Lee and Dernalowicz must satisfy Rule 23(b)(3)'s additional requirements of predominance and superiority. Lee and Dernalowicz must also show by a preponderance of the evidence that the classes are "currently and readily ascertainable based on objective criteria."[7] Id. at 19 (citation modified). With respect to the proposed injunction class, Lee and MFM must satisfy Rule 23(b)(2)'s requirement that Defendants "acted or refused to act on grounds the apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole."

B. Substantive Law

Chapter 93A declares unlawful "unfair or deceptive acts or practices in the conduct of any trade or commerce." Mass. Gen. Laws ch. 93A, § 2(a). "Any person . . . who has been injured by another person's use or employment" of a proscribed unfair or deceptive act or practice may bring suit for damages or equitable relief. Mass. Gen. Laws ch. 93A, § 9(1). To prevail on a Chapter 93A claim, a consumer plaintiff must establish four elements:

> first, that [the defendant] has committed an unfair or deceptive act or practice; second, that the unfair or deceptive act or practice occurred in the conduct of any trade or commerce; third, that [the plaintiff] suffered an injury; and fourth, that [the defendant's] unfair or deceptive conduct was a cause of the injury.

UBS Fin. Servs., Inc. v. Aliberti, 133 N.E.3d 277, 291 (Mass. 2019) (citation modified).

"[V]iolations of a limited number of statutes automatically give rise to liability under Chapter 93A"—that is, without further inquiry whether the act "was otherwise 'unfair or

[7] "The implied ascertainability requirement does not apply to classes seeking injunctive relief under Rule 23(b)(2)." Tassinari v. Salvation Army, 349 F.R.D. 10, 32 n.17 (D. Mass. 2025) (citing Yaffe v. Powers, 454 F.2d 1362, 1366 (1st Cir. 1972), abrogated on other grounds by Gardner v. Westinghouse Broad. Co., 437 U.S. 478 (1978)).

deceptive' or occurred in 'trade or commerce.'" McDermott v. Marcus, Erico, Emmer & Brooks, P.C., 775 F.3d 109, 117–18 (1st Cir. 2014) (citing Reddish v. Bowen, 849 N.E.2d 901, 906 (Mass. 2006)). By its own terms, the Massachusetts Manufactured Housing Act is such a statute. Mass. Gen. Laws ch. 140, § 32L(7) ("Failure to comply with the provisions of sections thirty-two A to thirty-two S, inclusive, shall constitute an unfair or deceptive practice under the provisions of paragraph (a) of section two of chapter ninety-three A."). The relevant substantive provision of the Manufactured Housing Act provides: "Any rule or change in rent which does not apply uniformly to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair." Mass. Gen. Laws ch. 140, § 32L(2). The Massachusetts Supreme Judicial Court has held that time of entry into an MHC is not a basis for different "classes" of residents under § 32L(2). Blake v. Hometown Am. Cmtys. Inc., 158 N.E.3d 18, 24, 28 (Mass. 2020).

In short, to prevail on their Chapter 93A and § 32L(2) claims, Plaintiffs must show that Defendants violated § 32L(2) by imposing a nonuniform "rule or change in rent" and thereby injured Plaintiffs. Defendants may defeat Plaintiffs' claims by, among other things, rebutting the presumption that the nonuniformity was "unfair."

III. DISCUSSION

The Court addresses the two proposed damages classes first, followed by the proposed injunction class, then the motion to strike. As the parties have acknowledged, many of the issues presented by the damages classes are equally raised by the injunction class. Where that is so, the Court briefly explains the extent to which it incorporates its earlier analysis by reference.

A. Rule 23(b)(3) Classes

Plaintiffs Lee and Dernalowicz propose to certify the following damages classes:

(1) a Rule 23(b)(3) class of persons who have paid home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts at any time since June 16, 2015 ("Oak Point Class"); and

(2) a Rule 23(b)(3) class of persons who have paid home-site rent to the Miller's Woods and River Bend Manufactured Housing Community located in Athol, Massachusetts at any time from June 16, 2015 to December 31, 2024 ("Miller's Woods Class").

See Doc. No. 222 at 5. Plaintiffs propose that Lee serve as class representative for the Oak Point Class, Dernalowicz serve as class representative for the Miller's Woods Class, and attorney Horowitz serve as counsel for both classes. Id.

Lee and Dernalowicz bear the burden to show that the proposed classes satisfy the implicit Rule 23 requirement of ascertainability; the express Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy; and the Rule 23(b)(3) requirements of predominance and superiority. In re Nexium, 777 F.3d at 17, 19, 27. The Court addresses Plaintiffs' showing for and Hometown's challenges to each Rule 23 criterion in turn. Several of Hometown's arguments turn on the proper construction of Chapter 93A and § 32L. The Court "conduct[s] a merits inquiry only to the extent that the merits overlap with the Rule 23 criteria." In re Ranbaxy, 338 F.R.D. at 300. As necessary, the Court "formulate[s] some predictions as to how specific issues will play out" and "test[s] disputed premises . . . if and when the class action would be proper on one premise but not another." In re New Motor Vehicles, 522 F.3d at 17 (citation modified).

1. *Rule 23(a) Prerequisites*

All proposed class actions must satisfy the express Rule 23(a) factors. For the reasons that follow, Lee and Dernalowicz have made sufficient Rule 23(a) showings with respect to the Oak Point and Miller's Woods Classes, respectively.

a. Numerosity

Numerosity requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Although Rule 23 does not provide a numerical threshold, courts generally find the numerosity requirement satisfied if the proposed class exceeds forty members. Mantha v. QuoteWizard.com, LLC, 347 F.R.D. 376, 392 (D. Mass. 2024); see also 1 William B. Rubenstein, Newberg and Rubenstein on Class Actions § 3:12 (6th ed. 2025) ("As a general guideline, . . . a class of 40 or more members raises a presumption of impracticability of joinder based on numbers alone."). The Oak Point Class will have at least 975 members—i.e., the approximate number of Oak Point home sites during the class period. Doc. No. 222 at 3; Doc. No. 227-1 ¶ 15; see also Doc. No. 222-14 ¶ 9 (identifying nearly 2,500 unique individual Oak Point tenants during class period). The Miller's Woods Class will have at least 140 members—i.e., the approximate number of Miller's Woods home sites during the class period. Doc. No. 222 at 3; Doc. No. 227-1 ¶ 17; see also Doc. No. 222-14 ¶ 21 (identifying 428 unique individual Miller's Woods tenants during class period). Both proposed classes satisfy numerosity, and Hometown does not argue otherwise.

b. Commonality

Commonality requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." Wal-Mart Stores, 564 U.S. at 349–50 (citation modified). The class members' claims must "depend upon a common contention . . . of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." Id. at 350. Therefore, "[w]hat matters to class certification . . . is not the raising of common 'questions'—

even in droves—but rather, the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." Id. (quoting Richard A. Nagareda, Class Certification in the Age of the Aggregate Proof, 84 N.Y.U. L. Rev. 97, 132 (2009)). The commonality requirement is "seen as a low bar because a single common legal or factual issue can suffice." Mantha, 347 F.R.D. at 393 (citation modified).

Lee and Dernalowicz satisfy commonality, and Hometown does not contest that conclusion. The Oak Point Class members' claims "depend upon . . . common contention[s]": that Hometown's nonuniform rent structure is unlawful under § 32L(2) and has injured the class members in the form of rent overpayment. Doc. No. 223 at 9–10. For one, Hometown acknowledges that it set rent in Oak Point pursuant to a "policy and practice" of charging new entrants a different rent based on their time of entry to the community. Doc. No. 227-1 ¶¶ 6, 9. The legality of that rent policy is a question common to the class, one whose answer will plainly "drive the resolution of the litigation." Wal-Mart Stores, 564 U.S. at 350. The Miller's Woods Class members' claims likewise depend on common contentions: that Hometown's rent policy violated § 32L(2), and that Hometown thereby injured them by charging higher rents than it was permitted to under the circumstances. Doc. No. 223 at 10. Thus, Lee and Dernalowicz have satisfied their Rule 23(a)(2) burden to show that the class members they seek to represent have "suffered the same injury." Wal-Mart Stores, 564 U.S. at 349–50.

c. Typicality

Typicality requires that "the claims or defenses of the representative parties are typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The central inquiry in determining whether a proposed class has 'typicality' is whether the class representatives' claims have the same essential characteristics as the claims of the other members of the class." Garcia

v. E.J. Amusements of N.H., Inc., 98 F. Supp. 3d 277, 288 (D. Mass. 2015) (citation modified). "Although typicality does not require that all putative class members share identical claims, the class representative's injuries must arise from the same events or course of conduct as the class's injuries, and the class representative's claims must be based on the same legal theory." Mantha, 347 F.R.D. at 393 (citation modified).

Lee's and Dernalowicz's claims are typical of the classes they seek to represent. Both named plaintiffs' injuries arose from the same rent policies Hometown implemented in their respective MHCs. They, like the proposed class members, paid more in rent than some of their neighbors paid for essentially the same lot and services, a "course of conduct" that, they claim, violates § 32L(2). They, like the rest of the Oak Point and Miller's Woods Classes, respectively, seek damages under Chapter 93A. Nothing more is required.

Hometown's arguments against typicality do not rebut the named plaintiffs' showings. Hometown first contends the named plaintiffs' claims are not "typical" of the putative classes because many class members (but not Lee and Dernalowicz) have claims only against the communities' prior owners, not Hometown. Doc. No. 227 at 26–27. Hometown's argument proceeds from a flawed premise: that the only potential § 32L(2) violation occurred when each plaintiff's initial base rent was set.[8] As the Court will explain, whether Hometown argues that

[8] In a footnote, Hometown contends that even the initial setting of rent for a new lease does not constitute a "change in rent" within the meaning of § 32L(2). Doc. No. 227 at 26 n.8. That argument is untenable after Blake, which held the statute was violated when an MHC owner charged higher rents to new entrants as compared to existing residents, with the change based only on time of entry to the community. Blake, 158 N.E.3d at 29. As the Massachusetts Attorney General's Guide explains, "owner/operators may not charge new residents entering the community a different rent than residents already living in the community where, for example, they have similar lot sizes and use similar amenities." Mass. Off. of Att'y Gen., The Attorney General's Guide to Manufactured Housing Community Law 31–32 (2024) (citing Blake, 158 N.E.3d at 29).

the initial rent-setting is the only "change in rent," or whether it argues that the initial rent-setting is the only nonuniform rule or change in rent, those positions are contrary to the text and the purpose of § 32L(2) and the record before the Court—and in any event Hometown's argument does not defeat typicality.

Section 32L(2) provides: "Any rule or change in rent which does not apply uniformly to all manufactured home residents of a similar class shall create a rebuttable presumption that such rule or change in rent is unfair." Mass. Gen. Laws ch. 140, § 32L(2). Under Massachusetts law, "statutory language should be given effect consistent with its plain meaning and in light of the aim of the Legislature unless to do so would achieve an illogical result." Commonwealth v. Rossetti, 186 N.E.3d 729, 736 (Mass. 2022) (citation modified). Here the "plain meaning" of the statutory language is unambiguous: the section encompasses any "change in rent." Were there any doubt about the plain meaning of the statute (and there is not), the Supreme Judicial Court has resolved any such doubt. After Blake, it is clear that a "change in rent" occurs both when an MHC owner changes the rent for an existing tenant and when an owner first assesses rent to a new tenant. See Blake, 158 N.E.3d at 29. If a tenant pays a rent different from that previously paid, there has been a change in rent and, thus, potential liability under § 32L(2).

Under the terms of its lease agreements, and on the record before the Court, Hometown changes the rent of all tenants every year through the application of the CPI increase.[9] Doc. No.

[9] Under the header "**RENT INCREASES**," the Oak Point lease provides that the "Annual Base Rent" is changed each year "by the annual percentage change in the [CPI]"—that is, the "increase in rent shall be calculated by multiplying the Annual Base Rent in effect for the prior Lease Year by the percentage increase in the Current CPI over the Prior CPI." Doc. No. 227-2 at 6. The lease also provides, "Increases in Annual Base Rent shall be effective on January 1st of each year[;] . . . [w]ithin 30 days of any increase in Annual Base Rent, Oak Point shall deliver to the Home Owner a written statement showing how the increase was computed." Id.

227-2 at 6; Doc. No. 227-1 ¶ 3. The below table illustrates how this structure operates, through a simplified hypothetical that assumes an annual 3% CPI increase.

	Year 1	Year 2	Year 3	Year 4	Year 5
Tenant 1	$200.00	$206.00	$212.18	$218.55	$225.10
Tenant 2	--	$250.00	$257.50	$265.23	$273.18
Tenant 3	--	--	$300.00	$309.00	$318.27
Tenant 4	--	--	--	$350.00	$360.50

Obviously, Hometown changes every tenant's rent every year. These rent changes—both the initial setting of rent and the annual changes—are "change[s] in rent" within the scope of § 32L(2). More to the point, Hometown annually changes the rent for tenants who moved into Oak Point and Miller's Woods before Hometown acquired those communities—and it does so in the same manner that it changes the rent for post-acquisition entrants, including Lee and Dernalowicz.[10] Hometown's potential liability is clear in Miller's Woods, where tenants never had lifetime leases and were almost all at-will tenants. Cf. Doc. No. 227 at 14 (noting that "[n]othing . . . precluded Miller's Woods Defendants from" making additional changes to at-will tenants' rent beyond CPI increases). But even at Oak Point, where some tenants signed lifetime leases before Hometown's acquisition, it is Hometown that calculates and implements annual changes in rents, and it is Hometown that is therefore potentially liable under § 32L(2) and Chapter 93A for those "change[s] in rent."

Hometown argues that the annual CPI adjustments are irrelevant to liability because they are "uniform[]" within the meaning of § 32L(2). But the CPI changes compound the initial

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At Oak Point, CPI increases for leases that began in or after September 2012 take effect on January 1 of each year; earlier leases are adjusted for CPI on each anniversary of their lease commencement date. Doc. No. 227-1 ¶ 7. This distinction does not affect class certification.

[10] To build on the example above, if Hometown acquired the community at the end of Year 2, then in Years 3 through 5, Hometown would change the rent for pre-acquisition Tenants 1 and 2.

nonuniformity of tenants' rents, whether those rents were set by the community's prior owners or by Hometown. Returning to the hypothetical above, on January 1 of Year 5, Hometown changed Tenant 1's monthly rent by $6.55 and Tenant 4's monthly rent by $10.50. Under Hometown's rent policy, Tenant 1's rent increase and Tenant 4's rent increase are not uniform, and the difference is driven solely by the date each tenant entered the community. Section 32L(2) prohibits "charg[ing] more in rent because [a tenant] entered into a lot rental agreement at a different time," Blake, 158 N.E.3d at 26, yet Hometown does exactly that when it increases each tenant's rent each year (even though it applies the same CPI percentage to every tenant's base rent). Thus, Hometown's changes in rent during the class periods—both when a new tenant entered and annually for all tenants—were not uniform, or at least not inarguably so.[11]

The Court need not definitively resolve this merits dispute now because, in any event, Hometown's contention that the only § 32L(2) claim many putative class members have is against the prior owners is wrong. All class members have experienced one or more "change[s] in rent" by Hometown that plausibly violated § 32L(2) in their nonuniformity.[12]

[11] Of course, the CPI adjustment is uniform in one sense (i.e., the percentage change) but, as explained above, it is nonuniform in another (i.e., the absolute rent increase). Miller's Woods has achieved rent uniformity as of January 1, 2025. Doc. No. 227-1 ¶ 4. The Miller's Woods Class period ends on December 31, 2024.

[12] At the December 19 hearing, counsel for Hometown suggested that, if the CPI increase is a nonuniform change in rent, then the only damages available to pre-acquisition tenants would be the rent overcharge attributable solely to the CPI increase. The Court is skeptical of this view. While the nonuniform CPI increases are "changes in rent" that appear to violate the statute, the injury caused by this allegedly unfair act is the amount of rent paid above what Hometown was permitted by law to charge under the circumstances. Thus, it appears likelier that damages, for a given tenant in a given year, are the difference between the actual rent paid and the lowest rent assessed to similarly situated tenants—the same measure calculated by Plaintiffs' expert. The Court need not now resolve this dispute because it does not affect class certification, as discussed in more detail below.

The Court recognizes that Plaintiffs' theory of liability is somewhat broader than that articulated above. Plaintiffs derive from Blake's construction of § 32L(2) a more general uniformity principle: like tenants must be treated alike. Doc. No. 234 at 8–9; Blake, 158 N.E.3d at 26, 28–29. The Blake Court observed that "charging different amounts of rent for essentially the same lot appears to violate the uniformity presumption presented by the plain language of" § 32L(2), and that the statute requires MHC owners "not [to] discriminate between similar classes of residents." Blake, 158 N.E.3d at 26, 29. Plaintiffs argue that § 32L(2) requires owners to charge a "uniform rental amount" and imposes liability on any entity that "assessed rents in excess of [that] uniform rental amount." Doc. No. 234 at 8–9. In other words, in Plaintiffs' view, it is the assessment of nonuniform rents, rather than particular changes in rent, that violates the statute.[13]

For purposes of certifying the damages classes, it is not necessary to resolve this merits dispute, which the Court considers "only to the extent that the merits overlap with the Rule 23

[13] An alternative basis for this position, perhaps more grounded in the statutory text, looks to the word "rule." The statutory language applies the uniformity principle to both a "change in rent" and "[a]ny rule." Mass. Gen. Laws ch. 140, § 32L(2) (emphasis added). "Rule" is not defined for purposes of the statute, but it encompasses at least "rules governing the rental or occupancy of a manufactured home site." Mass. Gen. Laws ch. 140, § 32L(1). ("Rule" is defined in the corresponding regulations as "any written or unwritten rule, regulation, or policy imposed by an operator that governs procedures, conduct, or standards within the manufactured housing community, including without limitation procedures for the screening and approval of prospective residents." 940 Mass. Code Regs. 10.01.)

It may be that the "policy and practice" of charging tenants different amounts based on their time of entry into a community—like that implemented in both Oak Point and, until recently, Miller's Woods—amounts to a "rule." If Hometown maintains a "rule" of charging similarly situated tenants different rents, liability may attach to each collection of rent—each implementation of its rule—and not only to each change in rent. Plaintiffs' theory fits under this analysis, but they did not present it to the Court in this manner. At this time, the Court discerns no material difference that would arise from applying this theory—whether grounded in the statutory "any rule" language or in Blake's general uniformity principle—as compared to the Court's above analysis of rent-setting plus CPI changes.

criteria." In re Ranbaxy, 338 F.R.D. at 300. First, if Plaintiffs have the better understanding of § 32L(2), the named plaintiffs' claims are clearly typical of the putative classes. Second, Plaintiffs' damages model is equally applicable to both liability theories: calculating the amount of rent charged above a uniform baseline during the class period is equivalent to calculating the nonuniform rent changes during that same time.

For purposes of Rule 23(a)(3), the law requires only that Lee's and Dernalowicz's claims "arise from the same . . . course of conduct" and are "based on the same legal theory" as the putative damages class members whom they seek to represent. Mantha, 347 F.R.D. at 393 (citation modified). As the Court has explained, Lee and Dernalowicz have satisfied those requirements. If Hometown's various defenses were to later establish that some putative class members' claims rest on different liability theories than the named plaintiffs', which the Court does not anticipate,[14] the Court has other procedural tools to handle those distinctions, including the creation of subclasses or refinement of the class definition. See Fed. R. Civ. P. 23(c)(1)(C) ("An order that grants or denies class certification may be altered or amended before final judgment."); see also Rubenstein, supra, §§ 7:34–40.

Additionally, Hometown argues that Lee and Dernalowicz cannot satisfy typicality (nor adequacy) because they are subject to a unique voluntary-payment defense. Doc. No. 227 at 24–26. "Both typicality and adequacy may be defeated where the class representatives are subject to unique defenses which threaten to become the focus of the litigation." In re Credit Suisse–AOL Sec. Litig., 253 F.R.D. 17, 23 (D. Mass. 2008); see also Swack v. Credit Suisse First Bos., 230 F.R.D. 250, 260–64 (D. Mass. 2005).

[14] The only such theories in the record are the ones advanced by the parties and addressed herein by the Court.

To start, Hometown has not shown that the voluntary-payment doctrine is viable here. The common-law voluntary-payment doctrine provides that "money voluntarily paid under a claim of right, with full knowledge of the facts on the part of the one making the payment, cannot be recovered back unless there is fraud or concealment or compulsion by the party enforcing the claim." Carey v. Fitzpatrick, 17 N.E.2d 882, 883 (Mass. 1938). A mistake of law does not excuse the voluntary-payment doctrine. See generally Right to Recover Money Voluntarily Paid with Knowledge of Facts but Under Misapprehension as to Legal Rights and Obligations, 53 A.L.R. 949 (1928). This "harsh" rule, Getty Oil Co. v. United States, 767 F.2d 886, 889 (Fed. Cir. 1985), serves to "ensure[] those who desire to assert a legal right do so at the first possible opportunity," Spivey v. Adaptive Mktg. LLC, 622 F.3d 816, 823 (7th Cir. 2010).

The Massachusetts courts have not directly confronted whether the common-law voluntary-payment doctrine lies as an affirmative defense to Chapter 93A claims, particularly those claims for which the underlying unfair or deceptive practice is defined by statute. When a federal court, sitting in diversity, confronts a question of state law which the state's highest judicial authority has not addressed, the federal court must "mak[e] an informed prophecy of what the [state high] court would do in the same situation," drawing from "analogous state court decisions, persuasive adjudications by courts of sister states, learned treatises, and public policy considerations identified in state decisional law." Aubee v. Selene Fin. LP, 56 F.4th 1, 4 (1st Cir. 2022) (citation modified).

In an analogous situation, the Supreme Judicial Court held the voluntary-payment doctrine inapplicable because a statutory remedy existed. The court rejected application of the defense to violations of the Rent Control Act because that statute provides "a clear statutory remedy which permits a tenant to recover amounts paid to a landlord in excess of the maximum

lawful rent." Huard v. Forest St. Hous., Inc., 316 N.E.2d 505, 508 (Mass. 1974). By statute, violations of § 32L(2) are "unfair or deceptive practice[s] under" Chapter 93A, and "actions for damages shall be in accordance with" Chapter 93A. Mass. Gen. Laws ch. 140, § 32L(7). Chapter 93A permits "[a]ny person . . . who has been injured by" an unfair or deceptive practice to bring a claim for damages. Mass. Gen. Laws ch. 93A, § 9(1), (3A). Section 32L and Chapter 93A work together to allow MHC tenants to seek damages if their rent is changed nonuniformly. In other words, these statutes permit MHC tenants to recover payments made to MHC owners "in excess of the maximum lawful rent" permitted under the circumstances—i.e., the rent charged to similarly situated tenants. See Blake, 158 N.E.3d at 33 ("Every month . . . someone has paid an additional ninety-six dollars on lots leased after the change in ownership. Those who have paid the additional ninety-six dollars per month for those lots have been injured and are entitled to compensation pursuant to [Chapter] 93A."). Huard therefore suggests the voluntary-payment doctrine is inapplicable in this case.

Massachusetts law interpreting Chapter 93A further supports this conclusion. Chapter 93A is a "statute of broad impact which creates new substantive rights and provides new procedural devices for the enforcement of those rights." Kattar v. Demoulas, 739 N.E.2d 246, 257 (Mass. 2000) (citation modified). The relief available is "neither wholly tortious nor wholly contractual in nature, and is not subject to the traditional limitations of preexisting causes of action." Id. (citation modified). As discussed above, Chapter 93A permits recovery for damages caused by violations of § 32L. Mass. Gen. Laws ch. 140, § 32L(7); id. ch. 93A, § 9(1), (3A). Although the voluntary-payment doctrine may differ from "waiver" in some regards, the doctrine has the same practical effect as waiver: failure to act on one's rights at the earliest opportunity bars one from later vindicating those rights in court. Accordingly, Massachusetts's strong

presumption against waiver of consumer rights cuts against the operation of a common-law doctrine by which consumers may unwittingly give up their ability to vindicate their statutory rights. See Mass. Gen. Laws ch. 93, § 101; Canal Elec. Co. v. Westinghouse Elec. Corp., 548 N.E.2d 182, 187 (Mass. 1990) ("A statutory right may not be disclaimed if the waiver could do violence to the public policy underlying the legislative enactment. . . . Thus, we ordinarily would not effectuate a consumer's waiver of rights under [Chapter] 93A." (citation modified)); cf. H1 Lincoln, Inc. v. S. Wash. St., LLC, 179 N.E.3d 545, 564–66 (Mass. 2022) (identifying "the fundamental principle that a waiver of statutory rights should not be given effect where enforcement of the particular waiver would do violence to the public policy underlying the legislative enactment" (citation modified)).

Hometown points to no case applying the voluntary-payment doctrine to a Chapter 93A claim.[15] See Doc. No. 227 at 25 (citing Selectmen of Hull v. Cnty. Comm'rs of Plymouth Cnty., 422 N.E.2d 787, 788 (Mass. App. Ct. 1981) (applying doctrine to tax assessments and noting that doctrine applies "where no statute makes provision to the contrary"); Mantia v. Bactes Imaging Sols., Inc., No. 10-2930-BLS1, 2011 WL 5555860, at *4 (Mass. Super. Ct. Oct. 24, 2011) (contract); Resnick v. Wyman-Gordon Co., No. 0502026D, 2010 WL 5783065, at *7–8 & n.24 (Mass. Super. Ct. Dec. 28, 2010) (unjust enrichment); Carey, 17 N.E.2d at 883 (contract)). The dearth of case law invoking the doctrine as a defense to Chapter 93A claims tends to support the conclusion that the common-law doctrine does not lie as a defense to these statutory violations.

Persuasive authority from other state high courts also supports this conclusion. The Wisconsin Supreme Court held that the doctrine does not apply to violations of a state consumer-

[15] The Court has likewise identified no cases applying the voluntary-payment doctrine as a defense to a Chapter 93A claim.

protection statute because its application would conflict with "the statute's manifest purpose"—to deter a certain abusive practice and to provide remedies to those harmed by the practice—leaving "no doubt that the legislature intended that the common law defense should not be applied to bar claims under the statute." MBS-Certified Pub. Accts., LLC v. Wis. Bell, Inc., 809 N.W.2d 857, 859, 868 (Wis. 2012). The court reasoned that operation of the voluntary-payment doctrine would "severely circumscribe[]" the "broad statutory remedy set forth by the legislature," and further that "one could conceive of very few situations in which a private action would produce an actionable claim for damages" if the doctrine applied. Id. at 866–69. The Wisconsin high court's reasoning applies with equal force to the statutes at issue here—laws enacted to "protect[] [MHC] residents from unfair practices or arbitrary distribution of operating costs," in recognition of "the vulnerability of [MHC] residents and the need for their protection." Blake, 158 N.E.3d at 27–28.

Similarly, the Missouri Supreme Court has concluded the doctrine is not a viable defense to claims under a consumer-protection statute because the purpose of that statute is to "protect those who could not otherwise protect themselves," making operation of the voluntary-payment doctrine—essentially waiver by conduct—contrary to public policy. Huch v. Charter Commc'ns, Inc., 290 S.W.3d 721, 727 (Mo. 2009) (citation modified). And the Washington Supreme Court has held (albeit without much explication) that the "voluntary payment doctrine is inappropriate as an affirmative defense in the [state's Consumer Protection Act] context." Indoor Billboard/Wash., Inc. v. Integra Telecom of Wash., Inc., 170 P.3d 10, 23 (Wash. 2007).

The Court therefore concludes that the voluntary-payment doctrine is not available as a defense to Hometown's potential liability under § 32L and Chapter 93A. In any event, and alternatively, Hometown has not shown that its voluntary-payment defense—to the extent it is

viable—is unique to Lee and Dernalowicz.[16] See Rubenstein, supra, § 3:45 & n.1 ("If a defendant mounts a defense general across the whole class, that defense will not render the class representative's situation atypical as it applies to her no differently than it does to the rest of the class."). For all these reasons, Hometown's arguments regarding the voluntary-payment defense do not undermine the named plaintiffs' showing of typicality.

d. Adequacy

Adequacy of representation is satisfied when "the representative parties will fairly and adequately protect the interest of the class." Fed. R. Civ. P. 23(a)(4). "The [adequacy-of-representation] rule has two parts. The moving party must show first that the interests of the representative party will not conflict with the interests of any of the class members, and second, that counsel chosen by the representative party is qualified, experienced and able to vigorously conduct the proposed litigation." Andrews v. Bechtel Power Corp., 780 F.2d 124, 130 (1st Cir. 1985). Conflicts of interest between the class representative and the class may defeat adequacy, but only if they are "fundamental to the suit and go to the heart of the litigation." Murray v. Grocery Delivery E-Servs. USA Inc., 55 F.4th 340, 346 (1st Cir. 2022) (citation modified).

[16] The evidence Hometown marshals does not support its assertion that the voluntary-payment defense is unique to plaintiffs Lee and Dernalowicz. Hometown cites Lee's and Dernalowicz's depositions to show that those plaintiffs "have known for years that other tenants pay different rents." Doc. No. 227 at 25. In those depositions, both Lee and Dernalowicz testified that they learned the rents in their communities were not uniform during broader community conversations about the Blake decision, which was handed down in 2020. Doc. No. 227-6 at 26–27; Doc. No. 227-7 at 15–18. Nothing in this testimony suggests that either Lee's or Dernalowicz's experience was unique to them. Indeed, Hometown later cites this testimony as evidence that "community members discussed their different rental rates." Doc. No. 227 at 33–34. Hometown also cites two documents in which Lee was allegedly advised about Oak Point's rent structure before she signed her lease. Id. at 25–26. But again, that alleged exposure does not appear unique to Lee; Hometown later contends that other putative Oak Point Class members likely received similar notice. Id. at 35 (arguing that "many putative class members voluntarily paid rent to Defendants with full knowledge—and approval—of the existing rent structures").

The adequacy inquiry "tend[s] to merge" with the commonality and typicality requirements; they all "serve as guideposts for determining whether under the particular circumstances maintenance of a class action is economical and whether the named plaintiff's claim and the class claims are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." Falcon, 457 U.S. at 157 n.13.

Lee and Dernalowicz have demonstrated their knowledge of and engagement in this litigation. See, e.g., Doc. No. 222-8 ¶¶ 6–7; Doc. No. 222-9 ¶¶ 6–7. For instance, both participated in lengthy depositions and responded to Defendants' written discovery requests. Doc. No. 222-8 ¶¶ 11–12; Doc. No. 222-9 ¶¶ 13–14. Lee and Dernalowicz have also retained qualified and experienced class counsel. Attorney Horowitz has litigated several manufactured housing cases in Massachusetts and has been appointed class counsel in six. Doc. No. 222-13 ¶¶ 3–5. Horowitz's prior work, in both this case and others, demonstrates that he amply satisfies the standards of Rules 23(a)(4) and 23(g). Hometown asserts no challenge to the named plaintiffs on grounds of their knowledge of or involvement in the suit, nor to putative class counsel on grounds of his experience or qualification.

Hometown attacks adequacy on two fronts. To start, Hometown contends that the named plaintiffs suffered no injury and therefore cannot adequately represent the putative class. Doc. No. 227 at 17–24. "A plaintiff who is unable to secure standing for himself is certainly not in a position to fairly insure the adequate representation of those alleged to be similarly situated." Kauffman v. Dreyfus Fund, Inc., 434 F.2d 727, 734 (3d Cir. 1970) (citation modified); cf. In re Sonus Networks, Inc. Sec. Litig., 247 F.R.D. 244, 249 (D. Mass. 2007) (finding Rule 23(a)(4) satisfied because named plaintiff "has constitutional and statutory standing"). Hometown offers two theories for why the named plaintiffs lack statutory standing. Neither prevails.

First, Hometown argues that because the named plaintiffs always paid below-market rents, they have not suffered an economic injury and therefore lack standing to bring their Chapter 93A claims. Doc. No. 227 at 17–22. (For purposes of the present motion, the Court assumes, without deciding, that Hometown charged below-market rents.) In Hometown's view, the law permits it to charge fair-market rents; therefore, it contends, so long as it always set rents at or below market rates, individuals who paid non-uniform rents suffered no injury or, at most, a purely regulatory injury insufficient to confer standing. Id.; see also Doc. No. 239 at 6–8.

Massachusetts law requires MHC owners to offer prospective or renewing tenants, "as an alternative to any other proposed term lengths," a five-year rental agreement "at fair market rental rates subject to any applicable rent control restrictions." Mass. Gen. Laws ch. 140, § 32P; see also 940 Mass. Code Regs. 10.01 (defining "fair market rental rates"). This provision plainly protects MHC tenants against price-gouging by requiring owners to make available a five-year, fair-market lease at each new lease and renewal. It also protects MHC owners from liability when they offer a five-year lease at market rate (so long as that rate is uniform). See Blake, 158 N.E.3d at 29 (recognizing that MHC owners "will not create or preserve such low income housing communities if they cannot get an adequate return on their investment"). The provision does not directly regulate the rent for leases of shorter or longer duration. Critically, it does not supplant the separate provision that makes all nonuniform rent changes presumptively unfair. Mass. Gen. Laws ch. 140, § 32L(2). The Supreme Judicial Court in Blake noted that the requirement to "offer" a five-year lease at fair-market rate does not obviate the requirement that rental rates be uniform. See Blake, 158 N.E.3d at 29 (noting that § 32L(2) "does not interfere with the determination of fair market rental rates . . . so long as such rates are uniform for similar classes of lots" (emphasis added)).

Hometown's argument is at odds with the statutory scheme. The statute imposes a presumption that nonuniform rents for similar lots are unfair and therefore actionable under Chapter 93A. See Mass. Gen. Laws ch. 140, § 32L(2), (7). But, under Hometown's theory, tenants could never challenge nonuniform rents unless operators also violated the fair-market rate requirement. See Doc. No. 227 at 24 n.6 (explaining that, under Hometown's theory, nonuniform changes in rent could result in Chapter 93A injury "if Defendants had charged new tenants market rental rates but raised rental rates for existing tenants above market"). This is an inversion of the scheme enacted by the Massachusetts legislature, which requires MHC owners to "offer" a five-year, fair-market lease (while permitting owners to also offer leases of different terms and rates) but requires that all rent changes for similarly situated lots be uniform. Uniformity is the universal requirement. A violation of the uniformity presumption may be vindicated whatever the actual rental rate. (Whether below-market rents tend to rebut the presumption of unfairness is a merits question not now before the Court.)

Further, Hometown's view of § 32L(2) is plainly counter to the construction given that statute by the Supreme Judicial Court. The Blake Court held that the payment of a nonuniform rent higher than that paid for similarly situated lots was an injury under Chapter 93A, explaining:

> Every month since the defendants took ownership of the property, someone has paid an additional ninety-six dollars on lots leased after the change in ownership. Those who have paid the additional ninety-six dollars per month for those lots have been injured and are entitled to compensation pursuant to [Chapter] 93A.

Blake, 158 N.E.3d at 33. Hometown argues that Blake did not grapple with a fair-market rent comparison. Doc. No. 239 at 7–8. But that only further demonstrates that the uniformity requirement is actionable independent of the fair-market rent requirement. And in any event, the higher rent charged to new entrants in Blake—ninety-six dollars higher than the incumbent rent—was apparently at or below market rate, because "willing prospective tenant[s] seeking

initial residency in the community" willingly paid that rate. 940 Mass. Code Regs. 10.01. In holding that the Blake plaintiffs had suffered a Chapter 93A injury, the Supreme Judicial Court implicitly rejected the theory of injury Hometown offers here.

The case law Hometown marshals does not save its theory. Massachusetts law provides that a mere "regulatory injury" does not confer standing under Chapter 93A; a plaintiff must allege she has "suffered an 'identifiable harm' caused by the unfair or deceptive act that is separate from the violation itself"—that is, she must "show 'real' economic damages, as opposed to some speculative harm." Shaulis v. Nordstrom, Inc., 865 F.3d 1, 10 (1st Cir. 2017) (first quoting Tyler v. Michaels Stores, Inc., 984 N.E.2d 737, 745 (Mass. 2013); and then quoting Rule v. Fort Dodge Animal Health, Inc., 607 F.2d 250, 253 (1st Cir. 2010)). Plaintiffs here have done exactly that. They have alleged that Hometown engaged in an unfair practice by treating similarly situated lots differently, as proscribed by § 32L(2) and Chapter 93A. The non-uniformity is the violation. And they have alleged that this violation caused them real economic injury because they actually paid more in rent than their similarly situated neighbors—that is, more than the law permits Hometown to charge under the circumstances. Uniformity provides an objective benchmark by which to measure Plaintiffs' injuries. Cf. Shaulis, 865 F.3d at 12 (noting that "subjective belief as to the nature of the value [plaintiff] received" is not a cognizable Chapter 93A injury).

Unlike the plaintiffs in Shaulis and similar Chapter 93A cases, Plaintiffs here have allegedly suffered an objective, pocketbook injury distinct from but directly traceable to the defendants' unfair or deceptive practices. Contrast Shaulis, 865 F.3d at 10–14 (rejecting "induced purchase" theory of injury because it "merges the alleged deception with the injury" and "travel expenses" theory of injury for lack of causation), and Bellermann v. Fitchburg Gas &

Elec. Light Co., 54 N.E.3d 1106, 1113–14 (Mass. 2016) ("The plaintiffs here would have paid the same amount for compliant electric service as they did pay . . . . The plaintiffs contend only that they suffered economic injury by purchasing a service that might have failed to provide them with emergency response services, in circumstances that never happened." (footnote omitted)), with Iannacchino v. Ford Motor Co., 888 N.E.2d 879, 886–87 (Mass. 2006) (failure to comply with vehicle safety regulations could cause economic injury in form of "cost to bring the vehicles into compliance"). The present suit is a far cry from the "purely vicarious suits by self-constituted private attorneys-general" precluded by the statutory injury requirement. Shaulis, 865 F.3d at 15 (citation modified). Lee and Dernalowicz have alleged they personally suffered an economic injury caused by Hometown's nonuniform rents. That is all Chapter 93A requires.

To put a finer point on it, consider a fanciful hypothetical statute that added more specificity to § 32L(2)'s equal-treatment requirement: "Any rule or change in rent that treats lessors differently based on the lessor's baseball-team allegiance shall create a rebuttable presumption that such rule or change in rent is unfair." If an MHC owner charged Red Sox fans $200 per month and Yankees fans $250 per month for otherwise-similar lots, the Yankees fans would clearly have standing to challenge the nonuniform rents. The MHC owner would have engaged in a proscribed unfair practice, and the Yankees fans would have suffered an economic injury of $50 per month, an injury that would be compounded through an annual CPI adjustment. (By contrast, the Red Sox fans may lack statutory standing to challenge the unlawful practice precisely because they would not have suffered an economic injury.) The same would hold even if market-rate rent for the properties was $300 per month (or $251 per month). The legislature has imposed a nondiscrimination requirement that MHC owners may not avoid by charging slightly less than the market would otherwise bear.

And again, the Blake decision belies Hometown's theory. The Supreme Judicial Court recognized not only that § 32L(2) imposes a requirement of equal treatment on MHC owners but also that tenants who pay more than their similarly situated neighbors have suffered a cognizable economic injury in the form of rent overpayment. See Blake, 158 N.E.3d at 29, 33.

Hometown's second theory invokes the economics concept of complementary goods, arguing that Plaintiffs' impermissibly high rents made them no worse off, since their homes were less expensive to purchase as a result.[17] Doc. No. 227 at 22–24. This argument fails for several reasons, first and foremost because it is not an "injury" issue. As the Court has explained, Plaintiffs have alleged a cognizable pecuniary injury in the form of rent overpayments caused by Hometown's violation of § 32L(2). That suffices as a Chapter 93A injury. Whatever cascading economic benefit Plaintiffs may have received (not from Hometown, but from the sellers of their homes) in the form of a lower home purchase price, that benefit does not negate the injury Hometown caused them. If this analysis is relevant at all, perhaps it bears on damages.[18] But it does not obviate injury.

Second, even if Hometown's appeal to the "rudimentary economics" of complementary goods were relevant to the statutory injury analysis (it is not), Hometown would need to show, to some reasonable degree of certainty, that the home-price benefit completely outweighed the rent-overpayment injury in order to show the named plaintiffs suffered "no injury." That Hometown has not done. While it may be "not controversial," as Plaintiffs' expert acknowledged, that a

[17] Or, put differently, Plaintiffs would have been no better off, overall, had they paid lower rents, since their homes would have cost more to purchase.

[18] At the present stage, the Court does not anticipate that home purchase price will become a relevant factor in the damages calculations because the causal relationship appears too attenuated. Because the Court does not predict that the likely course of litigation will travel down this road, it need not and does not consider an "offset" argument with respect to damages in its predominance analysis below.

"decrease in site rent causes an increase in home price,"[19] id. at 22–23, it is far from obvious (nor persuasively established on the present record) that the relationship between these two prices is a dollar-for-dollar tradeoff fully adjusted for the present value of money. The Court cannot conclude as a matter of law that Plaintiffs suffered no injury because their impermissibly high rents were possibly offset by precisely equal lower home purchase prices.[20] Hometown does not attempt to show that Lee and Dernalowicz in fact were made whole for their rent overpayments through the reduced purchase prices of their homes.

Hometown's reliance on Conley v. Roseland Residential Trust, 442 F. Supp. 3d 443 (D. Mass. 2020), is misplaced. That case centered on plaintiffs who "eschewed any claim of actual pecuniary damages" and, instead, sought a "free lunch"—to receive their utilities for free because their landlord had failed to complete certain paperwork.[21] 442 F. Supp. 3d at 452, 458–59. It was in this context that the Conley court observed that "[r]udimentary economics teaches that landlords burdened with providing utilities will charge higher rent" and that rent for units with submetered utilities will be "proportionately discounted."[22] Id. at 458–59. The court did

[19] Of course, this necessarily assumes holding equal all other factors, including any external economic forces.

[20] Hometown's argument that, if tenants spent $100 less on rent, they could afford $100 more in a mortgage payment, Doc. No. 227 at 23–24, is both oversimplistic and irrelevant to the injury inquiry.

[21] That is, the plaintiffs argued that, since the law did not permit the landlord to submeter without the requisite certification, they were injured by the landlord's regulatory violation, and they should not have had to pay for utilities at all. Conley, 442 F. Supp. 3d at 452, 458–59.

[22] This is also the context in which Conley remarked that, when the law gives landlords two ways to comply, a tenant's injury must be "measured against these two realistic options, not against a tenant's fantasy of fully free utilities without a concomitant increase in rent." Conley, 442 F. Supp. 3d at 459. Hometown claims this remark supports its argument discussed at length above that, because the law directs MHC owners to offer as an option five-year market-rate leases, Plaintiffs' injury must be measured against fair-market rent. Doc. No. 227 at 19–20. But § 32L does not give MHC owners the choice to charge uniform or fair-market rates; it requires that all rent changes be uniform. Fair-market rate does not negate Plaintiffs' rent overpayment injury.

not suggest that the rudimentary economics meant no one ever suffered any monetary injury. Id. at 452. Here, Plaintiffs seek actual pecuniary damages—recovery of the amounts they claim they were charged in violation of a law restraining the prices MHC owners can charge under certain conditions—not a "free lunch."

Conley differed from the present case in several other ways that minimize its persuasive value here. The operative law in Conley was fundamentally different from § 32L(2). In Conley, the relevant law was essentially procedural; it permitted landlords to either bundle rent and utilities into a single monthly cost or to submeter utilities, and if the landlord chose the second option, it was required to complete certain paperwork. Conley, 422 F. Supp. 3d at 456. The landlord failed to complete the required paperwork despite submetering the plaintiffs' utilities. Id. The district court reasonably determined that the plaintiffs had not suffered an economic injury because, in the absence of the landlord's regulatory violation, they still would have had to pay the cost of utilities, submetered or not.[23] See id. at 458–59 ("The unmistakable intent and effect of the Massachusetts regulations . . . is not to lower the bottom-line rent but to provide landlords with a choice: either submeter the utilities in accordance with the law or build those charges into the rent."). By contrast, as the Court has previously observed, § 32L(2) creates a "substantive legal standard against which to judge a non-uniformity in rent," and § 32L more broadly "vest[s] MHC tenants with substantive rights." Doc. No. 119 at 12. Moreover, the Massachusetts Manufactured Housing Act was enacted with the recognition that "standard residential landlord-tenant law fails to sufficiently protect the tenants of [MHCs]." Blake, 158

[23] The court also determined that class certification was inappropriate because some putative class members likely had suffered a pecuniary injury when the landlord's submetering practices caused them to overpay for utilities or rent. Conley, 442 F. Supp. 3d at 452. The court's discussion of rent and utilities as complementary was in the context of plaintiffs who had "eschewed" a claim of overpayment. Id. at 452, 458–59.

N.E.3d at 27 (quoting Letter from Scott Harshbarger, Att'y Gen., Mass., to William Weld, Governor, Mass. (Aug. 10, 1993)). The Court declines to revise the statute based upon economic principles not enacted into law by the Massachusetts Legislature.

Additionally, in Conley, the tenant and landlord were the only two parties to the transaction; it was the landlord who set the rent and either bundled in the cost of utilities or submetered them. Here, by contrast, Hometown attempts to piggyback on benefits possibly conferred by the prior owners of Plaintiffs' homes. In any event, as Hometown concedes, see Doc. No. 227 at 29–30, the relationship between rent and utilities is far more straightforward than the relationship between rent and home price. For all these reasons, the reach of the conclusion in Conley is far less than the application Hometown seeks here.

The issues Hometown raises under the header of "injury" are not necessarily irrelevant to this case, but whatever effects they may have on other issues at other stages are not now before the Court. None of Hometown's arguments suggest that Lee and Dernalowicz are inadequate class representatives for lack of a statutory injury.

Finally, Hometown argues that Lee and class counsel cannot adequately represent both the putative Oak Point damages and injunction classes because the two classes' members have competing interests: the damages class includes former residents who want to maximize damages, while the injunctive relief class includes current residents who want to maximize restraints. Doc. No. 227 at 27–28. Hometown relies on Lee's testimony that she "can't separate" damages from injunctive relief. Doc. No. 227-6 at 43 (162:17–19). But Lee's position—that both damages and injunctive relief matter to her—hardly makes her an inadequate representative of the damages and injunctive relief classes. This one statement is not a basis on which to disqualify her as class representative. While there may conceivably be tension between

these competing priorities, the Court does not at the class-certification stage see the kind of "material and presently manifest" conflict that would render either Lee or class counsel inadequate. Rubenstein, supra, § 3:75. This is not a limited-fund situation in which a benefit to one class would come directly at the other's expense. See Murray, 55 F.4th at 345 (noting "zero-sum circumstances . . . present[] a concern that the class representatives or class counsel may have sold out some of the class members by allocating some of their fair share to other class members" (citation modified)). Nor is it a settlement-only class action, which would heighten the tension in the representative's competing priorities. See In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig., 827 F.3d 223, 235 (2d Cir. 2016). In any event, if tension between the damages and injunction classes becomes an issue, that conflict would not defeat Lee's role in both classes, as eliminating her role in one class would eliminate the conflict.

In summary, Lee and Dernalowicz have shown that the proposed Oak Point and Miller's Woods Classes satisfy the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy. The Court turns to the Rule 23(b)(3) requirements of predominance and superiority.

2. *Rule 23(b)(3) Standards*

a. Predominance

The predominance inquiry is satisfied if a court "finds that the questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3); see Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 623 (1997) ("The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."). This inquiry requires "courts to give careful scrutiny to the relation between common and individual questions in a case." Tyson Foods, Inc. v. Bouaphakeo, 577 U.S. 442, 453 (2016). Although the predominance inquiry may overlap with the commonality and typicality analyses, it is a "far more demanding" one. In re New Motor

Vehicles, 522 F.3d at 20 (quoting Amchem, 521 U.S. at 624). Its "aim . . . is to test whether any dissimilarity among the claims of class members can be dealt with in a manner that is not 'inefficient or unfair.'" In re Asacol Antitrust Litig., 907 F.3d 42, 51 (1st Cir. 2018) (quoting Amgen Inc. v. Conn. Ret. Plans & Tr. Funds, 568 U.S. 455, 469 (2013)).

When a court performs the predominance inquiry, it "must not rely on mere speculation that individual issues may arise." Bais Yaakov of Spring Valley v. ACT, Inc., 12 F.4th 81, 89 (1st Cir. 2021). Instead, it must consider "'the probable course of litigation' so as to 'formulate some prediction as to how specific issues will play out in order to determine whether common or individual issues predominate.'" Id. (quoting Waste Mgmt. Holdings, Inc. v. Mowbray, 208 F.3d 288, 298 (1st Cir. 2000)). Rule 23(b)(3) does not demand the class representative "prove that each element of the claim is susceptible to class-wide proof." Muniz v. XPO Last Mile, Inc., 342 F.R.D. 189, 198 (D. Mass. 2022) (citing Amgen, 568 U.S. at 469). An action can still satisfy Rule 23(b)(3) "[w]hen one or more of the central issues are common to the class and can be said to predominate even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." Tyson Foods, 577 U.S. at 453 (citation modified).

On Plaintiffs' theory of the case, they have demonstrated that common questions predominate over individual ones. The question whether Hometown's changes in rent did not "apply uniformly to all residents of a similar class" under § 32L(2) is, first, a legal question involving the liability theories discussed above. Which liability theory represents the best reading of the statute and how that theory applies here are questions common to the classes.

The existence of "similar class[es]" of residents is a mixed question of law and fact that will be resolved through a common body of evidence. As a general matter, ascertaining "similar

classes" under § 32L(2) is "a fact-specific inquiry that principally relates to the nature of the residents' lots and the services they receive." Blake, 158 N.E.3d at 29. But in this case, merits discovery is complete, and Hometown has pointed to no evidence of distinct "classes" of residents at Oak Point characterized by their lots or services.[24] Accordingly, the Court's best prediction of the "probable course of litigation" is that Hometown will be unable to rebut Lee's showing that all Oak Point class members were similarly situated.[25] To the extent the issue of distinct "classes" at Oak Point remains a viable argument, the argument will rely on a common body of evidence (such as the manner in which Oak Point provided services).

The standard Hometown must satisfy to rebut the presumption of unfairness under § 32L(2) is a legal question common to the classes. The parties have not addressed in any depth in their class-certification briefing the contours of that showing. The Court anticipates, however, that the issue will largely be resolved through analysis of a common body of evidence: Hometown's lease policies, market-rent data and rent ledgers, notices Hometown provided to prospective and current tenants, and so on. Certainly, Hometown points to nothing on this issue rebutting predominance.[26]

[24] The Court addresses below Hometown's argument that Oak Point has improved over time.

[25] Whether the two different lease structures at Oak Point—lifetime leases before 2021 and five-year lease thereafter—lead to different "classes" for § 32L(2) purposes is a legal question amenable to classwide resolution.

[26] Hometown argues that class members' "knowledge" of its nonuniform rent structure is one factor to be weighed in rebutting the presumption of unfairness. Doc. No. 227 at 34–35 (citing Swanson v. Bankers Life Co., 450 N.E.2d 577, 580 (Mass. 1983)). The Court has previously noted that an individual party's subjective view of a contract's fairness is "not relevant to the determination of whether the presumption of unfairness arises under Mass. Gen. Laws ch. 140, § 32L(2), or whether Defendants have rebutted any such presumption." Doc. No. 201 at 2 & n.2. Even if individuals' "knowledge" is one factor to be weighed in assessing Hometown's defense, though, the Court does not predict that individualized inquiries into class members' knowledge will overwhelm the common questions in this case.

Finally, damages. Damages present an individualized inquiry in most any Rule 23(b)(3) class action but rarely defeat predominance; indeed, "the black letter rule is that individual damage calculations generally do not defeat" predominance. Rubenstein, supra, § 4:54; accord In re Nexium, 777 F.3d at 21. Here, Plaintiffs' damages model leverages Hometown's internal data to calculate the extent to which class members paid more than Hometown was permitted, under the circumstances, to charge them. Doc. No. 222-10 at 15–19, 35–37. The required individual calculations fall far short of "overwhelm[ing] the common" questions in this litigation. In re Nexium, 777 F.3d at 21 (quoting Halliburton Co. v. Erica P. John Fund, Inc., 573 U.S. 258, 268 (2014)).

The issues at the heart of Plaintiffs' claims and Hometown's defenses are thus characterized by common questions and common evidence. Plaintiffs have satisfied Rule 23(b)(3)'s predominance standard, unless one of Hometown's arguments defeats this otherwise persuasive showing.

Hometown's counterarguments fall short. Hometown offers two unconvincing arguments why some of these common questions are actually individualized ones. First, Hometown argues that identifying which class members have been injured will require individualized inquiry into (1) which members paid below-market rents and (2) how class members' home purchase prices were affected by their higher-than-permitted rents. Doc. No. 227 at 29–30. But this argument is wrong for the same reasons Hometown's argument that Lee and Dernalowicz lack statutory standing is wrong. Class members were cognizably injured by Hometown's nonuniform changes in rent, regardless of whether those rents were below-market

or were in some manner offset by their home purchase price.[27] Even assuming without deciding that charging below-market rent is relevant to other issues (such as rebutting the presumption of unfairness), those issues would be analyzed and proven using a common body of evidence: the year-by-year market rates and Hometown's rent ledgers. Any individual analysis would be a ministerial comparison of rent ledgers to market rates. It is very unlikely this individual analysis—if it occurs—will predominate the common questions outlined above.

Second, Hometown argues that determining which Oak Point Class members belonged to a "similar class" for § 32L(2) purposes requires individualized inquiries.[28] Doc. No. 227 at 35–37. But Hometown's argument that there are distinct classes of Oak Point residents relies on a misunderstanding of the law. Hometown contends that the evidence for identifying "classes" of residents are the lot characteristics and amenities in place at the time each resident entered the community. Id. at 36–37. Thus, Hometown says the first tenant at Oak Point is not in the same class of residents as Lee, for example, because when the first tenant entered the park, Oak Point had "barren lots and virtually no amenities," and it now has "manicured lots" and a "full amenity package." Id. Hometown's argument reduces to a claim that § 32L(2) permits it to treat residents as belonging to different "classes" based on when they entered the community. But Hometown's position is foreclosed by Blake. The Supreme Judicial Court "reject[ed] the . . . argument that time of entry into a lot rental agreement renders the renters dissimilar under the

[27] The Court is skeptical that home purchase price has any bearing on this case for the reasons explained earlier in this Order. It certainly is not "probable" that individualized inquiries into home purchase prices will become the focus of this litigation. Bais Yaakov, 12 F.4th at 89.
[28] Hometown does not advance this argument with respect to the Miller's Woods Class. See Doc. No. 27 at 35–37.

statute." Blake, 158 N.E.3d at 24. Hometown does not explain how its argument that Oak Point has improved over time is anything other than an end-run around binding precedent.[29]

In any event, Hometown's position rests on an unreasonable interpretation of the statute. Whether residents are in a "similar class" is determined at the moment of each "change in rent."[30] Mass. Gen. Laws ch. 140, § 32L(2). Here, Hometown changed the rent at least once every year, as explained earlier. To return to the hypothetical set out above, suppose Hometown provided "virtually no amenities" in Year 3 and a "full amenity package" in Year 4. At any given point in time, all tenants in the community would experience the same level of service and thus would be in the same class. Tenants 1 through 3 would be in the same class in Year 3, and Tenants 1 through 4 would be in the same class in Year 4. Hometown points to no evidence that, at any given moment in time, there were different classes of Oak Point residents based on lot character or services. The Court does not now determine that Hometown could not prove the existence of different classes at Oak Point, but at this time Hometown's argument is mere speculation insufficient to defeat class certification. Bais Yaakov, 12 F.4th at 89. Regardless, as mentioned above, any question whether there were distinct classes of Oak Point residents will be resolved with a common body of evidence.

Hometown identifies several other issues it claims require the Court to determine which class members knew what and when: (1) its voluntary-payment defense; (2) its statute-of-limitations defense and application of the discovery rule; and (3) its rebuttal of the presumption

[29] Indeed, Hometown tacitly acknowledges that Blake forecloses its position, instead arguing that Blake does not govern with respect to Oak Point because lifetime leases are fundamentally different from five-year leases. Doc. No. 227 at 36. Whatever the merits of that argument, it is a common question of law amenable to classwide adjudication for the Oak Point Class and therefore does not undermine predominance.

[30] Or at each application of a "rule" or possibly each assessment of nonuniform rents.

of unfairness. Doc. No. 227 at 30–35. Hometown's arguments with respect to the voluntary-payment doctrine and the rebuttal of the presumption of fairness fail to undermine predominance for the reasons explained above. The statute of limitations and discovery rule require a more detailed analysis.

The parties agree, and the Court concurs, that the applicable statute of limitations is four years. Mass. Gen. Laws ch. 260, § 5A; see also Doc. No. 227 at 31; Doc. No. 234 at 11. The proposed class definitions extend nearly six years before Plaintiffs filed suit—i.e., nearly two years further back than the limitations period.

There is no question that, because Hometown changed every tenant's rent at least every year, rental changes instituted in the four years preceding Plaintiffs' filing of this suit are within the limitations period. Each "change in rent" is a new violation of the statute, not merely the ongoing effect of a single original wrong. Cf. O'Brien v. Deutsche Bank Nat'l Tr. Co., 948 F.3d 31, 35–36 (1st Cir. 2020) (holding that Chapter 93A claim for unfair mortgage accrued at initiation and rejecting argument that each subsequent loan payment pursuant to mortgage amounted to independent violation). The Court rejects Hometown's argument that class members' only claims accrued when they signed their lease agreements, Doc. No. 227 at 31, for the same reasons it earlier rejected Hometown's theory that the only possible § 32L(2) violation occurred at the initial rent-setting.

Claims arising from rent changes that that occurred earlier in the proposed class period (i.e., between June 16, 2015, and April 15, 2017) are time-barred unless Plaintiffs can show that the limitations period should be tolled, such as by application of the discovery rule. Under Massachusetts law, the limitations period is tolled until the plaintiff "discovers, or any earlier date when she should reasonably have discovered, that she has been harmed or may have been

harmed by the defendant's conduct." Epstein v. C.R. Bard, Inc., 460 F.3d 183, 187 (1st Cir. 2006) (quoting Bowen v. Eli Lilly & Co., 577 N.E.2d 739, 741 (Mass. 1990)); see also Int'l Mobiles Corp. v. Corroon & Black/Fairfield & Ellis, Inc., 560 N.E.2d 122, 126 (Mass. App. Ct. 1990) (explaining that discovery rule applies to Chapter 93A claims). Discovery has three components: "that (1) [the plaintiff] has suffered harm; (2) [the plaintiff's] harm was caused by the conduct of another; and (3) the defendant is the person who caused that harm." Harrington v. Costello, 7 N.E.3d 449, 455 (Mass. 2014). What matters is when the plaintiff knew (or should have known) the facts that give rise to her claim—not when she knew (or should have known) the legal consequences of those facts. See, e.g., Bowen, 557 N.E.2d at 741–42. Whether a plaintiff should reasonably have discovered her injury is assessed by reference to what a "reasonable person who has been subjected to the conduct which forms the basis for the plaintiff's complaint" would have known. Salvas v. Wal-Mart Stores, Inc., 893 N.E.2d 1187, 1218 (Mass. 2008) (quoting Riley v. Presnell, 565 N.E.2d 780, 785 (Mass. 1991)).

Plaintiffs argue that the Massachusetts discovery rule operates differently in class actions. Doc. No. 234 at 11–12 (citing Salvas, 893 N.E.2d at 1218). But Salvas does not stand for so broad a proposition; it merely applies the standard discovery rule in a class-action context. See Salvas, 893 N.E.2d at 1218 (first citing Koe v. Mercer, 876 N.E.2d 831 (Mass. 2007); then citing Riley, 565 N.E.2d 780; and then citing Doe v. Creighton, 786 N.E.2d 1211 (Mass. 2003)). The Salvas court determined, on the record presented and "in the circumstances of [the] case," that a factfinder could conclude a reasonable person in the class members' position would not have discovered the defendant's time-shaving violations when they occurred, even though some outlier class members may have so discovered. Id. at 1218–19.

But in the circumstances of this case, individualized inquiries would be required to determine whether class members with claims accruing outside the limitations period have carried their burden to benefit from the discovery rule. The class members would need to show that they both did not know and should not have known, until on or after April 16, 2017, that they were harmed by earlier nonuniform changes in rent. See Museum of Fine Arts, Bos. v. Seger Thomschitz, 623 F.3d 1, 7 (1st Cir. 2010) ("The party seeking the benefit of the discovery rule has the burden of showing (1) that she lacked actual knowledge of the basis for her claim and (2) that her lack of knowledge was objectively reasonable." (citing Koe, 876 N.E.2d at 836)). Unlike the time-shaving at issue in Salvas, Hometown's assessment of nonuniform rents was not the type of conduct of which a reasonable person would not have become aware until news of it became public. Contra id. at 1217–19 (crediting arguments that "given that most class members made the minimum wage and had small amounts of time allegedly shaved from their records, the individual losses may have been too small to be readily detectable" and that "class members could not have known of Wal-Mart's time-shaving practices prior to the publication of [a news] article . . . that exposed the practices").[31] In this case, assessing whether class members get the benefit of the discovery rule requires an inquiry to the class members' individual actual and (objective) inquiry knowledge.

But these individualized issues do not defeat class certification altogether. The discovery rule only matters to claims accruing before April 16, 2017. Where, as here, a class definition can be modified in a manner that satisfies the requirements of Rule 23, a "district court has many

[31] This assessment of the record by the Salvas court has been subject to criticism, see Wanshen Li v. MW S. Station, Inc., No. 15-cv-12961-FDS, 2017 WL 2407256, at *8 (D. Mass. June 2, 2017), though it is, of course, binding precedent when it controls, id. at *9. Nonetheless, in this very different circumstance, Salvas does not have the application that Plaintiffs assert.

tools at its disposal to address concerns regarding the appropriate contours of the putative class, including redefining the class during the certification process or creating subclasses." Manning v. Bos. Med. Ctr. Corp., 725 F.3d 34, 60 (1st Cir. 2013); see also Powers v. Receivables Performance Mgmt., LLC, __ F. Supp. 3d __, 2025 WL 2734706 (D. Mass. 2025); cf. Mantha, 347 F.R.D. at 391 ("A class definition that runs afoul to the proscription on fail-safe classes can and often should be solved by refining the class definition rather than by flatly denying class certification on that basis." (citation modified)).

Accordingly, the Court exercises its discretion to modify the class periods for the damages classes in the following way: the Oak Point Class is modified to include "persons who have paid home-site rent . . . at any time since April 16, 2017," and the Miller's Woods Class is modified to include "persons who have paid home-site rent . . . at any time from April 16, 2017 to December 31, 2024." This modification is without prejudice to any plaintiffs who have claims outside the limitations period bringing those claims individually and attempting to show that the discovery rule tolls the clock for their claims.

b. Superiority

Rule 23(b)(3) also requires a finding "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." As to the superiority inquiry, a court will often consider four factors:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3)(A)–(D).

A court will also consider the alternatives to a class action, because "[t]he policy

at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for an individual to bring a solo action prosecuting his or her rights." Amchem, 521 U.S. at 617 (citation modified). This inquiry ensures that class actions will "achieve economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." Id. (quoting Fed. R. Civ. P. 23(b)(3) advisory committee's note to 1966 amendment).

Plaintiffs have sufficiently established that a class action is superior to other methods for resolving this dispute. The proposed class members here are all people in their fifties and older, many presumably living on a fixed income. See Doc. No. 227 at 11. Plaintiffs argue that many lack the means to support individual litigation. Doc. No. 223 at 19. The potential for individual recovery under Chapter 93A is not miniscule, but it pales in comparison to the costs of litigation. Thus, these putative class members may lack the incentive to bring individual claims, a problem that the class mechanism can overcome. See Amchem, 521 U.S. at 617; Fed. R. Civ. P. 23(b)(3)(A). Perhaps relatedly, there is no evidence of any other ongoing litigation by or against any class members concerning this controversy. See Fed. R. Civ. P. 23(b)(3)(B). Resolving the class members' claims in a single forum would also provide "flexibility, control, and consistency that would not exist with individual litigation." Krakauer, 311 F.R.D. at 400 (citing Fed. R. Civ. P. 23(b)(3)(C)). There are no great difficulties in managing this class action, as the foregoing discussion indicates. See Fed. R. Civ. P. 23(b)(3)(D).

Hometown's only argument against superiority is that the potential for individual recovery is not insignificant due to the availability of treble damages under Chapter 93A. Doc. No. 227 at 37–38 (arguing that Lee's individual claim could exceed $75,000 with treble

damages). That argument may prevail in some cases, but not in this one. The individual recovery for any class member, even with the possibility of treble damages, is vastly outweighed by the immense resources that have been and presumably will continue to be devoted to this dispute. Already, this matter has been in litigation for nearly five years. The parties submitted thousands of pages of documents just in support of or against the damages-class-certification motion. Even more importantly, as this Order illustrates, this case presents complex, novel issues of law. It is more efficient and fairer to the parties and to the judicial system to concentrate resources on the present class action.

3. *Ascertainability*

"Rule 23 has an implicit requirement that a putative class be ascertainable with reference to objective criteria." Mantha, 347 F.R.D. at 391 (citation modified); see also In re Nexium, 777 F.3d at 19 ("[T]he definition of the class must be 'definite,' that is, the standards must allow the class members to be ascertainable."). A class is ascertainable if it permits the Court to "decide and declare who will receive notice, who will share in any recovery, and who will be bound by the judgment." Hebert v. Vantage Travel Serv., Inc., 334 F.R.D. 362, 370 (D. Mass. 2019) (citation modified). The Court must also consider whether the proposed class's scope is "administratively feasible." Id. (citation modified).

The proposed class definitions satisfy this standard, which Hometown does not dispute. Both the Oak Point and Miller's Woods Classes are defined by reference to objective and definite criteria: persons who paid "home-site rent" in the communities during specified time periods. The definitions do not incorporate criteria that depend on the outcome of the litigation. Cf. Mantha, 347 F.R.D. at 391–92 (refining proposed class definition that would otherwise be impermissible fail-safe class).

The proposed classes are also administratively feasible. Hebert, 334 F.R.D. at 370. Hometown has produced rent ledgers for the Oak Point and Miller's Woods Classes that "identify all home-site rent payments assessed at each community during the applicable class periods . . . [and] identify the tenants or other occupants associated with each home-site rent transaction." Doc. No. 223 at 15 (citing Doc. No. 222-10 ¶¶ 103–114; Doc. No. 222-4 at 14–15 (86:23–91:3)). These records allow for identification of the tenants associated with each home-site rent transaction during the class periods. In most cases, the tenant associated with the rent payment likely is the class member; presently, there is no reason to suspect a meaningful number of "persons who have paid home-site rent" during the class period were not tenants identified in the ledgers. But if there are limited numbers of such distinctions, Plaintiffs' proposed notification plan adequately notifies non-tenant class members of their rights. Doc. No. 222-14 ¶¶ 16–17, 27–28; id. at 35, 46. Individual disputes, if any, may be straightforwardly resolved.

Lee and Dernalowicz have satisfied Rule 23. The Court ALLOWS IN PART the renewed motion to certify the damages classes (Doc. No. 222) and certifies the below classes:

> (1) a Rule 23(b)(3) class of persons who have paid home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts at any time since April 16, 2017 ("Oak Point Class"), with plaintiff Lee as class representative and attorney Horowitz as class counsel; and
>
> (2) a Rule 23(b)(3) class of persons who have paid home-site rent to the Miller's Woods and River Bend Manufactured Housing Community located in Athol, Massachusetts at any time from April 16, 2017 to December 31, 2024 ("Miller's Woods Class"), with plaintiff Dernalowicz as class representative and attorney Horowitz as class counsel.

4. *Class Notice Plan*

Finally, Plaintiffs request that the Court approve their proposed class notice plan under Rule 23(c)(2)(B). Doc. No. 223 at 19–20; see also Doc. No. 222-14. Plaintiffs propose to contract with Atticus Administration, LLC, a class-action administration provider, to notify the

Oak Point and Miller's Woods Class members of the instant litigation. Doc. No. 222-14 ¶¶ 2–4. Atticus will mail a class-action notice to all class-period tenants at Oak Point, using data provided by Hometown to identify the recipients.[32] Id. ¶¶ 7, 11–15; see also id. at 26–33 (proposed notice). The class-notice mailer includes basic information about the suit (the identity of class representative and class counsel, the claims, and the class certification) as well as class members' right to opt out. Id. at 26–33. Atticus will also (1) publish a notice in the Boston Globe once per week for two consecutive weeks and (2) maintain a website with "all important information pertaining to" this litigation. Id. ¶¶ 16–17; see also id. at 35 (proposed newspaper notice). Atticus will follow the same blueprint for the Miller's Woods Class, except that the class notice will be published in the Worcester Telegram & Gazette, not the Globe.[33] Id. ¶¶ 18–28; see also id. at 37–46. Defendants do not lodge any opposition to this notice plan.

The Rules require the Court to direct to Rule 23(b)(3) class members the "best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Here, the proposed plan includes individual notice via first-class mail to all tenants who lived in Oak Point and Miller's Woods during the respective class periods. Current tenants' address information, which was provided by Hometown (the owner of the MHCs in which the tenants reside) is reliable and readily ascertainable. Atticus has proposed an iterative process to identify former tenants' present addresses. Doc. No. 222-14 ¶¶ 13–15, 25–26. It also proposes to publish in the

[32] The current and former tenants identified in the proposal are those who paid home-site rent at Oak Point from June 2015 to February 2025. Doc. No. 222-14 ¶ 7. The Court's approval of this notification plan is contingent on Plaintiffs and Atticus adjusting the recipient list to reflect the certified class period.

[33] Again, the Miller's Woods recipients should align with the certified class period.

respective papers of record legal notices of this action. The proposed notices provide, in plain language, all the information required by Rule 23(c)(2)(B)(i)–(vii).

Plaintiffs' proposal is designed to individually notify all identifiable class members of the instant litigation and members' opt-out rights, supplemented with notice-by-publication. This plan is the "best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B). Accordingly, the Court approves the plan, with a few caveats. First, as noted above, the notice plan and notices should be refined to reflect the class definitions and periods actually certified herein. Second, as part of the joint status report the Court orders below, the parties shall propose an opt-out deadline for Oak Point and Miller's Woods Class members, which, if the Court approves the deadline, shall be incorporated into the notices.

Next, the Court turns to the renewed motion to certify a Rule 23(b)(2) class at Oak Point.

B. Rule 23(b)(2) Class

Plaintiffs Lee and MFM seek to certify the following class pursuant to Rule 23(b)(2):

> a Rule 23(b)(2) class of persons who are paying or will pay home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts ("Oak Point Rent-Payer Class").

Doc. No. 231 at 4. Lee and MFM are the proposed class representatives, and attorney Horowitz is the proposed class counsel. Id. Lee and MFM must show that the Oak Point Rent-Payer Class satisfies the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy and the Rule 23(b)(2) requirement that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole." As noted, Hometown advances against the proposed Rule 23(b)(2) class many of the same arguments it made against the Rule 23(b)(3) classes, which the Court addressed at length above.

1. *Rule 23(a) Prerequisites*

a. Numerosity

Oak Point comprises nearly 1,000 home sites. Doc. No. 227-1 ¶ 15. The proposed class of persons "who are paying or will pay home-site rent" at Oak Point therefore easily satisfies the numerosity requirement. Fed. R. Civ. P. 23(a)(1); see, e.g., Mantha, 347 F.R.D. at 392. Hometown does not challenge this conclusion.

b. Commonality

Just as the Oak Point damages class members' claims "depend upon . . . common contention[s]," Wal-Mart Stores, 564 U.S. at 350, so too do the Oak Point injunction class members' claims. Hometown does not challenge this conclusion, either.

c. Typicality

Lee's and the other MFM members' claims are typical of the injunction class members' claims: their alleged injuries arose from a common rent policy Hometown implements at Oak Point. See, e.g., Mantha, 347 F.R.D. at 393. Hometown advances the same argument against typicality that it made with respect to the damages class—that some putative class members' only claims are against Oak Point's prior owners, Saxon Partners. Doc. No. 240 at 19. The Court has already rejected that argument because it relies on a misreading of § 32L(2), which by its plain language applies to any nonuniform "rule or change in rent." The analysis above applies with equal force to the injunction class.

d. Adequacy

Lee and MFM have demonstrated that they are knowledgeable and engaged class representatives who will "fairly and adequately protect the interests of" the absent class members, Fed. R. Civ. P. 23(a)(4); see also Doc. No. 231-1 ¶¶ 11–14; Doc. No. 231-2 ¶¶ 22–24

—and that attorney Horowitz is "qualified, experienced and able to vigorously conduct the proposed litigation," Andrews, 780 F.2d at 130; see also Fed. R. Civ. P. 23(g). Hometown advances the same arguments about Lee's statutory standing that it made with respect to the damages class—that, if Hometown charged Lee below-market rent, she was not injured, and that a possible decrease in Lee's home purchase price negated her injury.[34] Doc. No. 240 at 13–15 & n.6. The Court has thoroughly addressed and rejected those arguments above, and its analysis applies equally here.

Hometown argues that organizational plaintiff MFM lacks standing. Id. at 15. A membership association such as MFM has standing, in an Article III sense, when three prerequisites are satisfied: "(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977). Associational standing may be appropriate when the relief sought is "a declaration, injunction, or some other form of prospective relief." Id. (quoting Warth v. Seldin, 422 U.S. 490, 515 (1975)). Massachusetts has adopted the Hunt standard for associational standing for claims seeking declaratory judgment or equitable relief. Associated Subcontractors of Mass., Inc. v. Univ. of Mass. Bldg. Auth., 810 N.E.2d 1214, 1218–19 (Mass. 2004) (citing Hunt, 432

[34] The only new aspect of Hometown's argument with respect to Lee's statutory standing is its contention that Lee's benchmark for injury—a comparison to the lowest rent for similarly situated tenants—is "arbitrary." Doc. No. 240 at 14. That benchmark is not arbitrary; it reflects Hometown's rent policy. Hometown (like its predecessor) charged new entrants higher rents based upon year of entry. When new entrants moved in, a "uniform" change of rent would have set their rent equal to the incumbent tenants' (lower) rent. The longest-standing lease is thus the benchmark for all later-arriving tenants. And, under Hometown's policy, the longest-standing lease corresponds to the lowest-rent lease. Whether lowering all rents to this level is the equitable remedy warranted after trial presents a different question not now before the Court.

U.S. at 343); Animal Legal Def. Fund, Inc. v. Fisheries & Wildlife Bd., 624 N.E.2d 556, 559 & n.4 (Mass. 1993) (same); see also Modified Motorcycle Ass'n of Mass., Inc. v. Massachusetts, 799 N.E.2d 597, 599 (Mass. App. Ct. 2003) ("[N]either the claim of preemption nor the request for declaratory relief 'requires individualized proof[;] . . . both are thus properly resolved in a group context.'" (quoting Hunt, 432 U.S. at 344)); Fathers & Fams., Inc. v. Mulligan, No. SUCV2009-01069E, 2009 WL 3204984, at *6 (Mass. Super. Ct. Sep. 23, 2009) (noting that "this action does not require individual member participation because the complaint seeks only declaratory and equitable relief"). Hometown has not shown that Chapter 93A displaces this generally applicable standard for associational standing in suits seeking equitable relief. See Mass. Gen. Laws ch. 93A, § 9(1) (authorizing "[a]ny person . . . who has been injured" to file suit, including for equitable relief); id. § 1(a) (defining "person" to include "incorporated or unincorporated associations").

Twenty current members of MFM—including Lee—are Oak Point tenants. Doc. No. 231-2 ¶ 8. Hometown's arguments with respect to MFM's members' standing rise and fall with its arguments regarding Lee's standing (and, in this case, they fall). Doc. No. 240 at 15. Thus, several of MFM's individual members have standing to sue. MFM has also shown that the interests it seeks to protect are germane to its purpose. According to MFM's president, the organization is "dedicated to protecting the rights of manufactured housing residents in Massachusetts." Doc. No. 231-2 ¶ 1. To serve that purpose, the entity seeks through this litigation to "stop Oak Point from overcharging everyone in the community who is paying or will pay home-site rent to Oak Point." Doc. No. 231-2 ¶¶ 18–19. Finally, the injunctive relief MFM seeks does not require the participation of individual members. Cf. Hunt, 432 U.S. at 343–44. Accordingly, MFM has standing to pursue a claim for injunctive relief.

Hometown's primary argument against adequacy centers around the purported existence of a substantial intra-class conflict. Doc. No. 240 at 15–24. An intra-class conflict can defeat certification of a Rule 23(b)(2) class on adequacy grounds. But "[o]nly conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the Rule 23(a)(4) adequacy requirement." Matamoros v. Starbucks Corp., 699 F.3d 129, 138 (1st Cir. 2012) (quoting 1 William B. Rubenstein, Newberg on Class Actions § 3:58 (5th ed. 2012)). In other words, to defeat class certification, the intra-class conflict must be "so substantial as to overbalance the common interests of the class members as a whole." Id. "[A]n interest by certain putative class members in maintaining the allegedly unlawful policy is not a reason to deny class certification." Id. (citation modified). To the extent Hometown's argument turns on some class members' interest in maintaining its "allegedly unlawful" rent policy, that interest is not a basis to deny certification. However, depending on the contours of the injunctive relief, it is plausible—but, as the Court will explain, not likely—that class members' differing interests could create an "actual and substantial risk of skewing available relief in favor of some subset of class members." Cohen v. Brown Univ., 16 F.4th 935, 950 (1st Cir. 2021).

The potential intra-class conflict would result, if at all, from the effect of Plaintiffs' injunctive relief on Hometown. If the injunction substantially reduces Oak Point revenue, Hometown could make various cuts to its profits, services, amenities, and capital improvements.[35] As the parties acknowledge, presumably no putative class member opposes lowering their own rent, all else being equal. But class members may objectively oppose an

[35] Indeed, counsel for Plaintiffs acknowledged at the December 19 hearing that, if Hometown proved that the injunction would force it to make significant cuts to its operating and/or capital expenditures, there may be a conflict that could require decertification or modification of the class definition, or alternatively that such an injunction could be inequitable.

injunction that comes at too high a cost. This conflict turns, most likely, on whether class members moved into Oak Point long ago (and thus have lower rents) or recently (and thus have higher rents). For example, class members who have lived in Oak Point for decades and thus pay near the least in rent may oppose the injunction if it comes at the expense of services and amenities that are objectively more valuable to them than a de minimis rent decrease.

The existence of an intra-class conflict thus turns on the resolution of two issues (assuming for the sake of this analysis that Plaintiffs succeed on the merits of their claim). The first issue is the injunction's contours. The briefing largely focuses on what might be understood as the most "extreme" remedy: an injunction immediately lowering all rents in Oak Point to the lowest rent and thereafter stepping up to the next-lowest rent each time the lowest-rent tenant leaves Oak Point. See, e.g., Doc. No. 240 at 7–12, 16–23. But counsel for Plaintiffs made clear at the December 19 hearing that this injunction is not the only potential remedy. In "choosing among equitable remedies," the Court has "the ability—indeed, the duty—to weigh all the relevant facts and circumstances and to craft appropriate relief on a case-by-case basis." In re Blinds to Go Share Purchase Litig., 443 F.3d 1, 8 (1st Cir. 2006); see also Mass. Gen. Laws ch. 93A, § 9(1) (authorizing "such equitable relief, including an injunction, as the court deems to be necessary and proper"); Kattar, 739 N.E.2d at 260 ("[Chapter 93A] granted full authority to the courts to use their traditional equity power to fashion decrees to remedy the wrong complained of and to make the decree effective." (quoting Commonwealth v. DeCotis, 316 N.E.2d 748, 756 (Mass. 1974))). As just one example, the Court could conclude that a fair and equitable remedy under the circumstances is one that sets Oak Point on a multiyear glidepath to uniformity, like the "transition plan" already implemented at Miller's Woods. The contours of the injunction will

plainly shape the resulting effect on Hometown's revenues and the existence, if any, of intra-class conflict. But the Court cannot determine those contours at the class-certification stage.

The second issue is how Hometown ultimately responds to the injunctive relief and its effect on Hometown's revenues. Under the "extreme" remedy sketched above, Hometown contends that the injunction will cut its revenues by about $60 million total over the next twenty-five years, forcing it to cut back on expenditures that benefit the Oak Point community.[36] Doc. No. 240 at 15–24; Doc. No. 227-3 at 38. Hometown has not definitively established which expenditures it would cut, though its executives have made clear that, if revenues were substantially reduced, a "likely scenario" is that "services would be reduced" below the current standard. Doc. No. 231-5 at 19 (106:15–24). Indeed, the only reasonable inference to draw from the record before the Court is that cuts to Oak Point's revenues will affect its profits, its capital expenditures, its operating expenditures, or some combination of the three. The deeper the cut, the more likely it is to affect all three. But, Plaintiffs argue, Hometown could decide to internalize the injunction's costs. There is some support for this argument in the present record. For example, a former Hometown executive explained that Hometown would "[a]bsolutely not" cut resident services if revenues were substantially reduced because "it's not the right and prudent thing to do" and "[i]t's not good for long-term business relations." Doc. No. 231-6 at 6–7, 9. In any event, the record fails to establish what Hometown would do if its revenues were substantially reduced in response to an injunction which, at present, is neither crafted nor issued.

The Court cannot presently conclude that, if Plaintiffs succeed in this litigation, Hometown will necessarily make cuts that would meaningfully affect Oak Point tenants such that an intra-class conflict is manifest. Indeed, these two scenarios appear mutually exclusive: if

[36] The Court accepts this estimate for the purpose of the present analysis only.

the injunctive relief were to create a substantial intra-class conflict, decertification will be required; if it does not, then there is no intra-class conflict. The potential intra-class conflict is "dependent upon some future event . . . that might never occur" rather than "manifest at the time of certification." Rubenstein, supra, § 3:58. Accordingly, the specter of potential intra-class conflict does not defeat class certification at this time.

In short, Lee and MFM have shown that the proposed injunction class satisfies the Rule 23(a) standards, and the Court turns to the requirements of Rule 23(b)(2).

2. *Rule 23(b)(2) Standard*

To certify a Rule 23(b)(2) injunction class, the Court must determine that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief . . . is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). "Rule 23(b)(2) applies only when a single injunction or declaratory judgment would provide relief to each member of the class." Wal-Mart, 564 U.S. at 360. A Rule 23(b)(2) class must be sufficiently "cohesive" in that the challenged conduct "can be enjoined . . . only as to all of the class members or as to none of them." Reid v. Donelan, 17 F.4th 1, 11 (1st Cir. 2021) (quoting Wal-Mart, 564 U.S. at 360).

Here, Plaintiffs challenge Oak Point's "policy and practice" of charging different rents to tenants based upon their time of entry to the community, allegedly in violation of § 32L(2). Hometown has "acted . . . on grounds that apply generally to the class." Fed. R. Civ. P. 23(b)(2). If Plaintiffs show that Hometown's nonuniform rent structure is unlawful, a classwide injunction would provide complete relief. In other words, the challenged conduct may be enjoined as to all of the class members or as to none of them.

Hometown marshals many of the arguments it made against predominance in the Rule 23(b)(3) classes against cohesiveness in the Rule 23(b)(2) class. Doc. No. 240 at 27–31. For the

same reasons the Court rejected them above, none of these arguments support finding that the proposed injunction class is not cohesive.

First, Hometown argues that Plaintiffs cannot show the existence of a classwide injury because their "injury" is not measured against fair-market rent. Id. at 26. The Court has considered and rejected that theory. Second, Hometown argues that its statute-of-limitations defense defeats cohesiveness. Id. at 27–28. But the Court has explained why Hometown is wrong when it claims that the only potential violation of § 32L(2) is the initial setting of rent. Hometown changes the rent for all current Oak Point tenants every year.[37] Thus, the injunction class members—who are current or future Oak Point rent-payers—all have claims that are not time-barred. Third, Hometown argues that its rebuttal of the presumption of unfairness requires individual inquiry into each putative class member's actual knowledge. Doc. No. 240 at 30–31. The Court has previously determined that the fairness determination will most likely turn, primarily, on a common body of evidence. Finally, Hometown contends that determining which Oak Point tenants are similarly situated is an inquiry that defeats cohesiveness. Doc. No. 240 at 31. As the Court has explained, though, Hometown is unlikely to rebut Plaintiffs' showing that all Oak Point members were and are similarly situated for purposes of § 32L(2).

Hometown's only new argument is that its laches affirmative defense requires individualized inquiries that defeat cohesiveness. Doc. No. 240 at 28–30. "The doctrine of laches operates in equity as an affirmative defense against a plaintiff whose unreasonable delay in bringing a claim results in some injury or prejudice to the defendant." W. Broadway Task Force v. Bos. Hous. Auth., 608 N.E.3d 713, 716 (Mass. 1993). Hometown's laches argument

[37] Hometown also assesses nonuniform rents and implements its nonuniform rent "policy" each month. As the Court has explained, it need not and does not now resolve which liability theory represents the best interpretation of § 32L(2).

fails to undermine cohesiveness for several reasons. To establish a laches defense, Hometown must "establish both actual knowledge . . . and prejudice." Woodward Sch. for Girls, Inc. v. City of Quincy, 13 N.E.3d 579, 603 (Mass. 2014) (emphasis added). But Hometown has failed to point to any way in which it has been prejudiced by class members' purported delay in bringing their claims. Cf., e.g., Colony of Wellfleet, Inc. v. Harris, 883 N.E.2d 1235, 1243 (Mass. App. 2008) (defendant prejudiced by unreasonable delay when key witnesses died before trial). Second, whether laches lies as an affirmative defense in this case is, first, a question of law amenable to classwide resolution.[38] Moreover, even if Hometown has a colorable laches defense against some class members, the possibility of some individual issues does not necessarily undermine cohesiveness. "In determining whether cohesiveness is present, courts tend to focus on whether adjudication is likely to break down into individual inquiries." Rubenstein, supra, § 4:34. At this point, the Court predicts that the litigation will not "break down into individual inquiries" over the laches defense.

Lee and MFM have satisfied Rule 23. The Court ALLOWS the renewed motion to certify the injunction class (Doc. No. 231) and certifies the below class:

> a Rule 23(b)(2) class of persons who are paying or will pay home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts ("Oak Point Rent-Payer Class"), with plaintiffs Lee and MFM as class representatives and attorney Horowitz as class counsel.

[38] Plaintiffs argue that, under Massachusetts law, laches does not run against public rights. Doc. No. 241 at 11 n.7; see also, e.g., Carnegie Inst. of Med. Lab'y Technique, Inc. v. Approving Auth. for Schs. for Training Med. Lab'y Technologists, 213 N.E.2d 225, 228 (Mass. 1965). Hometown argues that this principle applies only when a party is vindicating public rights rather than their own private interests. Doc. No. 242 at 2 n.1. Resolution of this dispute does not require any individualized inquiry; the Court need not and does not resolve it now.

3. *Class Notice Plan*

Plaintiffs propose to notify Oak Point Rent-Payer Class members of the present litigation. Plaintiffs' proposal largely mirrors the notice plan for the Rule 23(b)(3) classes approved above: Atticus would mail notices to all Oak Point home sites and operate a website with pertinent information. Doc. No. 231 at 4–5; Doc. No. 231-8. The proposed notice advises class members, among other things, that they do not have the right to opt out of the class. Doc. No. 231-8 at 7. It explains, "If you do not believe this lawsuit is in your best interest, the only way for your voice to be heard by the Court is to ask the Court to add you separately to the lawsuit, a process called intervention." Id. at 2.

The Rules do not require class-certification notice to Rule 23(b)(2) class members. See Fed. R. Civ. P. 23(c)(2)(A) ("For any class certified under Rule 23(b)(1) or (b)(2), the court may direct appropriate notice to the class." (emphasis added)). Although such notice is not required, it is appropriate in this case, particularly because current Oak Point rent-payers are now members of two distinct classes with different attendant rights. Current class members are readily identifiable from Hometown's own records, as discussed in connection with the Oak Point damages class above. The Court approves the proposed class notice plan for the injunction class.

C. Motion to Strike

Finally, the Court addresses Hometown's motion to strike Plaintiffs' expert report. Doc. No. 228. Hometown's argument turns primarily on its "injury" theories the Court earlier rejected. Doc. No. 229 at 6–7, 13–16. That is, Hometown argues that the expert's damages model cannot be used to show classwide injury because it fails to incorporate fair-market rental rates or to account for the effects high rents had on home purchase prices, and that it is therefore irrelevant. Id. The Court has explained why neither fair-market rent nor home purchase price is

a relevant consideration to establishing a Chapter 93A injury in this case. Hometown's injury arguments thus are not a basis on which to strike the expert's report, and the motion is DENIED.

IV. CONCLUSION

For the foregoing reasons and to the extent discussed herein, the Court ALLOWS IN PART the renewed motions for class certification (Doc. No. 222, 231) and DENIES Hometown's motion to strike Plaintiffs' expert report (Doc. No. 228). Specifically, the Court certifies the following classes:

(1) a Rule 23(b)(3) class of persons who have paid home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts at any time since April 16, 2017 ("Oak Point Class"), with plaintiff Lee as class representative and attorney Horowitz as class counsel;

(2) a Rule 23(b)(3) class of persons who have paid home-site rent to the Miller's Woods and River Bend Manufactured Housing Community located in Athol, Massachusetts at any time from April 16, 2017 to December 31, 2024 ("Miller's Woods Class"), with plaintiff Dernalowicz as class representative and attorney Horowitz as class counsel; and

(3) a Rule 23(b)(2) class of persons who are paying or will pay home-site rent to the Oak Point Manufactured Housing Community located in Middleborough, Massachusetts ("Oak Point Rent-Payer Class"), with plaintiffs Lee and MFM as class representatives and attorney Horowitz as class counsel.

The parties shall submit a joint status report setting out their joint or separate positions as to (1) the Rule 23(b)(3) class member opt-out deadline; (2) summary judgment motions, see Doc. No. 133; (3) the timing, shape, and duration of trial, including whether trial is by jury on some or all issues; and (4) whether the parties wish to build into that schedule mediation either via the Court's program or with a private mediator. The status report is due January 23, 2026. The Clerk shall schedule a prompt status conference after receiving that report.

SO ORDERED.

/s/ Leo T. Sorokin
United States District Judge