UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RACHELLE BAKER and JASON DITTMANN, individually and on behalf of all others similarly situated,	Civil Action No. 13-12217
Plaintiff.	Middlesex Superior Court Civil Action No. 2013-03630
v.	
EQUITY RESIDENTIAL MANAGEMENT, L.L.C. and EQR-WALDEN PARK, L.L.C.,	NOTICE OF REMOVAL UNDER 28 U.S.C. §§ 1332, 1441, 1446, and 1453
Defendants.	

SECOND NOTICE OF REMOVAL FROM STATE COURT

Pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, defendants Equity Residential Management, L.L.C. and EQR-Walden Park, L.L.C. hereby give notice of a second removal of Civil Action No. 2013-03630 from the Superior Court Department for Middlesex County, Massachusetts, to the United States District Court for the District of Massachusetts. In support of this notice, defendants state as follows:

A. BACKGROUND

1. On or about August 15, 2013, plaintiffs Rachelle Baker and Jason Dittman commenced a putative class action, entitled *Rachelle Baker and Jason Dittmann v. Equity Residential Management, L.L.C. and EQR-Walden Park, L.L.C.*, Civil Action No. 2013-03630 (the "Complaint"), in Middlesex Superior Court. A true and accurate copy of the Complaint is attached as Exhibit A.

2. The Complaint alleges that defendants failed to provide heat and hot water service, for a period in excess of one year, to themselves and other similarly situated tenants in

two apartment buildings located in Cambridge, Massachusetts. The Complaint alleges the following causes of action: (1) violation of G.L. c. 186, § 14; (2) breach of the implied covenant of quiet enjoyment; (3) breach of the implied warranty of habitability; (4) unjust enrichment; and (5) violation of G.L. c. 93A, §§ 2 and 9. Ex. A, ¶¶ 35-73.

3. As stated in the Civil Action Cover Sheet filed simultaneously with the Complaint, plaintiffs sought actual damages of three million dollars ($3,000,000.00). A true and accurate copy of the Civil Action Cover Sheet is attached as Exhibit B.

4. On September 6, 2013, defendants filed a first notice of removal to this Court. *See* Civil Action No. 1:13-cv-12217-RBC, Dkt. No. 1 (the "First Notice of Removal"). In the First Notice of Removal, defendants alleged that all of the elements for removal were met under the Class Action Fairness Act of 2005 ("CAFA"), including the $5,000,000 amount-in-controversy requirement. Specifically, defendants alleged that the $3,000,000 in damages set forth in the Civil Action Cover Sheet, when trebled pursuant to G.L. c. 93A, yields $9,000,000—a figure which clearly exceeds the $5,000,000 jurisdictional threshold set forth by CAFA. First Notice of Removal ¶¶ 13-14.

5. On September 9, 2013, plaintiffs filed a motion for remand to state court. *See* Civil Action No. 1:13-cv-12217-RBC, Dkt. No. 6 (motion), Dkt. No. 7 (memorandum in support). Plaintiffs argued that the case should be remanded because "the amount in controversy in this case does not exceed the sum or value of $5 million, exclusive of interest and costs, as is required by CAFA for removal." *Id*., Dkt. No. 7, at 1.

6. On February 12, 2014, Magistrate Judge Collings granted plaintiffs' motion for remand. *See* Civil Action No. 1:13-cv-12217-RBC, Dkt. No. 22. A true and accurate copy of Judge Collings' remand order is attached as Exhibit C. In the remand order, Judge Collings

found that the plaintiffs' demand in their Civil Action Cover Sheet notwithstanding, actual damages based on the pleadings were more reasonably calculated to be a maximum of $1,823,256, and statutory damages (*i.e.*, "triple rent" damages pursuant to G.L. c. 186, § 14) were more reasonably calculated to be a maximum of $2,355,039. *Id*. at 14. Because double recovery is not permissible, Judge Collings found that only the larger of these two sums ($2,355,039) would control, and even with attorneys' fees there would be no way to reach the $5,000,000 threshold. *Id*. at 15-17. In sum, Judge Collings concluded that "[b]ecause Equity 'has not demonstrated a reasonable probability that the amount in controversy exceeds $5 million,' the case must be remanded." *Id*. at 17 (quoting *Amoche v. Guar. Trust Life Ins. Co.*, 556 F.3d 41, 52 (1st Cir. 2009)).

7. Following remand, the parties engaged in fact discovery in the Superior Court. After the close of discovery, plaintiffs moved for class certification and the Superior Court certified two classes: (1) an "Admitted Outage Class"; and (2) a "Construction Project Class." *See* June 27, 2017 Memorandum and Order on Plaintiffs' Motion for Class Certification ("Class Certification Order," attached as Exhibit D) at 2-3.

8. The parties are currently engaged in expert discovery, pursuant to a schedule entered by the Superior Court following the Class Certification Order.

9. On May 30, 2018, in keeping with the expert discovery schedule set by the Superior Court, plaintiffs served on defendants two expert reports, including an expert report on damages (the "Damages Report"). A true and accurate copy of the Damages Report is attached as Exhibit E. This was the first time since the filing of the Complaint that plaintiffs provided any further elaboration of, or specific information about, the damages they were seeking. The Damages Report opines that "Damages Based on the Implied Warranty of Habitability, Unjust

Enrichment and Chapter 93A Claims" are calculated to be $4,146,882 for the Admitted Outage Class and $3,725,592 for the Construction Project Class, respectively, for a total of $7,872,474. *See* Ex. E, at 1. The Damages Report further opines that "Damages Based on the Covenant of Quiet Enjoyment Claims" are calculated to be $10,016,586. Putting aside whether only one of these amounts is recoverable (*e.g.*, the greater of $7,872,474 or $10,016,586), instead of both added together (*e.g.*, $17,889,060), in either case the numbers are well in excess of $5,000,000.

B. GROUNDS FOR REMOVAL

10. 28 U.S.C. § 1441(a) establishes when an action commenced in state court is removable, providing in relevant part that:

> any civil action brought in a state court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or the defendants, to the district court of the United States for the district and division embracing the place where such action is pending.

11. This Court's subject matter jurisdiction is grounded upon diversity of citizenship. *See* 28 U.S.C. § 1332(d), as amended by the Class Action Fairness Act of 2005 ("CAFA").

12. CAFA provides for federal subject matter jurisdiction over any class action in which the aggregate number of putative class members in all proposed plaintiff classes is at least 100, the matter in controversy exceeds the sum or value of $5,000,000, and any member of a class of plaintiffs is a citizen of a different state from any defendant. *Id.* §§ 1332(d)(2) and (5).

The number of putative class members is at least 100.

13. CAFA defines a "class action" as "any civil action filed under Rule 23 of the Federal Rules of Civil Procedure or similar state statute or rule of judicial procedure authorizing an action to be brought by 1 or more representative persons as a class action." *Id.* § 1332(d)(1)(B). CAFA also requires that "the number of members of all proposed plaintiff classes in the aggregate" be 100 or greater. *Id.* § 1332(d)(5)(B).

14. Defendants deny that plaintiffs have properly identified a viable class, or that plaintiffs are necessarily adequate representatives of their putative class. Nevertheless, it is undisputed that there are 116 units at the 205 Walden Street property and 116 units at the 225 Walden Street property, for a total of 232 units. *See* Ex. D, at 4. Thus, based on plaintiffs' allegations and on the Class Certification Order, the number of class members is at minimum 232. *See also id*. at 5 (Superior Court finding that "[t]he numerosity requirement is met"). Indeed, plaintiffs' Damages Report bases its calculations on a list of 1534 tenants. *See* Ex. E, at 2. Thus, CAFA's requirement of 100 class members is readily met.

The amount in controversy exceeds $5,000,000.

15. In order to support removal, CAFA requires that the amount in controversy exceeds $5,000,000, exclusive of interest and costs. 28 U.S.C. § 1332(d)(6).

16. The Damages Report specifies a total of $7,872,474 for "Damages Based on the Implied Warranty of Habitability, Unjust Enrichment and Chapter 93A Claims," and a total of $10,016,586 for "Damages Based on the Covenant of Quiet Enjoyment Claims." *See* Ex. E, at 1. Either of these damages figures is well in excess of the $5,000,000 threshold under CAFA.

17. Defendants deny that plaintiffs will be able to establish their entitlement to any of the damages specified in the Damages Report, or to any other amount. Defendants also deny that plaintiffs will be able to establish their entitlement to multiple damages or attorneys' fees. As the First Circuit has made clear, however, "the pertinent question" for removal purposes "is what is *in controversy* in the case, not how much the plaintiffs are ultimately likely to recover." *Amoche*, 556 F.3d at 51 (emphasis in original).

Minimal diversity exists.

18. Under CAFA, minimal diversity exists if "any member of a class of plaintiffs is a citizen of a State different from any defendant." 28 U.S.C. § 1332(d)(2)(A).

19. Plaintiffs allege that they reside in Massachusetts. *See* Ex. A, ¶ 6.

20. For diversity purposes, a person is a "citizen" of the state in which s/he is domiciled, and residence is prima facie evidence of domicile.

21. Defendant Equity Residential Management, L.L.C. is a Delaware limited liability company with its principal place of business in Chicago, Illinois. *See* Affidavit of James D. Fiffer (attached as Exhibit F), ¶ 3. Accordingly, for CAFA removal purposes, it is a citizen of the states of Delaware and Illinois. *See* 28 U.S.C. §§ 1332(c), (d)(10).

22. Defendant EQR-Walden Park, L.L.C. is a Delaware limited liability company with its principal place of business in Chicago, Illinois. *See* Ex. F, ¶ 4. Accordingly, for CAFA removal purposes, it is a citizen of the states of Delaware and Illinois. *See* 28 U.S.C. §§ 1332(c), (d)(10).

23. Because at least one plaintiff in this putative class action is a citizen of a state different from at least one defendant, diversity of citizenship exists under 28 U.S.C. § 1332(d)(2)(A).

C. REMOVAL IS TIMELY AND ALL PROCEDURES FOR REMOVAL HAVE BEEN FOLLOWED

24. 28 U.S.C. § 1446(b)(3) supplies the framework for removal of actions that only become removable based on pleadings or papers served later in the case:

> [I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order *or other paper from which it may first be ascertained that the case is one which is or has become removable.*

(Emphasis added.)

25. Consistent with other circuits, the First Circuit's interpretation of "other paper" under 28 U.S.C. § 1446(b)(3) is expansive. *See Romulus v. CVS Pharmacy, Inc.*, 770 F.3d 67,

77 (1st Cir. 2014) ("[W]e rely on the clear congressional intent to interpret 'other paper' broadly."). The First Circuit has even permitted "other paper" to encompass an email or other document not formally filed and/or served on the parties, so long as the paper "explicitly specifies the amount of monetary damages sought or sets forth facts from which an amount in controversy in excess of $5 million can be readily ascertained." *Id*. at 76.

26. Here, plaintiffs' Damages Report is exactly the kind of "other paper" contemplated by 28 U.S.C. § 1446(b)(3). It represents the first time in this case, beyond the $3,000,000 generalized demand in the Civil Action Cover Sheet, that plaintiffs have articulated the damages they are seeking. It specifies a total of $7,872,474 for "Damages Based on the Implied Warranty of Habitability, Unjust Enrichment and Chapter 93A Claims," and a total of $10,016,586 for "Damages Based on the Covenant of Quiet Enjoyment Claims." Ex. E, at 1. Thus, the Damages Report "explicitly specifies the amount of monetary damages sought." *Romulus*, 770 F.3d at 76.

27. Under CAFA, there is no time limit from the filing of the complaint as to when a class action may "become removable." *See* 28 U.S.C. § 1453(b) (expressly eliminating, for class actions, the 1-year limitation on removal under § 1446(c)(1)); *see also Amoche*, 556 F.3d at 53 (affirming that "class actions under CAFA are exempt from the removal statute's one-year time limit"). Defendants were served with the Damages Report on May 30, 2018. This Second Notice of Removal has been filed within thirty days of receipt of the Damages Report and thus is timely under 28 U.S.C. § 1446(b)(3).

28. All adverse parties to this action have been provided with written notice of the filing of this removal pursuant to 28 U.S.C. § 1446(d), as evidenced by the attached Certificate of Service.

29. Also pursuant to 28 U.S.C. § 1446(b), defendants will cause to be filed with the Superior Court Department for Middlesex County a copy of this Second Notice of Removal promptly after filing in this Court.

Respectfully submitted,

EQUITY RESIDENTIAL MANAGEMENT, L.L.C. and EQR-WALDEN PARK, L.L.C.,

By their attorneys,

/s/ Thomas H. Wintner

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Dated: June 5, 2018

CERTIFICATE OF SERVICE

I certify that the above Notice of Removal and all associated papers were filed electronically using the CM/ECF system on June 5, 2018, and that on the same date copies were served on counsel for the plaintiffs by first-class mail.

/s/ Thomas H. Wintner
Thomas H. Wintner

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss **SUPERIOR COURT**
DEPT. OF THE TRIAL COURT

RACHELLE BAKER and
JASON DITTMANN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

EQUITY RESIDENTIAL MANAGEMENT, L.L.C., AND EQR-WALDEN PARK, LLC,

Defendants.

Civil Action Number: 13-3630

Jury Trial Demanded

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
AUG 15 2013
CLERK

CLASS ACTION COMPLAINT

I. INTRODUCTION

1. Plaintiffs Rachelle Baker and Jason Dittmann, individually and on behalf of all others similarly situated, through undersigned counsel, file this Class Action Complaint against their landlord EQR-Walden Park, LLC and Equity Residential Management, L.L.C. (collectively "Equity") for claims arising out Equity's failure to provide heat and hot water service for an extended period of time between April of 2012 and the present.

II. PARTIES

2. Rachelle Baker is an individual who, at all times relevant hereto, resided at 225 Walden Street, Apartment 1L, Cambridge, Massachusetts.

3. Jason Dittmann is an individual who, at all times relevant hereto, resided at 225 Walden Street, Apartment 1L, Cambridge, Massachusetts.

4. EQR-Walden Park, LLC is a Delaware Corporation with a principal place of

business located at 205 Walden Street, Cambridge, Massachusetts.

5. Equity Residential Management, L.L.C. is a Delaware Corporation with a principal place of business located at Two North Riverside Plaza, Chicago, Illinois.

6. Upon information and belief, EQR-Walden Park, LLC is the corporate entity that owns the apartment complex known as "Walden Park," which is located at 205 Walden Street and 225 Walden Street, Cambridge, Massachusetts ("Walden Park" or "Premises").

7. However, EQR-Walden Park, LLC, is not identified anywhere in Baker and Dittmann's lease, in any promotional materials including Equity's webpage,[1] e-mail correspondence from Equity personnel, or elsewhere in documentation provided by Equity to Baker or Dittmann.

8. Plaintiffs Baker and Dittmann, as well as all others similarly situated, are Walden Park residents.

9. According to Baker and Dittmann's lease, Equity Residential Management, L.L.C. is the plaintiffs' lessor.

III. VENUE AND JURISDICTION

10. The jurisdiction of this Court is lawful and proper as the damages are well in excess of $25,000.00. *See, e.g.*, G. L. c. 214, § 1; G. L. c. 212, § 3; and G. L. c. 93A, § 9.

11. Venue in Middlesex County is lawful and proper as Baker and Dittmann reside in Middlesex County, EQR-Walden Park, LLC has a principal place of business in Middlesex County, this action involves residential property located in Middlesex County, Equity Residential Management, L.L.C. is the Lessor of at least one rental community in Middlesex County, and Equity's unlawful acts occurred in Middlesex County.

[1] http://www.equityapartments.com/massachusetts/boston-apartments/porter-square/walden-park-apartments.aspx

IV. FACTUAL BACKGROUND

12. On November 4, 2011, Equity acquired Walden Park, which includes two large apartment buildings located at 205 and 225 Walden Street, Cambridge, Massachusetts.

13. Walden Park has approximately 250 apartment units.

14. When Equity acquired Walden Park, the heating and hot water systems were fully operable and in good working order.

15. Baker and Dittmann entered into a written lease agreement with Walden Park's previous owner, the Dolben Company, to rent the apartment located at 225 Walden Park, Apt. 1L, Cambridge Massachusetts.[2]

16. When the Dolben Company owned Walden Park, the plaintiffs had no issues with the heat or hot water system.

17. After Equity acquired Walden Park, issues with Equity-provided utilities, including heat and hot water, began. Starting in April of 2012, and continuing for well over a year thereafter until the present date, Baker, Dittmann and the Class experienced significant deficiencies and outages with the heat and hot water, including, without limitation, issues on the following dates:

- May 8, 2012
- May 12, 2012
- May 16, 2012
- June 27, 2012
- August 23, 2012
- October 20, 2012
- October 21, 2012
- October 23, 2012
- November 1, 2012
- November 3, 2012
- November 6, 2012
- November 7, 2012

[2] When Baker and Dittmann's lease expired, they renewed their lease with Equity.

- November 16, 2012
- November 17, 2012
- November 19, 2012
- March 28, 2013
- April 3, 2013
- April 10, 2013
- April 17, 2013
- April 18, 2013
- April 23, 2013
- June 6, 2013
- June 25, 2013
- August 15, 2013 (i.e., today – the day this Complaint was filed)[3].

18. These outages were systemic, and affected all Walden Park units.

19. Over the course of this year, Equity exhibited no urgency in resolving these issues and provided misleading and contradictory reasons for shutting off the utilities.

20. These reasons included, among other stated reasons, conversion from oil to natural gas, a water conservation project, a heating and cooling project, fuel supply/consumption issues, operator error, and automatic shutdowns.

21. The problem was so egregious that the Cambridge Board of Health, which received numerous reports from Walden Park residents, cited Equity for violations of the State Sanitary Code, and deemed the violations to materially impair the health, safety or well-being of the Walden Park's residents. *See* HOUSING INSPECTION REPORT AND ORDER, attached herewith as "Exhibit A," *citing* 105 CODE MASS. REGS., §§ 410.190 and 410.750.

22. On numerous occasions, both Baker and Dittmann (as well as other Walden Park residents) complained to Equity's staff including complaints by telephone, e-mail and in person.

23. These complaints were not resolved, forcing the plaintiffs to pursue formal litigation against Equity.

24. On May 20, 2013, Baker and Dittmann served both defendants with a 30-day

[3] Equity notified Baker and Dittmann that heat and hot water system outages would continue for several weeks.

Demand Letter pursuant to G. L. c. 93A, § 9.

25. On June 19, 2013, Equity responded with what purported to be an offer of settlement.

26. By letter dated July 23, 2013, Baker and Dittmann accepted the offer made by Equity in its June 19, 2013 correspondence.

27. However, on July 31, 2013, Equity backed out of the deal and refused to honor the terms of the accepted deal, forcing Baker and Dittmann to litigate their claims.

V. CLASS ALLEGATIONS

28. Baker and Dittmann bring this action on behalf of themselves and all others similarly situated, as a member of the proposed class (the "Class") defined as follows:

> All residents of the Walden Park apartment complex, including 205 Walden Street, Cambridge, Massachusetts and 225 Walden Street, Cambridge, Massachusetts from April 1, 2012 through the present.

29. Excluded from the Class are: (a) any Judge or Magistrate presiding over this action and members of their families; (b) Equity and any entity in which Equity has a controlling interest or which has a controlling interest in Equity and the legal representatives, assigns and successors of Equity; and (c) Class counsel and members of their families; and (d) all persons who properly execute and file a timely request for exclusion from the Class.

30. *Numerosity*. Baker and Dittmann do not know the number of members in the Class. However, Equity represented that there are approximately 250 apartment units in the Walden Park complex and, with routine turnover common at apartment complexes such as Walden Park, the total Class could approach or exceed four hundred members.[4] The Class is so numerous that the individual joinder of all of members is impractical. Thus, this matter should

[4] *See* EQUITY RESIDENTIAL, 2012 ANNUAL REPORT at ¶ 47 (annual apartment turnover in excess of 58%), accessible at http://www.equityapartments.com/corporate/library/pdf/annualreports/annual2012/2012AnnualReport.pdf.

be certified as a Class Action to assist in the expeditious litigation of the matter. While the exact number and identities of the Class members are unknown at this time and can only be ascertained through appropriate discovery, Baker and Dittmann believe that all Class members may be ascertained by the records maintained by Equity.

31. *Commonality.* Questions of law and fact common to the Class exist as to all members of the Class and predominate over any questions affecting only individual members of the Class. These common legal and factual issues include, without limitation, the following:

a) whether Equity failed to furnish heat and hot water to Walden Park tenants;

b) whether Equity's failure to furnish heat and hot water to Walden Park tenants breached the implied covenant of quiet enjoyment;

c) whether Equity's failure to furnish heat and hot water to Walden Park tenants breached the implied warranty of habitability;

d) whether Equity's failure to furnish heat and hot water to Walden Park tenants was a violation of G. L. c. 186, § 14;

e) whether Equity was unjustly enriched by charging rent, while failing to provide heat and water;

f) whether Equity's conduct was unfair and deceptive in violation of G. L. c. 93A, § 2;

g) whether Equity's unfair and deceptive conduct was willful and knowing; and

h) whether members of the Class are entitled to damages, including treble damages, attorneys' fees, costs and interest.

32. *Typicality.* Baker and Dittmann's claims are typical of the claims of the members of the Class, as all such claims arise out of Equity's conduct in shutting off or otherwise failing to furnish utilities at the Walden Park property.

33. *Adequate Representation.* Baker and Dittmann will fairly and adequately protect the interests of the members of the Class. Baker and Dittmann have retained attorneys experienced in the prosecution of class actions, including consumer protection class actions, and

those involving residential landlords, including Equity.

34. *Predominance and Superiority.* A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Class members is impracticable. Even if every Class member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.[5]

VI. CAUSES OF ACTION

COUNT ONE
VIOLATIONS OF G. L. C. 186, § 14

35. Plaintiffs readopt and reallege the preceding paragraphs and incorporates them into this count.

36. It is unlawful for any lessor of a residential premises to willfully and intentionally fail to furnish heat and/or hot water. *See* G. L. c. 186, § 14.

37. Equity violated G. L. c. 186, § 14 by willfully and intentionally failing to provide all Walden Park residents, including the plaintiffs, heat and/or hot water service.

38. This violation occurred intermittently from April 1, 2012 through the present.

39. At all relevant times, Equity had knowledge that it was not providing heat and/or hot water. Equity's knowledge is evidenced by, among other things, its receipt of complaints

[5] Predominance and superiority are not requirements for class certification pursuant to G. L. c. 93A, § 9. However, the plaintiffs can satisfy these elements nonetheless. *See* MASS. R. CIV. P. 23(b).

from residents including Baker and Dittmann, having been cited by the Cambridge Board of Health, and its attempts to apologize to residents both before and after the utilities were shut off.

40. Despite having knowledge of its failure to furnish heat and/or hot water, Equity continued to willfully and intentionally fail to provide these utilities.

41. As a direct and proximate result of Equity's violations of G. L. c. 186, § 14, the plaintiffs suffered significant financial damages, and are entitled to actual and consequential damages or three month's rent (whichever is greater) plus attorneys' fees and costs.

COUNT TWO
BREACH OF THE IMPLIED COVENANT OF QUIET ENJOYMENT

42. Plaintiffs readopt and reallege the preceding paragraphs and incorporates them into this count.

43. It is unlawful for any lessor of a residential premises to "directly or indirectly interfere[] with the quiet enjoyment of any residential premises by the occupant." *See* G. L. c. 186, § 14.

44. Equity breached the implied covenant of quiet enjoyment by failing to provide all Walden Park residents, including the plaintiffs, heat and/or hot water service.

45. Equity's breach occurred intermittently from April 1, 2012 through the present.

46. Equity's breach impaired the character and value of the leased premises.

47. At all relevant times, Equity had knowledge that it was not providing heat and/or hot water. Equity's knowledge is evidenced by, among other things, its receipt of complaints from residents including Baker and Dittmann, having been cited by the Cambridge Board of Health, and its attempts to apologize to residents both before and after the utilities were shut off.

48. Despite this knowledge, Equity failed to remedy the problem, and the heat and hot water were shut off intermittently for a period exceeding one year.

49. As a direct and proximate result of Equity's breach of the covenant of quiet enjoyment, the plaintiffs suffered significant damages, and are entitled to the greater of actual and consequential damages or three month's rent, plus attorneys' fees and costs.

COUNT THREE
BREACH OF THE IMPLIED WARRANTY OF HABITABILITY

50. Plaintiffs readopt and reallege the preceding paragraphs and incorporates them into this count.

51. Implied in every residential lease there exists an implied warranty of habitability requiring that the premises are fit for human occupation. This means that at the inception of the rental there are no latent or patent defects in facilities vital to the use of the premises for residential purposes and that these essential facilities will remain during the entire term in a condition which makes the property livable.

52. Equity breached the implied warranty of habitability by failing to furnish heat and/or hot water.

53. Equity's breach occurred intermittently from April 1, 2012 through the present.

54. Equity's failure to provide heat and/or hot water was cited by the Cambridge Board of Health as a substantial Sanitary Code violation, deemed to materially impair the health, safety or well-being of Walden Park residents.

55. It is well settled that a dwelling afflicted with a substantial Sanitary Code violation is unfit for human occupation.

56. At all relevant times, Equity had knowledge that it was not providing heat and/or hot water. Equity's knowledge is evidenced by, among other things, its receipt of complaints from tenants including Baker and Dittmann, having been cited by the Cambridge Board of Health, and its attempts to apologize to tenants both before and after the utilities were shut off.

57. Despite this knowledge, Equity failed to remedy the problem, and the heat and hot water were shut off intermittently for a period exceeding one year.

58. As a direct and proximate result of Equity's breach of the implied warranty of habitability, the plaintiffs suffered significant financial damages.

COUNT FOUR
UNJUST ENRICHMENT

59. Plaintiffs readopt and reallege the preceding paragraphs and incorporates them into this count.

60. Equity has unjustly benefited from collecting rent while failing to provide heat and hot water. Equity voluntarily accepted these benefits.

61. Equity wrongfully retained the benefits conferred by Baker, Dittmann and all members of the Class, and the retention of these benefits would violate fundamental principles of justice, equity and good conscience.

62. As a direct and proximate result, Baker, Dittmann and all members of the Class have suffered damages in an amount to be proven at trial.

COUNT FIVE
VIOLATIONS OF THE MASSACHUSETTS CONSUMER PROTECTION ACT, G. L. C. 93A, §§ 2 AND 9

63. Plaintiffs readopt and reallege the preceding paragraphs and incorporates them into this count.

64. At all relevant times, Equity was engaged in commerce for purposes of G. L. c. 93A.

65. On or about May 20, 2013, Baker and Dittmann served Equity with a Demand Letter pursuant to G. L. c. 93A, § 2.

66. On or about June 19, 2013, Equity responded with what purported to be an offer

of settlement. The offer purported to offer each person Equity believed was a member of the class approximately $2,405.00.

67. By letter dated July 23, 2013, Baker and Dittmann accepted this offer.

68. Thereafter Equity backed out of the deal and refused to forward payment to Baker and Dittmann.

69. Equity's gross misuse of the demand/offer procedure of Chapter 93A is, in and of itself, an unfair and deceptive business practice.

70. In addition, all other causes of action stated in this Complaint constitute per se violations of the Massachusetts Consumer Protection Act.

71. These unfair and deceptive business practices resulted in significant financial damage to the plaintiffs.

72. Because Equity had firsthand knowledge that the heat and hot water systems were inoperable for an extended period of time, Equity committed all of these unfair and deceptive business practices willfully and knowingly.

73. Therefore, the plaintiffs are entitled to treble damages, attorneys' fees and costs.

VII. PRAYER FOR RELIEF

WHEREFORE, the plaintiffs Rachelle Baker and Jason Dittmann, on behalf of themselves and the Class, pray for the following relief:

A. An Order certifying this case as a Class Action pursuant to MASS. R. CIV. P. 23 on behalf of the Class defined herein, appointing Baker and Dittmann as representative of the Class, and appointing their counsel as Class counsel;

B. An award of actual, consequential and statutory damages;

C. Treble damages, costs, interest, and attorneys' fees; and

D. Such further and other relief the Court deems just and appropriate.

VIII. JURY DEMAND

Baker and Dittmann hereby demand a trial by jury on all issues so triable.

Respectfully submitted,

LAW OFFICES OF JOSHUA N. GARIK, P.C.

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Counsel for Plaintiff and the Class

Dated: August 15, 2013

EXHIBIT A

CITY OF CAMBRIDGE

INSPECTIONAL SERVICES DEPARTMENT
831 MASSACHUSETTS AVENUE, CAMBRIDGE, MASSACHUSETTS 02139
PHONE (617) 349-6100, FAX (617) 349-6132; TDD/TTY (617) 349-6112

Ranjit Singanayagam
Commissoner

HOUSING INSPECTION REPORT AND ORDER

ADDRESS OF PREMISES: 205 (Number) Walden St (Street) (Apartment Number)

OCCUPANT: (Last Name) (First) (Middle I.) **TELEPHONE:**

OWNER: Residential Equity (Last Name) (First) (Middle I.) **TELEPHONE:**

OWNER ADDRESS: P.O BOX 87407 (Number) (Street) Chicago (City)

CODE CASE NUMBER: HOU-000740-2013 **DATE:** 04/22/2013

DATE OF INSPECTION: MO. April DAY 22nd HOUR 04:23 PM

NOTE: Any party effected by this order has a right to a hearing by the Inspectional Services Department in accordance with Section 410.850 of the State Sanitary Code. You have the right to inspect all available information and to be present or be represented at a hearing. A hearing must be requested within 7 days of this order.

ROOM(S) / VIOLATIONS OF STATE SANITARY CODE **REGULATION 105 CMR 410.**

410.190 Hot Water Restore hot water/ heat

410.750 Cond. Deemed to Endgr. or Impair Health or Safety Restore heat and hot water,

One or more of the violations cited above is a condition which may materially impair the health, safety or well-being of the occupant(s) as determined ty Regulation 410.750 of the State Sanitary Code or the Authorized inspector.

___ is hereby ordered to remedy the above cited violation within __2__ days or face prosecution by the City of Cambridge. These violations may permit the occupant to exercise one or more statutory remedies.

RECEIPT OF THIS INSPECTION REPORT IS NOTICE AS REQUIRED BY MASSACHUSETTS GENERAL LAWS CHAPTER 239 SECTION 8A.

_____
Signature of Occupant

SIGNED UNDER PAINS AND PENALTIES OF PERJURY:

APPROXIMATE DATE & TIME OF REINSPECTION _____

INSPECTOR

CERTIFIED TRUE COPY
I THIS DAY DELIVERED A TRUE COPY
IN HAND TO _____ **ON** _____ **TIME** _____
_____ **CONSTABLE OF CITY OF CAMBRIDGE**

This is an important legal document. It may effect your rights. You should have it translated

EXHIBIT B

CIVIL ACTION COVER SHEET	TRIAL COURT OF MASSACHUSETTS SUPERIOR COURT DEPARTMENT COUNTY OF MIDDLESEX	DOCKET NO. 13-3630
PLAINTIFF(S) RACHELLE BAKER and JASON DITTMANN, individually and o/b/o all others similarly situated	DEFENDANT(S) EQUITY RESIDENTIAL MANAGEMENT, LLC and EQR-WALDEN PARK, LLC	

Type Plaintiff's Attorney name, Address, City/State/Zip Phone Number and BBO#	Type Defendant's Attorney Name, Address, City/State/Zip Phone Number (If Known)
Joshua N. Garick, Esq. (BBO #674603) Law Offices of Joshua N. Garick, P.C. 100 TradeCenter, Suite G-700 Woburn, Massachusetts 01801 (617) 600-7520	

TYPE OF ACTION AND TRACK DESIGNATION (See reverse side)

CODE NO.	TYPE OF ACTION (specify)	TRACK	IS THIS A JURY CASE?
A08	Sale or Lease of Real Estate -	Fast Track	(X) Yes ( ) No

The following is a full, itemized and detailed statement of the facts on which plaintiff relies to determine money damages. For this form, disregard double or treble damage claims; indicate single damages only.

TORT CLAIMS
(Attach additional sheets as necessary)

A. Documented medical expenses to date:
   1. Total hospital expenses $
   2. Total doctor expenses $
   3. Total chiropractic expenses $
   4. Total physical therapy expenses $
   5. Total other expenses (describe) $
B. Documented lost wages and compensation to date $
C. Documented property damages to date $
D. Reasonably anticipated future medical expenses $
E. Reasonably anticipated lost wages and compensation to date $
F. Other documented items of damages (describe) $
Subtotal $

FILED
IN THE OFFICE OF THE
CLERK OF COURTS
FOR THE COUNTY OF MIDDLESEX
AUG 15 2013
CLERK

G. Brief description of plaintiff's injury, including nature and extent of injury (describe)

Total $

CONTRACT CLAIMS
(Attach additional sheets as necessary)

Provide a detailed description of claim(s):

Violations of G. L. c. 186, s. 14, breach of the covenant of quiet enjoyment, breach of the warranty of habitability, unjust enrichment, and 93A claims arising out of lessor's failure to furnish heat and hot water for a period of time spanning in excess of one year.

$3,000,000.00

TOTAL $.....

PLEASE IDENTIFY, BY CASE NUMBER, NAME AND COUNTY, ANY RELATED ACTION PENDING IN THE SUPERIOR COURT DEPARTMENT

"I hereby certify that I have complied with the requirements of Rule 5 of the Supreme Judicial Court Uniform Rules on Dispute Resolution (SJC Rule 1:18) requiring that I provide my clients with information about court-connected dispute resolution services and discuss with them the advantages and disadvantages of the various methods."

Signature of Attorney of Record _____ Date: 8/15/13

A.O.S.C. 3-2007

EXHIBIT C

United States District Court
District of Massachusetts

RACHELLE BAKER, ETC.,
JASON DITTMANN, ETC.,
Plaintiffs,

v. CIVIL ACTION NO. 13-12217-RBC[1]

EQUITY RESIDENTIAL MANAGEMENT, L.L.C.,
EQR-WALDEN PARK, LLC,
Defendants.

MEMORANDUM AND ORDER ON PLAINTIFFS' MOTION FOR REMAND TO STATE COURT (#6)

COLLINGS, U.S.M.J.

I. Introduction

Putative class representatives Rachelle Baker and Jason Dittmann ("Plaintiffs") filed a class action against Equity Residential Management, L.L.C. and EQR-Walden Park, L.L.C. (collectively "Equity") for claims arising out of

[1] With the parties' consent, this case has been assigned to the undersigned for all purposes, including trial and the entry of judgment, pursuant to 28 U.S.C. § 636(c). (#11)

Equity's failure to provide heat and hot water service for two apartment buildings (collectively "Walden Park") at sporadic intervals on about twenty-four occasions between April 2012 and the present. These outages lasted anywhere from one to twenty-four hours at a time.

Ms. Baker and Mr. Dittmann are residents of one of the two Walden Park buildings, 225 Walden Street, Apartment 1L, Cambridge, Massachusetts. They seek to represent a putative class of similarly situated individuals living at Walden Park for a period during which the outages occurred. Equity Residential Management, L.L.C. is the plaintiffs' lessor and is a Delaware corporation with a principle place of business located in Chicago, Illinois. EQR-Walden Park, L.L.C. owns the apartment complex and is a Delaware corporation with a principle place of business in Chicago, Illinois.[2] Plaintiffs Baker and Dittmann filed this class action in the Massachusetts Superior Court of Middlesex County on August 15, 2013 pursuant to Mass. R. Civ. P. 23. Equity filed a Notice of Removal from State Court under 28 U.S.C. §§ 1332, 1441, 1446, and 1453 claiming federal subject matter jurisdiction on the basis of diversity of

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[2] The Complaint alleges that EQR-Walden Park, L.L.C. has a principle place of business in Cambridge, Massachusetts. *See* #1-1 at pp. 1-2. If that were true, there would be no diversity jurisdiction. However, in the Answer, Etc., it is averred that EQR-Walden Park L.L.C. has a principle place of business in Chicago, Illinois. *See* #1-3 at p. 2. Evidently, the plaintiffs accept this assertion since they advance no argument that there is not complete diversity in this case.

citizenship and satisfaction of the other elements under the Class Action Fairness Act of 2005 ("CAFA"). Plaintiffs filed a Motion for Remand, disputing satisfaction of the amount in controversy under § 1332(d)(2).

II. Applicable Law

CAFA provides for the removal to federal court of class actions filed in state court if they satisfy the statute's minimal diversity and class size requirements and have more than $5 million in controversy, exclusive of interests and costs. *See* 28 U.S.C §§ 1332(d), 1441(b), 1446(c), 1453; *Amoche v. Guarantee Trust Life Ins. Co.*, 556 F.3d 41, 42-43 (1st Cir. 2009). The only CAFA requirement at issue in this case is whether or not the amount in controversy exceeds the jurisdictional threshold.

"[D]etermining whether a case belongs in federal court should be done quickly, without an extensive fact-finding inquiry." *Spielman v. Genzyme Corp.*, 251 F.3d 1, 4 (1st Cir. 2001). There is a "general rule of deference to the plaintiff's chosen forum." *Amoche*, 556 F.3d at 50 (citing 14C Wright, Miller & Cooper, *Federal Practice and Procedure* § 3725, at 95 (3d ed. 1998)) (recognizing that "a greater burden [is imposed] on defendants in the removal situation than is imposed on plaintiffs who wish to litigate in federal court by

invoking its original jurisdiction" to demonstrate the amount in controversy but that "[t]his discrepancy in treatment of plaintiffs and defendants may be justified by the historical tradition that the plaintiff is the master of the forum and is empowered to choose the court system and venue in which litigation will proceed"). Thus, any doubts in the evidence should be resolved in favor of remand because the court has "a responsibility to police the border of federal jurisdiction." *Spielman*, 251 F.3d at 4.

Law in the First Circuit, along with seven other circuits, places the burden of showing federal jurisdiction on the defendant removing under CAFA. *Amoche*, 556 F.3d at 48-49; *accord Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008) ("The removing party [under CAFA], as the proponent of federal jurisdiction, bears the burden of describing how the controversy exceeds $5 million."); *Strawn v. AT & T Mobility LLC*, 530 F.3d 293, 298 (4th Cir. 2008); *Smith v. Nationwide Prop. & Cas. Ins. Co.*, 505 F.3d 401, 404-05 (6th Cir. 2007); *Morgan v. Gay*, 471 F.3d 469, 473 (3d Cir. 2006); *DiTolla v. Doral Dental IPA of New York*, 469 F.3d 271, 275 (2d Cir. 2006); *Miedema v. Maytag Corp.*, 450 F.3d 1322, 1329-30 (11th Cir. 2006); *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 685-86 (9th Cir. 2006); *Brill v. Countrywide Home Loans, Inc.*, 427

F.3d 446, 447 (7th Cir. 2005).

Where the complaint does not contain specific damage allegations, the removing defendant must show there is a reasonable probability that the amount in controversy exceeds the $5 million threshold *at the time of removal*. *Amoche*, 556 F.3d at 43, 51; *see also Blockbuster, Inc. v. Galeno,* 472 F.3d 53, 58 (2d Cir. 2006) ("[The removing defendant] must show that it appears to a 'reasonable probability' that the aggregate claims of the plaintiff class are in excess of $5 million."); *Brill*, 427 F.3d at 449 ("[T]he removing litigant must show a reasonable probability that the stakes exceed the [jurisdictional] minimum."). "When a plaintiff's complaint fails to specify damages, or specifies damages less than the federal jurisdictional amount, the courts have disagreed as to the burden that a defendant must meet to establish the jurisdictional sufficiency of the amount in controversy for removal purposes." 14C Wright, Miller & Cooper, *Federal Practice & Procedure* § 3725.1, at 76 (4th ed. 2009). Where the complaint filed in state court alleges a specific damage amount that is less than the federal jurisdictional minimum, many circuits place a heavier burden—showing to a legal certainty that the amount in controversy exceeds the jurisdictional threshold—on the defendant than if the complaint did not

claim a specific amount. *See* 14AA Wright, Miller & Cooper, *Federal Practice & Procedure* § 3702.2, at 395-96 (4th ed. 2011). This heavier burden reflects "the respect accorded the plaintiff's forum choice and the strict construction accorded the removal statute, which effectively amounts to a presumption against the amount in controversy requirement being satisfied and therefore a presumption against removal." *Id.* (footnote omitted). In that situation, the defendant's notice of removal does not meet the legal certainty burden that the presumption creates if it is merely conclusory assertions. *Id.* at 396. This heavier burden is much like that imposed on a defendant seeking dismissal for want of federal subject matter jurisdiction by challenging a plaintiff's claim for damages allegedly in excess of the jurisdictional minimum. *Id.* ("In many respects the burden the Eleventh Circuit established—showing to a legal certainty that the monetary value of the controversy does exceed the jurisdictional amount—is parallel to the burden applied in original federal court actions."). *Compare St. Paul Mercury Indemnity Co. v. Red Cab Co.*, 303 U.S. 283, 288-89 (1938) ("[T]he sum claimed by the plaintiff controls if the claim is apparently made in good faith. It must appear to a legal certainty that the claim is really for less than the jurisdictional amount to justify dismissal." (footnotes omitted)), *with Burns v. Windsor Ins. Co.*, 31 F.3d 1092, 1095-96 (11th Cir.

1994) ("[D]efendant must prove to a legal certainty that plaintiff's claim must exceed [the jurisdictional minimum]. This strict standard is consistent with case law and [C]ongress' policy of limiting federal diversity jurisdiction." (footnote omitted)), *and Guglielmino v. McKee Foods Corp*., 506 F.3d 696, 699 (9th Cir. 2007) (recognizing three different burdens of proof placed on a removing defendant and, in the CAFA context, "when a state-court complaint affirmatively alleges that the amount in controversy is less than the jurisdictional threshold, the party seeking removal must prove with legal certainty that CAFA's jurisdictional amount is met" (internal citation, quotation marks and footnote omitted)).

The *Amoche* court, in holding that the removing defendant must show to a reasonable probability that the amount in controversy exceeds $5 million where the complaint does not contain specific damage allegations, found the reasonable probability standard to be substantively the same as the preponderance of the evidence standard adopted in several circuits. *See Amoche*, 556 F.3d at 50. Because a preponderance of the evidence standard is less burdensome than legal certainty and reasonable probability is substantively the same as preponderance of the evidence, the reasonable probability standard applied in *Amoche* is less burdensome than the legal certainty standard applied

in other circuits. *See id.*; 14AA Wright, Miller & Cooper, *Federal Practice & Procedure* § 3702.2, at 396-400 (4th ed. 2011).

In the instant case, the defendants removed from state court pursuant to 28 U.S.C. §§ 1332(d), 1441(b), 1446(c), and 1453, claiming that the amount in controversy exceeds $5 million. The complaint itself does not contain a specific damage amount, but the civil case cover sheet attached to the complaint does claim $3 million in damages. If the civil case cover sheet is *not* considered in conjunction with the complaint for the purpose of determining whether a specific damages amount is alleged, then *Amoche* controls and the burden on the defendants in this case is proving to a reasonable probability that the amount in controversy exceeds $5 million. *See Amoche*, 556 F.3d at 50. The First Circuit has not spoken on whether or not the civil cover sheet may be considered, but there is an opinion in this District which holds that it can be. *Williams v. Litton Loan Servicing*, 2011 WL 3585528, at *6 (D. Mass. Aug.15, 2011) ("[C]ivil action cover sheets may be considered in determining the amount in controversy." (citation omitted)) If the civil case cover sheet may be considered for the purpose of determining whether a specific damages amount is alleged, then the burden placed on the removing defendant is unclear under *Amoche* as that opinion explicitly left unresolved the question of what the

burden is when a specific damage amount is alleged. *Id.* at 49 n. 2.

Although the issue was left open, the *Amoche* court did note that it saw no reason to apply a higher standard than is appropriate for a case where specific damages are not alleged. *Id.* at 49 n.2. Because there appears to be an open question as to the precise standard applicable to this case, assuming that the specific amount of damages alleged in the civil case cover sheet attached to the complaint is effectively the same as if alleged in the complaint, the Court must decide whether to follow the dictum in *Amoche* suggesting a reasonable probability standard or adopt the approach of other circuits and impose a standard higher than reasonable probability. However, as discussed *infra*, because the defendants failed to prove that the amount in controversy exceeds $5 million—even to a reasonable probability—the decision to remand need not rest on the resolution of this issue.

III. Discussion

To meet the standard of a reasonable probability that the amount in controversy meets $5 million *at the time of removal*, the defendants must allege facts with sufficient particularity to demonstrate that the amount in controversy exceeds the jurisdictional minimum. *See Amoche,* 556 F.3d at 51; *see also Dep't of Recreation and Sports v. World Boxing Ass'n*, 942 F.2d 84, 88 (1st Cir. 1991);

see also Barrett v. Lombardi, 239 F.3d 23, 30-31 (1st Cir. 2001). Here, the Defendants' Notice of Removal and Opposition to Plaintiff's Motion for Remand fail to allege *any* facts that would bring the amount in controversy above $5 million. The only information upon which the defendants base their notice and opposition is the facts alleged in the complaint and a blanket trebling of damages claimed in the civil case cover sheet.

The complaint seeks actual, consequential, and statutory damages; treble damages, costs, interests and attorneys' fees; and further appropriate relief. Based on the type of relief being sought and without specificity in the complaint as to the type of damages the $3 million figure represents, the defendants argue that the $3 million figure claimed by the plaintiffs is subject to trebling under Mass. Gen. L. c. 93A § 9(3), bringing the amount in controversy to $9 million. However, alleging a blanket trebling of damages, without more, fails to meet the defendants' burden of proving—even to a reasonable probability—that the amount in controversy exceeds $5 million.

Where a tenant seeks relief for damages arising from the same facts under concurrent violations of Mass. Gen. L. c. 186 § 14 and c. 93A, the "triple rent" clause of c. 186 § 14 does not serve its function as "'an incentive to the pursuit of relief where the actual and consequential damages are slight or are difficult

to prove.'" *Wolfberg v. Hunter*, 385 Mass. 390, 400, 432 N.E.2d 467, 474 (1982) (quoting *Darmetko v. Boston Hous. Auth.*, 378 Mass. 758, 762, 393 N.E.2d 395, 398 (1979)). Thus, a tenant proceeding under both Mass. Gen. L. c. 186 § 14 and c. 93A "may collect only one such award, covering all claims that the tenant has raised or reasonably could have raised in the suit." *Simon v. Solomon,* 385 Mass. 91, 110-11, 431 N.E.2d 556, 569 (1982). Thus, plaintiffs in this case may only recover under one of these two theories because their claims arise out of the same set of facts and circumstances. *See id.*

A. Damages

1. Counts One, Two, and Three:
Violation of Mass. Gen. L. c. 186 § 14

Count One alleges violation of Mass. Gen. L. c. 186 § 14, which codifies the Implied Covenant of Quiet Enjoyment (Count Two). *See, e.g.*, *Wiesman v. Hill*, 629 F. Supp.2d 106, 114 (D. Mass. 2009). This section also, in effect, codifies the Implied Warranty of Habitability (Count Three) because recovery under both of these theories for the same violations is not permitted. *See, e.g.*, *Darmetko*, 378 Mass. at 761, 393 N.E.2d at 398. Because the damages for breaches of the covenant of quiet enjoyment and the warranty of habitability

are very similar,[3] the allegations for each breach arise from the same set of circumstances, and there is no statute authorizing cumulative recovery, plaintiffs are not entitled to recover under both theories. *See id.* Thus, Mass. Gen. L. c. 186 § 14 sets out the damages to which the plaintiffs are entitled under breaches of these implied duties as "actual and consequential damages *or* three months' rent, whichever is greater, and the costs of the action, including a reasonable attorney's fee."

Based on the figures provided in the Defendants' Notice of Removal from State Court and the Plaintiffs' Motion for Remand to State Court, there are 367[4] affected units with an average rent of $2,139.00/month. Three months of rent for the affected class would be a total of $2,355,039. In the alternative, actual damages are calculated as the difference in the value of the property in its damaged condition from the value of the property free of these damages (i.e.,

[3]

> Damages for breach of the covenant of quiet enjoyment where the tenant remains in possession of the premises are measured by the difference between the value of what the lessee should have received and the value of what he did receive. *Charles E. Burt, Inc. v. Seven Grand Corp.*, 340 Mass. 124, 130, 163 N.E.2d 4 (1959). Damages for breach of the implied warranty of habitability are measured by 'the difference between the value of the dwelling as warranted (the rent agreed on may be evidence of this value) and the value of the dwelling as it exists in its defective condition.' *Boston Hous. Auth. v. Hemingway*, 363 Mass. 184, 203 (1973). These remedies are 'quite similar.'

Darmetko, 379 Mass. at 761 n. 4, 393 N.E.2d at 398 n. 4.

[4] 232 units with a 58% turnover rate during the class period claimed yields 367 affected units.

monthly rent). *See, e.g.*, *Dorgan v. Loukas*, 19 Mass. App. Ct. 959, 960, 473 N.E.2d 1151, 1153 (Mass. App. Ct. 1985). Because the heat and hot water were out for varying periods for a total of twenty-four days and the average daily rent is $69.00, actual damages would be $607,752.[5] Neither party has pled consequential damages. Because three months' rent is greater than the actual plus consequential damages, defendants would be liable for $2,355,039 under Mass. Gen. L. c. 186 § 14.

2. Damages under Count Four

Count Four of the complaint alleges that the defendants were unjustly enriched by committing the acts alleged in Counts One, Two, Three, and Five. "Unjust enrichment is defined as 'retention of money or property of another against the fundamental principles of justice or equity and good conscience.'" *Santagate v. Tower,* 64 Mass. App. Ct. 324, 329, 833 N.E.2d 171, 176 (Mass. App. Ct. 2005) (quoting *Taylor Woodrow Blitman Constr. Corp. v. Southfield Gardens Co.,* 534 F. Supp. 340, 347 (D. Mass. 1982) (further citation omitted)). As an equitable remedy and not a separate cause of action, unjust enrichment would not change the amount recoverable when the remedy at law would be

[5] $69/day multiplied by 367 affected units multiplied by 24 days is $607,752.

adequate. *See Bisbano v. Strine Painting Co.*, 737 F.3d 104, 108 (1st Cir. 2013); *Smith v. Jenkins*, 718 F. Supp.2d 155, 172 (D. Mass. 2010).

3. Damages Under Count Five

Count Five alleges violations of the Massachusetts Consumer Protection Act, Mass. Gen. L. c. 93A §§ 2 & 9. Section 9(3) entitles plaintiffs to treble actual damages if the court finds that the defendants willfully and knowingly violated § 2. Treble actual damages would be $1,823,256.[6]

B. Computing the Amount in Controversy

The plaintiffs seek treble damages under Mass. Gen. L. c. 93A § 9(3), which may be included in the jurisdictional minimum calculation. *Youtsey v. Avibank Mfr., Inc.*, 734 F. Supp.2d 230, 238 (D. Mass. 2010). Treble actual damages under this section would be $1,823,256. Alternatively, the plaintiffs seek damages under Mass. Gen. L. c. 186 § 14, which would be three months' rent, or $2,355,039, because three months' rent is more than actual damages. However, because the claims under c. 186 § 14 and c. 93A § 9 arise out of the same set of circumstances, plaintiffs would be entitled to the greater of the two awards, which is less than the jurisdictional minimum of $5 million.

[6] $607,752 actual damages times three is $1,823,256.

Normally, attorney's fees are not included in determining the amount in controversy because "the successful party does not collect his attorney's fees in addition to or as part of the judgment." *Velez v. Crown Life Ins. Co.,* 599 F.2d 471, 474 (1st Cir. 1979) (citing 1 *Moore's Federal Practice* 0.99(2)). There are two exceptions to this general rule: (1) when the fees are provided for by contract, and (2) when a statute mandates or allows payment of the fees. *Id.* (citations and footnote omitted). The second exception applies here as both Mass. Gen. L. c. 186 § 14 and c. 93A § 9(4) allow plaintiffs to collect attorney's fees.

In *Spielman*, the First Circuit rejected the plaintiff's claim that attorney fees under Mass. Gen. L. c. 93A § 9(4) should be aggregated for the putative class in order to reach the amount in controversy requirement for an individual claim. 251 F.3d at 10. However, in that case the plaintiff wished to aggregate anticipated attorney's fees—attributable to the entire class—in order to meet the jurisdictional minimum for an *individual* plaintiff, not the minimum for a class action. *See id.* This decision also predates the CAFA of 2005. Thus, such a prohibition would likely not be applicable to this case where the amount in controversy threshold must be satisfied by the putative class and not the named individual plaintiffs.

In *Youtsey*, the parties conceded that attorney's fees mandated under Mass. Gen. L. c. 149 § 150 should be considered for the purpose of meeting the amount in controversy requirement. 734 F. Supp.2d at 238. Though the plaintiff alleged that attorney's fees would not amount to enough such that the amount in controversy requirement would be met, the court recognized that the burden was on the defendant. *Id*. at 238-39; *accord Spielman,* 251 F.3d at 5 (satisfying burden involves "alleging with sufficient particularity facts . . ."); *Dep't of Recreation & Sports,* 942 F.2d at 88 (same). Still, the court noted, the defendant in that case "offered nothing more than its *own* naked speculation that Plaintiff's fees could possibly be high enough to raise his recovery to over [the jurisdictional minimum]." *Youtsey*, 734 F. Supp.2d at 238 (emphasis in original). Because the burden in *Youtsey* was on the defendant and not the plaintiff, the court found such speculation by the defendant to be insufficient. *Id.* at 238-39; *accord Amoche,* 556 F.3d at 50 ("[A]s the proponent of federal jurisdiction, [the defendant] must *sufficiently demonstrate* that the amount in controversy exceeds [the] jurisdictional minimum." (emphasis added)); *Cf. Raymond v. Lane Const. Corp.,* 527 F. Supp.2d 156, 164 (D. Me. 2007) (holding that defendant bore its burden because "even one extra dollar of attorney's fees would place [the plaintiff] over the [jurisdictional] threshold").

Here, even if attorney's fees are considered in order to meet the amount in controversy requirement, these fees would need to exceed $2.5 million in order to reach the jurisdictional minimum. Further, the defendants, upon whom the burden rests, have not alleged any facts—let alone facts "with sufficient particularity"—to justify speculation that an award of attorney's fees would bring the amount in controversy over the jurisdictional threshold amount of $5 million. *See Amoche*, 556 F.3d at 50; *Spielman,* 251 F.3d at 5. The defendants fail to meet their burden to show sufficiently that attorney's fees plus damages would exceed $5 million. Because Equity "has not demonstrated a reasonable probability that the amount in controversy exceeds $5 million," the case must be remanded. *See Amoche,* 556 F.3d at 52.

IV. Conclusion and Order

For all the reasons stated, it is ORDERED that Plaintiffs' Motion for Remand to State Court (#6) be, and the same hereby is, ALLOWED. It is FURTHER ORDERED that judgment enter remanding the case to the state court.

/s/ Robert B. Collings

ROBERT B. COLLINGS
United States Magistrate Judge

February 12, 2014.

EXHIBIT D

22

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

SUPERIOR COURT
CIVIL ACTION
No. 13-3630

RACHELLE BAKER, JASON DITTMAN,
and all others similarly situated

vs.

EQUITY RESIDENTIAL MANAGEMENT, L.L.C.
and EQR-WALDEN PARK, LLC

****

MEMORANDUM AND ORDER ON
PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

For the following reasons, the plaintiffs' Motion for Class Certification is ALLOWED.

BACKGROUND

Beginning on April 1, 2011 the named plaintiffs were tenants inWalden Park, a residential apartment complex at 205 and 225 Walden Street, Cambridge. The defendants' unit is Apartment 1L in 225 Walden Street. They have renewed their one-year leases in the same apartment at least through March 31, 2016; from recent filings, it appears they may have moved elsewhere. They have never occupied a unit in the other building at 205 Walden Street.

Defendant EQR-Walden Park, LLC ("EQR") is the owner of Walden Park, having acquired it on October 25, 2011. It appears that Equity Residential Management, L.L.C. ("Equity") manages Walden Park for EQR, though the plaintiffs maintain that this has not been proven. The parties have not come to an agreement on how old the buildings and their systems are, but it seems clear enough that they predate the plaintiffs' tenancy and EQR's acquisition by some number of decades (the defendants suggesting 50 years).

Beginning in 2012, the defendants began the first of three construction projects to upgrade the heating and hot water systems.

The Conversion Project: The first was to replace oil-fueled boilers with boilers fueled by natural gas. The defendants put forward its initial proposal in or about April 2012. The plan was to get the work done in the summer season, shutting down the boilers (and thus curtailing hot water service) as needed, so as to be ready for the heating season. Getting the necessary approvals from the City and doing the actual work, however, took from until about May 2013. The work itself necessarily caused temporary interruptions of the heating and hot water systems.

The Heating System Modification Project: During the boiler replacements, the defendants discovered other problems with the systems as a whole. Clogs in the fuel lines in had caused automatic shutdowns, which the defendants attempted to address with contractors and auxiliary fuel tanks, apparently with uneven success.

The Riser Replacement Project: In the summer of 2014, the defendants undertook to fix leaks in the heating system by replacing the risers (vertical piping). This required shutting down the temporarily dormant heating system and, perhaps on occasion, the domestic hot water system, which had different piping but depended on the same boilers.

The plaintiffs have identified 27 dates between April 23, 2012 and March 30, 2014 on which the defendants have acknowledged that there were heat and/or hot water outages in both buildings (205 and 225 Walden Street), and an additional 19 dates when there were outages only in 225 Walden Street. They seek certification of two classes:

- The "Conversion Class," consisting of all persons who were tenants occupying either building during the Conversion Project (May 1, 2012 through May 30, 2013), the

Heating System Modification Project (July 1, 2013 through December 31, 2013), and/or the Riser Replacement Project (July 7, 2014 through September 30, 2014); and

- The "Admitted Outage Class," consisting of all persons who were tenants in either building on any of the 27 dates for which the defendants have admitted outages, and all persons who were tenants in 225 Walden Street on any of the 19 dates for which the defendants have admitted outages in that building only.

DISCUSSION

A. The Counts.

The Complaint was originally in five counts:

1. Violations of G.L. c. 186, §14;
2. Breach of the Implied Covenant of Quiet Enjoyment;
3. Breach of the Implied Warranty of Habitability;
4. Unjust Enrichment; and
5. Violation of G.L. c. 93A, §§2 and 9.

Count 1 went the way of a motion for partial summary judgment, but the rest remain in play.

B. Certification Under Rule 23.

The requirements for certification of a class in this Court are found in Mass. R. Civ. P. 23(a) and (b):

> (a) **Prerequisites to Class Action.** One or more members of a class may sue or be sued as representative parties on behalf of all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the

> claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.
>
> (b) **Class Actions Maintainable.** An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Thus, the familiar checklist – numerosity, commonality, typicality, adequacy, predominance, and superiority – which the Massachusetts rule shares with its federal counterpart, Fed. R. Civ. P. 23(a) and (b)(3).[1]

A motion for class certification should not turn on the court's evaluation of the merits of the parties' legal or factual claims. The court may find it necessary, however – as I have – to analyze the parties' substantive claims and review such facts as are available at this preliminary stage, in order to evaluate whether the requirements of Rule 23 have been satisfied. In re Ford Motor Co. Ignition Switch Prod. Liab. Litig. 174 F.R.D. 332, 339 (D.N.J. 1997).

Walden Park consists of 231 apartment units, 116 of which are in the 225 Walden Street building. Although the record does not reveal how may units were occupied at a given time (which might reduce these numbers somewhat), it is highly likely that a substantial number of apartments had two or more occupants, and that some changed tenancies over the 23 month period in question,

---

[1]There are also differences between the state and federal rules. Among these are the unavailability, under the state rule, of the "limited-issue class" actions expressly authorized by the terms of Fed. R. Civ. P. 23(c)(4)(A) but not Mass. R. Civ. P. 23, see Fletcher v. Cape Cod Gas Co., 394 Mass. 595, 602 (1985), and of the "opt-out" procedure of Fed. R. Civ. P. 23(c)(2)(B)(v).

suggesting that in all likelihood, the number of class members substantially exceeds the number of apartments. The numerosity requirement is met.

The commonality requirement dictates that plaintiffs seeking class certification must demonstrate that "all the persons whom they profess to represent have a common interest in the subject matter of the suit and a right and interest to ask for the same relief." Spear v. H.V. Greene Co., 246 Mass 259, 266 (1923). The commonality test is "qualitative rather than quantitative, that is, there need only be a single issue common to all members of the class." In re American Medical Systems, Inc., 75 F.3d 1069, 1080 (6th Cir. 1996) *quoting* 1 H. Newberg & A. Conte, NEWBERG ON CLASS ACTIONS, §3.10 at 3-50 (3rd ed. 1992).

The evidence brought forward meets the commonality, requirement. As noted above, there were 29 outages affecting the entire Waldon Park complex and an additional 19 outages affecting only the 225 Waldon Street building. Apart from the likelihood that some tenants moved out and others moved in during the relevant 23-month timeframe (which should be readily ascertainable from the defendants' records), it should be relatively simple to tally the class members who were without heat, hot water, or both, on each of the 48 dates.

The typicality and adequacy requirements are also met. The named plaintiffs are typical of the occupants in the 225 building and, in significant part, of the occupants of Walden park as a whole. They are, to all appearances, able and willing to represent their fellow tenants. That they lived in the 205 building – never in 225 – does not prevent them from representing the interests of the 225 tenants and presenting evidence in their behalf, and their attorneys have done a fine job so far.

The predominance and superiority requirements present an arguably closer call. The defendants point out that not all tenants necessarily suffered identical impacts from a given interruption of their heat or hot water. Some (including the plaintiffs) worked at times from home, while others were away during working hours; some had young children or pets that might have reacted poorly to the cold, while others didn't; the named plaintiffs kept a diary of the temperatures in their apartment during outages while others likely did not, and so forth.

There are cases in which the injuries to class members are sufficiently individual, dissimilar, and complex that the assessment of damages, one by one, predominates over issues of culpability and causation common to all. For example,

> "[a] 'mass accident' resulting in injuries to numerous persons is ordinarily not appropriate for a class action because of the likelihood that significant questions, not only of damages but of liability and defenses of liability, would be present, affecting the individuals in different ways. In these circumstances an action conducted nominally as a class action would degenerate in practice into multiple law-suits separately tried."

Fletcher v. Cape Cod Gas Co., 394 Mass. 595, 604 n.8 (1985), quoting the Advisory Committee Notes to the 1966 Revision of Fed. R. Civ. P. 23(b)(3); see also Aspinall v. Philip Morris Companies, Inc., 442 Mass. 381, 399 n.19 (2004) (in product liability action for personal injuries, "unique and different experiences of each individual member of the class would require litigation of substantially separate issues and would defeat the commonality of interests in the certified class").

This, however, is not such a case; at least, it does not appear so at this juncture. "Class certification may be appropriate where common issues of law and fact are shown to form the nucleus of a liability claim, even though the appropriateness of class action treatment in the damages phase is an open question." Salvas v. Wal-Mart Stores, Inc., 452 Mass. 337, 364 (2007). So far at least,

there is no allegation that any tenant (of for that matter, their pets) suffered physical injury as a result of the shut-offs of heat and hot water. Without meaning to demean the inconvenience, discomfort, and frustration inherent in even a temporary loss of these most basic of life's comforts, the injury to the tenants hardly equates to the hypothetical "mass accident," whether considered in dollars or in diversity of harm. In such a case, the fact that "'[t]he amount of damages is invariably an individual question ... does not defeat class action treatment.'" Id. (citation omitted).

In short: the requirements of numerosity, commonality, typicality, adequacy, predominance, and superiority are all satisfied in this case.

C. Certification Under Chapter 93A, §9.

"Where appropriate, 'the public policy of the Commonwealth strongly favors G.L. c. 93A class actions.'" Bellermann v. Fitchburg Gas and Elec. Light Co., 470 Mass. 43, 52 (2014), quoting from Feeney v. Dell Inc., 454 Mass. 192, 200 (2009). .

> In considering certification under G.L. c. 93A, a judge must bear in mind the "'pressing need for an effective private remedy' ... and that 'traditional technicalities are not to be read into the statute in such a way as to impede the accomplishment of substantial justice.'"

Bellerman at 52-53, quoting from Aspinall, 442 Mass. at 391-392 and Fletcher, 394 Mass. at 605–606.

The statutory language governing class certification in a Chapter 93A action is somewhat less stringent than that of Rule 23. Aspinall, 442 Mass. at 391-92; Kwaak v. Pfizer, Inc., 71 Mass. App. Ct. 293, 302 (2008). Section 9(2) of the statute allows a consumer injured by an unfair or deceptive act or practice to bring a class action, where

> the use or employment of the unfair or deceptive act or practice has caused similar injury to numerous other persons similarly situated and

> if the court finds in a preliminary hearing that [the consumer] adequately and fairly represents such other persons.

Section 9(2) thus expressly incorporates numerosity and adequacy requirements that parallel those of Rule 23. Caselaw has implied as well the requirements of commonality and typicality, but has eschewed importing the "highly discretionary element[s]" of predominance and superiority. Baldassari v. Public Fin. Trust, 369 Mass. 33, 40 (1975); *accord*, Fletcher, 394 Mass. at 605This case meets the class certification requirements of Chapter 93A as well as those of Rule 23.

ORDER

For the foregoing reasons, the plaintiffs' Motion for Class Certification is ALLOWED.

The case is in need of a revised tracking order. On or before July 17, 2017 counsel for the plaintiffs shall file a joint motion for extension of the tracking order or, if the parties are unable to agree, a motion for each side. The B session will not have a judge in the third quarter, but I will act on the motion.

Counsel for both sides shall report for a status conference on September 13, 2017 (or such other date as is mutually convenient) at 2:00 p.m., prepared to report on each side's view of the path toward resolution.

Thomas P. Billings
Justice of the Superior Court

Dated: June 27, 2017

EXHIBIT E

EXPERT REPORT
HOWARD M. NEWBURG, CPA, MST, CVA, CFF

The Class Representative and Class Counsel have retained as a damages expert Howard Newburg, CPA, MST, CVA, CFF of Newburg & Company, LLP, 890 Winter Street, Suite 208 Waltham, MA 02451. Howard Newburg is the CEO and Managing Partner of Newburg & Company, LLP. Howard has over forty years' experience providing accounting, auditing, tax, and business advisory services. He specializes in financial and estate planning, tax strategies and compliance issues, litigation support, merger/acquisition transactions, business valuations, executive benefits and general consulting in all financial and transactional areas. He earned his Bachelor of Science degree in Business Administration from the University of Massachusetts at Amherst, and a Master of Science in Taxation from Bentley College. He is a member of the American Institute of Certified Public Accountants, Massachusetts Society of Certified Public Accountants (where he serves on the Litigation Support Committee), National Association of Certified Valuation Analysts, Association of Certified Fraud Examiners, Boston Estate Planning Counsel, and the American Society of Appraisers.

i. Subject Matter Upon Which Expert is Expected to Testify:

Mr. Newburg is expected to testify in support of the damages the Class sustained as a result of defendant's conduct. He is excepted to testify that to a reasonable degree of accounting certainty, the Class-wide damages are as follows:

Damages Based on the Implied Warranty of Habitability, Unjust Enrichment and Chapter 93A Claims:

Admitted Outage Class:	**$4,146,882.00**
Construction Project Class:	**$3,725,592.00**

Damages Based on the Covenant of Quiet Enjoyment Claims:

Total Damages:	**$10,016,586.00**

These damage calculations do not include other statutory damages such as attorneys' fees, costs, expenses or other damages that may be assessed by the Court as of right. Mr. Newburg also reserves the right to supplement this opinion to account for changes in the rent records or changes to the value of the demised property as found by the real estate appraisal expert retained by the Class.

ii. Substance of the Facts and Opinions to Which the Expert is Expected to Testify:

The opinions of Mr. Newburg are based on his review of the defendant's rent records, which were provided by defendants Equity Residential Management, L.L.C. and EQR-Walden Park, LLC (collectively "ERM") during discovery in the above-referenced matter. These rent records were displayed on an Excel spreadsheet that listed (among other items) the name of the tenant, the monthly rent amount, and the dates of tenancy.

The opinions of Mr. Newburg are also based on the expert report of John A. Regan, MAI of Petersen LaChance Regan Pino, LLC. Mr. Regan is a real estate appraisal expert retained by the Class to opine on the fair market value of the property that lacked heat and/or hot water on any of the "Admitted Outage Class" days. He also opined on the fair market value of the property during periods of construction relating to the "Construction Project Class." In both instances, Mr. Regan determined that the fair market value of the property on these affected dates was Zero Dollars ($0.00). Mr. Newburg relied on Mr. Regan's opinions in calculating damages.

Mr. Newburg is expected to testify that the application of the fair market value contained in the opinion of Mr. Regan to the rent records provided by ERM during discovery resulted in the damages to the Class as outlined above. Damages on the warranty of habitability, unjust enrichment and Chapter 93A claims were calculated by determining the difference between the value of the apartment as leased and the fair market value of the apartment (as found by the real estate appraiser expert) that lacked heat, hot water and/or underwent construction. Damages on the quiet enjoyment claims were based on liquidated damages equal to three month's rent. See G. L. c. 186, § 14. According to the rent records produced by ERM, there were 1534 tenants listed with monthly rents for these tenancies totaling $3,338,862.00. Trebled, total Class damages on the breach of the covenant of quiet enjoyment claim is $10,016,586.00.

iii. Grounds for Each Such Opinion

The grounds for the opinions to which Mr. Newburg is expected to testify are the facts and assumptions as stated in subsections (i) and (ii) above, as well as Mr. Newburg's training, education and experience in the accounting field.

EXPERT CERTIFICATION

I, Howard M. Newburg, pursuant to Superior Court Rule 30B, hereby certify that the foregoing disclosure accurately states the matters on which I am expected to testify, the substance of facts and opinions about which I am expected to testify, and the summary of the grounds for each opinion to which I am expected to testify at trial.

_____

Howard M. Newburg, CPA, MST, CVA, CFF

EXHIBIT F

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

RACHELLE BAKER and JASON DITTMAN, individually and on behalf of all others similarly situated, Plaintiff. v. EQUITY RESIDENTIAL MANAGEMENT, L.L.C. and EQR-WALDEN PARK, L.L.C., Defendants.	Civil Action No. _____

AFFIDAVIT OF JAMES D. FIFFER

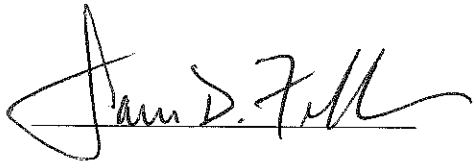
1. My name is James D. Fiffer, and I am a Senior Vice President of Equity Residential in Chicago, Illinois.

2. I have personal knowledge of the facts recited herein and affirm their truth and accuracy under penalty of perjury.

3. Named defendant Equity Residential Management, L.L.C. is a Delaware limited liability company with its principal place of business in Chicago, Illinois.

4. Named defendant EQR-Walden Park, L.L.C. is a Delaware limited liability company with its principal place of business in Chicago, Illinois.

5. The aforesaid information is true and correct to the best of my knowledge and belief.



JAMES D. FIFFER
June 4, 2018

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

RACHELLE BAKER and JASON DITTMANN

(b) County of Residence of First Listed Plaintiff Cambridge, MA
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Joshua N. Garick, 100 TradeCenter Suite G-700, Woburn, MA 01801 (617) 600-7520; Preston W. Leonard, 139 Charles Street Suite A121, Boston, MA 02114 (617) 595-3460

DEFENDANTS

EQUITY RESIDENTIAL MANAGEMENT, L.L.C., and EQR-WALDEN PARK, L.L.C.

County of Residence of First Listed Defendant Chicago, IL
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*
Thomas H. Wintner and Mathilda S. McGee-Tubb
Mintz Levin Cohn Ferris Glovsky and Popeo PC
One Financial Center, Boston, MA 02111 (617) 542-6000

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ❒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*
(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	☒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ☒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

LABOR
- ❒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

V. ORIGIN *(Place an "X" in One Box Only)*

❒ 1 Original Proceeding ☒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
28 U.S.C. section 1332(d), 1441, 1446, 1453

Brief description of cause:
Plaintiffs claim that defendants violated c. 186 s. 14 and c. 93A with respect to property in Cambridge, MA.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Magistrate Judge Robert B. Collings DOCKET NUMBER 1:13-cv-12217-RBC

DATE 06/05/2018

SIGNATURE OF ATTORNEY OF RECORD /s/ Thomas H. Wintner

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

1. **Title of case (name of first party on each side only)** Rachelle Baker v. Equity Residential Management, L.L.C.

2. **Category in which the case belongs based upon the numbered nature of suit code listed on the civil cover sheet. (See local rule 40.1(a)(1)).**

☐ **I.** **410, 441, 470, 535, 830*, 835*, 891, 893, 895, R.23, REGARDLESS OF NATURE OF SUIT.**

☑ **II.** **110, 130, 140, 160, 190, 196, 230, 240, 290,320,362, 370, 371, 380, 430, 440, 442, 443, 445, 446, 448, 710, 720, 740, 790, 820*, 840*, 850, 870, 871.**

☐ **III.** **120, 150, 151, 152, 153, 195, 210, 220, 245, 310, 315, 330, 340, 345, 350, 355, 360, 365, 367, 368, 375, 376, 385, 400, 422, 423, 450, 460, 462, 463, 465, 480, 490, 510, 530, 540, 550, 555, 625, 690, 751, 791, 861-865, 890, 896, 899, 950.**

***Also complete AO 120 or AO 121. for patent, trademark or copyright cases.**

3. **Title and number, if any, of related cases. (See local rule 40.1(g)). If more than one prior related case has been filed in this district please indicate the title and number of the first filed case in this court.**

Rachelle Baker v. Equity Residential Management, L.L.C. 1:13-cv-12217-RBC

4. **Has a prior action between the same parties and based on the same claim ever been filed in this court?**

YES ☑ **NO** ☐

5. **Does the complaint in this case question the constitutionality of an act of congress affecting the public interest? (See 28 USC §2403)**

YES ☐ **NO** ☑

If so, is the U.S.A. or an officer, agent or employee of the U.S. a party?

YES ☐ **NO** ☐

6. **Is this case required to be heard and determined by a district court of three judges pursuant to title 28 USC §2284?**

YES ☐ **NO** ☑

7. **Do all of the parties in this action, excluding governmental agencies of the United States and the Commonwealth of Massachusetts ("governmental agencies"), residing in Massachusetts reside in the same division? - (See Local Rule 40.1(d)).**

YES ☑ **NO** ☐

A. **If yes, in which division do all of the non-governmental parties reside?**

Eastern Division ☑ **Central Division** ☐ **Western Division** ☐

B. **If no, in which division do the majority of the plaintiffs or the only parties, excluding governmental agencies, residing in Massachusetts reside?**

Eastern Division ☐ **Central Division** ☐ **Western Division** ☐

8. **If filing a Notice of Removal - are there any motions pending in the state court requiring the attention of this Court? (If yes, submit a separate sheet identifying the motions)**

YES ☐ **NO** ☑

(PLEASE TYPE OR PRINT)

ATTORNEY'S NAME Thomas H. Wintner BBO# 667329

ADDRESS Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, MA 02111

TELEPHONE NO. (617) 542-6000