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 DEFENDANTS' AND PLAINTIFFS' CROSS MOTIONS FOR PARTIAL JUDGMENT ON THE PLEADINGS (DOC. NOS. 78, 88)

February 27, 2023

SOROKIN, J.

In 2021, plaintiffs Edwin Bartok, Barbara Lee, and the Manufactured Home Federation of Massachusetts, Inc. ("MFM") commenced this action against Defendants for alleged violations of the Consumer Protection Act and the Manufactured Housing Act. Bartok and Lee are residents at the manufactured housing communities at Miller Woods and Oak Point, respectively, which are owned and operated by Defendants. MFM is a "membership-based, non-profit organization which is dedicated to protecting the rights of manufactured housing residents in Massachusetts." Doc. No. 11 ¶ 20.[1]

In 2022, Defendants moved for partial judgment on the pleadings as to Counts II and IV of the First Amended Complaint, those pertaining to Oak Point. Doc. No. 78. Plaintiffs then cross-moved for judgment on the pleadings to strike the Fourth, Seventeenth, and Eighteenth

[1] Citations to "Doc. No. __" reference documents appearing on the court's electronic docketing system; pincites are to the page numbers in the ECF header.

Additional Defenses asserted in Defendants' Answer and Defenses to the First Amended Class Action Complaint. Doc. No. 26 at 16, 20; Doc. No. 88. The motions are fully briefed, and the Court heard argument on January 6, 2023. Doc. No. 109.

The Court first addresses Defendants' motion, applying the familiar Rule 12(c) standard in which the Court accepts all facts pled by Plaintiffs as true and draws all reasonable inferences in Plaintiffs' favor. After carefully reviewing the parties' submissions and arguments, the Defendants' Motion for Partial Judgment on the Pleadings (Doc. No. 78) is DENIED. Subsequently, the Court proceeds to Plaintiffs' cross-motion, applying the same legal standard and finding that even when all reasonable inferences are drawn in Defendants' favor, Plaintiffs prevail. Accordingly, Plaintiffs' Cross-Motion for Judgment on the Pleadings (Doc. No. 88) is ALLOWED.

I. BACKGROUND

The Manufactured Housing Act ("MHA"), originally passed by the Massachusetts Legislature in 1939, was designed to "protect the rights of residents of mobile home parks." Layes v. RHP Props., Inc., 133 N.E.3d 353, 361 (Mass. App. Ct. 2019). Since then, the Legislature has further developed this regulatory scheme by enacting amendments that provide additional protections, such as those passed in 1973. Blake v. Hometown Am. Cmtys., Inc., 158 N.E.3d 18, 27-28 (Mass. 2020). These protections were instituted to preserve the affordability of manufactured housing communities ("MHCs"), particularly for low-income families and the elderly. Id. Such protections include prohibiting no-cause evictions, barring the imposition of unreasonable insurance requirements on residents, and requiring that MHC operators provide residents with notice and relocation costs in the event of the MHC's closure. Id. at 27. In passing the amendments, the Legislature also recognized that creating and preserving the affordability of

MHCs required MHCs to be secure investments such that owners would be able to recoup their costs and get an adequate return on their investments. Id. at 29.

Among their many protections, the amendments include the provision codified at § 32L(2)—central to the present suit—which states: "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 same section provides that failure to abide by § 32L(2) "shall constitute an unfair or deceptive practice" under Chapter 93A, § 2(a), thus subjecting those in violation to liability. Id. § 32L(7).

Determining the meaning of the MHA is a question of statutory interpretation ultimately left to the courts. Blake, 158 N.E.3d at 26. In interpreting statutes, the Court is guided by the intent of the Legislature as determined by the plain meaning of the statute's language when considered in the context of the Legislature's overall goals in enacting the statute. Id.

When considering the MHA, and specifically § 32L(2), the Court does not confront a blank slate. Under Chapter 140, § 32S and Chapter 93A, § 2(c), the Massachusetts Attorney General ("AG") is empowered to interpret and enforce the MHA, including through adopting regulations. The Court is required to give substantial deference to the AG's interpretation unless it is found to substantially contradict the plain language of the statute. Blake, 158 N.E.3d at 26. The AG's interpretation of § 32L(2) is found in the AG's own regulations, Manufactured Housing Community Regulations ("Regulations"), and the additional guidance found in The Attorney General's Guide to Manufactured Housing Community Law (2017) ("Guide").[2] 940 Code Mass. Regs. 10.00–10.14 (1996). The AG also provided further clarification regarding

[2] Mass. Att'y Gen.'s Off., *The Attorney General's Guide to Manufactured Housing Community Law* (2017), available at https://www.mass.gov/doc/attorney-generals-guide-to-manufactured-housing-nov-2017.

§ 32L(2) in an amicus letter to the Supreme Judicial Court ("SJC") in Blake, when the SJC was tasked with providing its own interpretation of the provision. Doc. No. 88-6; see Blake, 158 N.E.3d at 28-29.

The use of the term "similar class" as found in § 32L(2) appears only in the Guide, in which the AG states that "[i]n general, any change in rent must be applied uniformly to all residents of a similar class. A rent increase that is not applied uniformly to residents who receive similar services and have similar lot sizes may be unfair under the [MHA]." Guide at 24. The Regulations, while not referring to "similar classes," use the term "non-discriminatory rent increases" to refer to "proposed rental increases . . . that are apportioned equally among similarly situated tenants in the community." See 940 Code Mass. Regs. 10.01, 10.05(4)(c), 10.05(8) (1996). As described in the AG's amicus letter to the SJC in Blake, the Regulations and the Guide embody the AG's interpretation of § 32L(2). Doc. No. 88-6 at 3.

In that same letter, the AG explained that a determination of similar classes under § 32L(2) requires a "fact-specific inquiry that principally relates to the nature of the residents' lots and the services they receive . . . ." Id. While such an inquiry presumes unfairness when similar classes are treated differently in rent—as written into the statute—certain circumstances may warrant the non-uniformity. Id.; Blake, 158 N.E.3d at 29. Such a showing would rebut the presumption; failure to rebut the presumption renders the non-uniform rent structure unfair.

The SJC—the final authority on Massachusetts law—has also recently construed § 32L(2). In Blake, the SJC was confronted with an MHC operator who, upon purchasing the MHC, promptly raised the rent for all new lot rental agreements by ninety-six dollars a month. Blake, 158 N.E.3d at 24. Residents and tenants who had entered into agreements before the change in ownership were not subject to the increase in rent, despite having similar sized lots

with access to similar amenities. Id. In its decision determining whether the non-uniform rents constituted a violation of § 32L(2), the SJC provided several key holdings:

> [W]e reject the owners' argument that time of entry into a lot rental agreement renders the renters dissimilar under the statute.
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> * * *
>
> The defendants argue that the timing of entry into lot rental agreements renders the plaintiffs not in a "similar class" under the statute, even if the lots rented are essentially the same with the same amenities. This contention is incorrect.
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> * * *
>
> Charging different amounts of rent for essentially the same lot appears to violate the uniformity presumption presented by the plain language of the statute. Although different lot sizes or amenities would clearly divide the residents into different classes, time of rental does not appear to defeat the uniformity principle contained within the statute. If every time a lot turned over, a different class were created, there would be no uniformity whatsoever.
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> * * *
>
> Section 32L (2) clearly states this concern [of maintaining manufactured housing communities as affordable housing options] by creating a presumption that nonuniform rents for similar classes of residents are unfair.
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> * * *
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> In sum, the language and legislative history of § 32L (2) provide for a presumption of uniform treatment and protection of the low income residents of manufactured housing communities, new and old. Nowhere does the text or legislative history of the statute indicate that a turnover in a lot lease would create a new class of resident and subject that new resident to paying more rent than others for the same lot. If every such change created a new class of resident, and allowed unrestricted rent increases, there would be no uniformity and no protection.
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> * * *
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> In light of the text of the statute as a whole, the Attorney General's guidance, and the legislative history, we hold that time of entry into an occupancy agreement does not create a dissimilar class under § 32L (2). Such an interpretation would allow a manufactured housing community operator to completely circumvent § 32L (2) by

> creating a new class each time a new lease is signed, and remove the protections that the statute offers against unfair and nonuniform changes in rent.
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> * * *
>
> Because the defendants have violated G. L. c. 140, § 32L (2), damages are governed by G. L. c. 93A.

Id. at 24, 26-29, 33. The SJC also held that the AG's interpretation as set forth in the amicus letter was "consistent with [their] interpretation of § 32L(2)." Id. at 29. The SJC's interpretation of § 32L(2) in Blake opened the door to actions such as this one. In at least partial response to Blake, Plaintiffs sued the owners and operators of the Oak Point Manufactured Housing Community in Middleborough, Massachusetts alleging that the Oak Point rent structure—a non-uniform structure—was unlawful. See Doc. No. 11.

As described by Plaintiffs, the Oak Point rent structure sets rent "based on a resident's or tenant's date of entry into the community," such that new entrants are charged higher rents even when they are "leasing home sites and receiving services similar to the home sites leased or services received by existing residents or tenants." Doc. No. 11 ¶¶ 31-32. The leases are for lifetime occupancy with the only annual rent increases based on the annual percentage change in the consumer price index. See Doc. No. 29-1 at 6-15.

According to Plaintiffs, this rent structure has produced dissimilar rents for similar classes of Oak Point tenants in violation of Chapter 93A, § 9 and Chapter 140, § 32L(2). Doc. No. 11 ¶¶ 118-24, 132-38. Defendants assert that they are not subject to liability because Chapter 93A, § 3 exempts "actions otherwise permitted under laws as administered by any regulatory board or officer acting under statutory authority of the commonwealth." See Doc. No. 78. Defendants argue that the exemption applies to the Oak Point rent structure because the rent structure has been permitted by the Middleborough Rent Control Board ("the Board"). Id.

The Board was established by the Massachusetts Legislature through the Special Act of 1985, which was enacted to address the "emergency . . . created by high and unwarranted rental increases imposed by some park owners of mobile home parks." Doc. No. 78-2 at 1. Such increases were deemed a risk to the "public safety, health and general welfare of the citizens of [Middleborough], particularly the elderly." Id. Under Section 2 of the Special Act, the Legislature authorized the creation of a Middleborough rent board to regulate "rents, standards and evictions" of mobile home park accommodations to "remove hardships, or correct inequities for both the owner and the tenants." Id. at 1-2. When regulating rent, Section 3 authorized the Board to consider the need to guarantee a fair net operating income for mobile home park owners, including how changes to property taxes, maintenance expenses, and other conditions may impact owners. Id. at 2. The Special Act of 1985 made no mention of either Chapter 140 or any authority of the Board to enforce or interpret its provisions. Id. at 1-3.

The Board first confronted the issue of Oak Point's rent structure in 1998 when Saxon Partners, the developer and initial owner of Oak Point, submitted a rent proposal to the Town regarding the then-planned Oak Point MHC. Doc. No. 88-9 at 13; see Doc. No. 89 at 2. The proposal described the rent structure still in place at Oak Point today—lifetime leases in which the base rent is set at the time of the tenant's arrival to Oak Point and the only permitted increases are annual adjustments based on changes to the consumer price index. Doc. No. 78-1 at 11-12. Over the course of several meetings that year, the Board discussed the Oak Point rent structure, but ultimately decided not to vote on the proposal nor take any formal action. Id. at 8-12, 26-28. At the same time, the Board made no effort to adjust the proposal nor prevent its implementation. Id. at 26-28. Without restrictions imposed by the Board, Saxon Partners implemented the proposed rent structure at Oak Point.

In 2009, the issue of Oak Point's rent structure again came before the Board. Id. at 54. The rent structure was raised during the Board's drafting and ultimate passage of the Rules and Regulations for Mobile Home Park Accommodations, Rent, and Evictions ("the Middleborough Rules"), which explicitly set forth maximum rent requirements under Section 2, "Maximum Rent." Id. at 70-80. Section 2 states that the maximum rent for a new manufactured home may "be higher or lower than the maximum rent for other mobile homes in the park when the rental housing agreement is made." Id. at 72-73. For manufactured homes which were previously owned, the maximum rent—established by a new agreement—shall not exceed either (1) the rent being offered to purchasers of new manufactured homes (in cases where the MHC owner is selling new manufactured homes at that time) or (2) the highest rent being paid by other tenants (in cases where the MHC owner is not selling new manufactured homes at the time). Id. Once the annual base rent has been established, further increases must be approved by the Board or based on the annual change in the consumer price index as approved by the Board or as provided in the rental agreement. Id. at 73. The governing rules in place today, most recently amended in 2013, retain the original language of Section 2. Id. at 131-32; Doc. No. 79 at 17.

In 2011, Defendants purchased Oak Point and continued to implement the original rent structure put in place by Saxon Partners, the same structure currently challenged by Plaintiffs. Doc. No. 11 ¶¶ 30-32. The Oak Point rent structure was, and continues to be, compliant with Section 2 of the Middleborough Rules. The heart of the present dispute is whether compliance with the Middleborough Rules entitles Defendants to an exemption under Chapter 93A, § 3. Defendants argue that they are exempt under § 3 because the Middleborough Rules "permit" the Oak Point rent structure within the meaning of that statute. See Doc. No. 79. In opposition, Plaintiffs assert that regardless of whether Oak Point's rent structure is compliant with the

Middleborough Rules, the Board lacked the authority to permit the structure in the first place and, accordingly, Defendants have no right to the § 3 exemption. See Doc. No. 89.

II. DISCUSSION[3]

The parties agree that if Defendants are entitled to the § 3 exemption, Claims II and IV of the First Amended Complaint must be dismissed. Alternatively, if Defendants are not entitled to the exemption, Defendants' motion must be denied; Defendants' Fourth, Seventeenth, and Eighteenth Affirmative Defenses must be struck; and the Court would later determine whether, under § 32L(2), Defendants are in fact charging dissimilar rents for similar classes of tenants without sufficient justification. As explained in the discussion that follows, the Court finds that the exemption does not apply because the Oak Point rent structure is not "permitted" within the meaning of Chapter 93A, § 3. At present, the Court takes no position on the ultimate § 32L(2) merits dispute. Several reasons support the conclusion that the exemption does not apply.

First, Defendants have failed to show more than a related or overlapping regulatory scheme. As such, they do not meet their "heavy" burden of proving the § 3 exemption applies. Aspinall v. Philip Morris, Inc., 902 N.E.2d 421, 424 (Mass. 2009). Courts are not to apply the exemption lightly. Ducat v. Ethicon, Inc., No. 4:21-CV-10174-TSH, 2021 WL 5749856, at *1 (D. Mass. June 4, 2021). To meet their burden, Defendants must show "more than the mere existence of a related or even overlapping regulatory scheme that covers the transaction. Rather, [Defendants] must show that such scheme affirmatively permits the practice which is alleged to be unfair or deceptive." Aspinall, 902 N.E.2d at 424 (emphasis in original, citations omitted). That permission must come from a "regulator authorized to review the defendant's actions" who,

[3] The Court acknowledges that there are differences in meaning between "tenants" and "residents." Those differences do not bear upon this decision. The Court has adopted the term "tenants" where applicable for the sake of simplicity.

in turn, has "determined that those actions, in particular, were not unfair or deceptive." O'Hara v. Diageo-Guinness, USA, Inc., 306 F. Supp. 3d 441, 454 (D. Mass. 2018), on reconsideration, 370 F. Supp. 3d 204 (D. Mass. 2019).

While it is true that the Oak Point rent structure complies with the Middleborough Rules and that the Board was well-aware of the Oak Point structure by the time the rules were passed, those rules express no binding determination over whether Defendants are separately compliant with § 32L(2). The Special Act of 1985, which established the Board, does not explicitly or impliedly authorize the Board to determine what is sufficient to rebut the presumption of unfairness under § 32L(2). Similarly, that law vests no authority in the Board to interpret, apply, or enforce § 32L(2) or any other provision of Chapter 140. Certainly, the Legislature did authorize the Board to regulate rents in ways that consider both tenant rights and the financial needs of operators, and the SJC has instructed rent control boards to "be mindful" of § 32L(2). Chelmsford Trailer Park, Inc. v. Town of Chelmsford, 469 N.E.2d 1259, 1264 (Mass. 1984). Nonetheless, that existing authorization and instruction decidedly fall short of authorizing the Board to determine whether classes of tenants are "similar" within the meaning of § 32L(2) or whether non-uniform rents are justifiable under § 32L(2). That fact-specific inquiry is not something the Board is authorized to do. Thus, the Board's regulations do not (and could not) "permit" the rent structure at Oak Point within the meaning of Chapter 93A, § 3. Rather, the Board is administering a related or overlapping rent control scheme through its regulations. Such a showing is insufficient to meet Defendants' heavy burden and, therefore, the exemption does not apply.[4]

[4] Moreover, the AG's regulations do not "expressly proclaim[]" that rent increases authorized by rent control laws are "permitted," as Defendants argue. Doc. No. 95 at 12-13. The principles of statutory interpretation require that the regulations be construed according to their plain

Second, § 32L(2) plainly creates substantive rights for tenants of manufactured housing communities that cannot be impaired by local governments. As previously described, § 32L(2) was added to the MHA as part of a package designed to protect the rights of tenants. The need for such rights was rooted in the Legislature's understanding that those tenants—often of fixed- or low-income status, such as the elderly or single parents—were vulnerable. Blake, 158 N.E.3d at 27-28. The Legislature sought to address these concerns by establishing a specific right with an associated cause of action. See Mass. Gen. Laws ch. 140, § 32L(7).

The text of § 32L(2) creates a legal standard against which non-uniform rent structures are to be measured. Under subsection two, a change in rent which does not apply uniformly to all "manufactured home residents of a similar class" is presumptively "unfair." Id. § 32L(2). Subsection six goes on to provide that "[a]ny rule . . . which is unfair or deceptive or which does not conform to the requirements of this section shall be unenforceable." Id. § 32L(6). Subsection seven endows plaintiffs with the ability to vindicate those rights by stating that "[f]ailure 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 [Chapter 93A, § 2(a)]. Enforcement of

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language. Mass. Fine Wines & Spirits, LLC v. Alcoholic Beverages Control Comm'n, 126 N.E.3d 970, 975 (Mass. 2019). Here, Defendants misread the plain language of the applicable regulation, 940 Code Mass. Regs. 10.02. As relevant to this case, subsections two and seven of 10.02 set forth, respectively, that MHC operators must abide by § 32L(2) and that MHC rent increases must be allowed by rent control laws where they exist. Subsection eight, which Defendants take out of context, only applies to a subset of rent increases and only concerns when such increases are "unfair." This regulation does not encompass let alone "permit" rent increases which violate § 32L(2). Indeed, following Defendants' interpretation of the regulations would result in a municipal rent control law rendering any rent increase "permitted" despite the express provisions of the governing statute and the regulations. Such an outcome would contradict the well-established direction that courts not construe statutes in ways that reach "absurd" results when sensible construction is available. Commonwealth v. Tinsley, 167 N.E.3d 861, 869 (Mass. 2021).

compliance and actions for damages shall be in accordance with the applicable provisions of [Chapter 93A, §§ 4–10].” Id. § 32L(7).

Viewed together, these provisions of Chapter 140, §32L create a comprehensive structure to protect tenant rights. Subsection two creates a substantive legal standard against which to judge non-uniformity in rent, subsection six renders unenforceable any rules that violate subsection two, and subsection seven authorizes a cause of action to enforce the foregoing legal rights. Plainly, these provisions vest MHC tenants with substantive rights, which, in certain circumstances, afford them protection from non-uniform rent structures.

That the right is not unqualified—because its presumption of unfairness is rebuttable—does not make it any less of a right. Indeed, the bedrock constitutional right against government searches of private homes is itself not unqualified because it is limited only to prohibiting “unreasonable” searches, yet it is undoubtedly a right. See U.S. Const. amend. IV. Moreover, that the plaintiffs in Blake successfully challenged a non-uniform rent structure as a violation of § 32L(2) through Chapter 93A demonstrates that, in passing § 32L(2), the Legislature created a right. See Blake, 158 N.E.3d at 33.

Under Article 89, § 7(5) of the Constitution of the Commonwealth, cities and towns do not have the authority “to enact private or civil law governing civil relationships except as an incident to an exercise of an independent municipal power . . .”. Mass. Const. art. 89, § 7(5). Consequently, Middleborough does not have the authority to modify or impair the substantive rights afforded by § 32L(2). Nor does the text of the enabling act of the Middleborough Rent Control Board—the Special Act of 1985—authorize Middleborough to step in and administer those rights.

Lastly, Defendants' interpretation proves too much. Under Defendants' theory, a rent control board concededly lacking the authority to enforce § 32L(2) could pass MHC regulations separating similar tenants into different rent classes without sufficient justification in contravention of § 32L(2) and, in doing so, could effectively (1) insulate the MHC owner from a Chapter 93A action challenging the rent structure and (2) preclude all future MHC tenants from challenging the legality of the rent structure under Chapter 93A. The Court rejects an interpretation resulting in such an outcome.[5] Such an interpretation would preclude judicial review, disregarding long-standing authority that the "duty of statutory interpretation rests ultimately with the courts." Blake, 158 N.E.3d at 26 (citations omitted, emphasis added).[6]

Of course, municipal rent control regulations are not irrelevant to the § 32L(2) analysis. To the contrary, the SJC has held that rent control boards must consider § 32L(2). Chelmsford Trailer Park, Inc., 469 N.E.2d at 1264. Various provisions of the AG's regulations reference and, in some sense, defer to municipal rent control determinations. See 940 Code Mass. Regs. 10.02(7), 10.02(8)(c) (1996). Rent control in Middleborough, as set forth in the Special Act of 1985, is meant to protect tenants and assure a reasonable income for the owner, objectives that are not dissimilar to those of the MHA. Blake, 158 N.E.3d at 30. The Middleborough Rules are

[5] A simple example building on Blake illustrates this point. Suppose a town with a rent control board enacted an MHC regulation authorizing a ninety-six dollar per month increase for all new tenants and, in response, an MHC operator implemented that rent structure. While current tenants could avail themselves of a Chapter 30A appeal of those regulations, they likely would have no reason to do so as their rent remained unchanged. Future tenants—the people who would be subject to the increase upon moving to the MHC—would likely lack both the standing and the interest to file an appeal at the time the regulations were adopted. If, after moving to the MHC, those tenants decided to challenge the non-uniform rent structure as a violation of § 32L(2), Defendants' interpretation would require a court to dismiss those claims without reaching the merits because the rent structure was compliant with the regulations and, thus, exempt under § 3.

[6] To be sure, the Court is not saying that Defendants have failed—or succeeded—to rebut the presumption of unfairness outlined in § 32L(2). At present, the Court only holds that the exemption does not apply.

certainly relevant—possibly even quite weighty—to the issues presented in this suit, but as a matter of law, they do not exempt Defendants from liability nor do they insulate the Oak Point rent structure from judicial review.

For these reasons, Defendants' Motion for Judgment on the Pleadings is DENIED. Turning to the Plaintiffs' Cross-Motion, the Court notes that even when viewing the matter under the defendant-friendly standard, the resolution of the issues remains the same.[7] Therefore, the Court ALLOWS Plaintiffs' cross-motion.

III. CONCLUSION

For the foregoing reasons, Defendants are not entitled to a § 3 exemption. At present, the Court makes no determination as to whether the rebuttable presumption under § 32L(2) has been met. Accordingly, Defendants' Motion for Partial Judgment on the Pleadings (Doc. No. 78) is DENIED, and Plaintiffs' Cross Motion for Judgment on the Pleadings (Doc. No. 88)—striking Defendants' Fourth, Seventeenth, and Eighteenth Additional Defenses—is ALLOWED.

SO ORDERED.

/s/ Leo T. Sorokin
Leo T. Sorokin
United States District Judge

[7] The Court notes that no party has suggested that the resolution of either motion turns on in whose favor the Court draws inferences. Such is the case especially given that the dispositive questions are legal in nature.