

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

IN RE GATEWAY PLAZA RESIDENTS LITIGATION

Index No. 651023/2014
Hon. Melissa A. Crane

**ORDER PRELIMINARILY APPROVING SETTLEMENT
AND SCHEDULING FAIRNESS HEARING**

The Court has received the Stipulation of Settlement, dated as of October 30, 2019 (the “Stipulation”), that has been entered into by the Representative Plaintiffs and defendant Marina Towers Associates, L.P. The Court has reviewed the Stipulation and its attached exhibits, and, good cause appearing,

IT IS HEREBY FOUND, CONCLUDED AND ORDERED as follows:

1. The Court, for purposes of this Preliminary Order, adopts all defined terms as set forth in the Stipulation, and incorporates them herein by reference as if fully set forth.
2. The Court preliminarily approves: (a) the settlement of the Action as set forth in the Stipulation; and (b) the proposed Plan of Allocation described in the Notice.
3. The Court hereby certifies the Class for settlement purposes. The Class is defined as: all persons who (i) reside at Gateway Plaza as of the Final Settlement Date, or (ii) do not reside at Gateway Plaza as of the Final Settlement Date but resided at Gateway Plaza for any period of time between April 1, 2008, and the Final Settlement

Date. The term Class or Class Members does not include (i) such persons or entities who submit valid and timely requests for exclusion from the Class; or (ii) persons who are or were Marina Towers Releasees and Related Party Releasees, and each of their employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; and the Family Members of each of the foregoing.

4. The Court finds that each element for certification of the Class for purposes of settlement pursuant to Section 901 of the New York Civil Practice Law and Rules is met, that is, for the purpose of settlement: (i) the class is so numerous that joinder of all members, whether otherwise required or permitted, is impracticable; (ii) there are questions of law or fact common to the class which predominate over any questions affecting only individual members; (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class; (iv) the representative parties will fairly and adequately protect the interests of the class; and (v) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

5. The Court approves as to form and content, and for distribution to Class Members, the Notice of Pendency and Proposed Settlement of Class Action (the "Notice"), substantially in the form of Exhibit A attached hereto, a Proof of Claim, substantially in the form of Exhibit B attached hereto; and for publication of a Summary Notice of Pendency and Proposed Settlement of Class Action, substantially in the form of Exhibit C attached hereto.

6. Class Counsel are authorized to act on behalf of the Class with respect to all acts required by, or which may be given pursuant to, the Stipulation or such other acts which are reasonably necessary to consummate the proposed settlement set forth in the Stipulation.

7. Class Counsel are hereby authorized to retain the firm of Epiq Class Actions & Claims Solutions as Claims Administrator of the Settlement, to supervise and administer the notice and claim procedures.

8. The Court will hold the Fairness Hearing on March 2, 2020, at 11:00 a.m. at the New York Supreme Court, Civil Branch, New York County, Courtroom 303, 71 Thomas Street, New York, New York 10013, to: (i) determine whether the Settlement should be finally approved as fair, reasonable, adequate, and in the best interests of the Class, (ii) determine whether a Judgment substantially in the form attached as Exhibit E to the Stipulation should be entered dismissing all claims in the Action against the Released Parties with prejudice, (iii) rule upon an application by Class Counsel for an award of attorneys' fees and reimbursement of expenses, and reimbursement of expenses for the Representative Plaintiffs, and a Representative Plaintiffs' Compensatory Award, and (iv) consider any other matters that may properly be brought before the Court in connection with the Settlement.

9. No later than seventy-five (75) days before the Fairness Hearing, the Administrator shall cause a copy of the Notice and Proof of Claim to be transmitted to each person or entity in the Class who can be identified by reasonable effort. Such transmittal shall be by first-class mail or, as to Class Members who currently reside at Gateway Plaza, and at the election of Class Counsel, by delivery to apartments at

Gateway Plaza or to mailboxes maintained for tenants at Gateway Plaza. Upon request, Marina Towers will assist Class Counsel in this effort as it pertains to Class Members who currently reside at Gateway Plaza.

10. The costs of such Notice will be paid out of the Initial Payment as set forth in Section II.A.1 of the Stipulation, and supplemented to the extent permitted by the Supplemental Notice and Administrative Expense Payments provision set forth therein.

11. The Court finds and concludes, with respect to both the form of the Notice given and the procedure used to give notice, that the Notice provided for in this Order is the best notice reasonably practicable under the circumstances, fully satisfies all applicable requirements of the New York Civil Practice Law and Rules, the United States Constitution (including the Due Process Clause), the Constitution of the State of New York, the Rules of the Court, and any other applicable law, and constitutes due and sufficient notice to all persons entitled to receive notice.

12. The Fairness Hearing may be adjourned by the Court without notice to the members of the Class. The Court may consider modifications of the Settlement (with the consent of the Representative Plaintiffs and Marina Towers) without further notice to the members of the Class.

13. Class Counsel shall file papers in support of the Settlement, Plan of Allocation, and requests for award of Attorneys' Fees, reimbursement of expenses, and Representative Plaintiffs' Compensatory Award no later than fifty (50) days prior to the Settlement Hearing.

14. Any member of the Class may request to be excluded from the Settlement. The request for exclusion from the Settlement Class must be received by the Claims Administrator no later than thirty (30) days prior to the date set in this Order for the Fairness Hearing, must be in writing, and must include the following information: name, address, telephone number, the dates the Class Member resided at Gateway Plaza, and the building and apartment number of the apartment at Gateway Plaza in which the Class Member resided or resides. The request to be excluded must be mailed by first class postage pre-paid mail (or delivered by hand or overnight delivery service) as specified in the Notice. Any person who requests exclusion from the Settlement in accordance with the terms stated in this Order shall not be a member of the Class, shall not be bound by the terms of the Settlement, and shall have no right to participate in the distribution of the Settlement proceeds.

15. Any member of the Class who does not request exclusion from the Settlement in the manner required by this Order may object to the Settlement, Plan of Allocation, the request by Class Counsel for attorneys' fees and reimbursement of expenses, and/or to the Representative Plaintiffs' Compensatory Award or otherwise request to be heard in person or by counsel concerning any matter properly before the Court at the Settlement Hearing. The objection or request to be heard at the Fairness Hearing must be received no later than thirty (30) days prior to the date set in this Order for the Fairness Hearing, must be in writing, and must include the following information: (i) whether the Class Member is a Class Member, (ii) the dates he or she resided at Gateway Plaza and the building and apartment number of the apartment at Gateway Plaza in which the Class Member resided or resides; (iii) which part of the Settlement

Agreement the Class Member objects to and (iv) the specific reason(s), if any, for each such objection made by the Class Member, including any legal support the Class Member wishes to bring to the Court's attention and any evidence the Class Member wishes to introduce in support of such objection. The objection or request to be heard at the Fairness Hearing must be filed with the Clerk of the Court and must be delivered by hand, overnight delivery, or first class mail to the counsel for the parties identified in the Notice at the same time that the objection or request to be heard is filed with the Clerk of the Court.

16. Class Counsel and Counsel for Marina Towers may respond to any such objection within ten (10) days prior to the date set in this Order for the Fairness Hearing.

17. Any member of the Class who does not submit a request to be excluded from the Settlement in the manner stated in this Order shall be deemed to have waived his or her right to be excluded from the Settlement, and shall forever be barred from requesting exclusion from the Settlement in this or any other proceeding.

18. Any member of the Class who does not object to the Settlement, Plan of Allocation, the request for attorneys' fees and reimbursement of expenses, and/or the Representative Plaintiffs' Compensatory Award, or otherwise request to be heard concerning the Settlement in the manner stated in this Order, shall be deemed to have waived his or her right to object to the Settlement, Plan of Allocation, the request for attorneys' fees and reimbursement of expenses and/or the Representative Plaintiffs' Compensatory Award, or otherwise to be heard concerning such matters, and shall

forever be barred from objecting to such matters, or otherwise being heard concerning such matters in this or any other proceeding.

19. Any member of the Class who does not submit a request to be excluded, and who wants to participate in the Settlement, shall complete and submit a Proof of Claim in accordance with the instructions contained therein. Unless the Court orders otherwise, all Proofs of Claim and Releases must be submitted no later than forty-five (45) days after the Fairness Hearing. Any Member for whom timely and valid Proof of Claim has not been submitted within the time provided for shall, unless otherwise ordered by the Court, be barred from sharing in the distribution of the proceeds of the Settlement, but shall nonetheless be bound by the terms of the Final Judgment.

20. The Representative Plaintiffs may alter the Plan of Allocation (subject to Court approval) without any further notice to Class Members, unless such Class Members expressly request notice of alteration of the plan by submitting such request to the Claims Administrator.

21. Pending the Fairness Hearing, the Court stays all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Stipulation.

22. This Order, the Settlement, and any of their terms, and all negotiations, discussions, and proceedings in connection with this Order and the Settlement, shall not constitute any evidence, or an admission by Marina Towers or any Releasee (as that term is defined in the Stipulation), that any acts of wrongdoing have been committed and shall not be deemed to create any inference that there is any liability on the part of Marina Towers or any Releasees. This Order, the Settlement, and any of

their terms, and all negotiations, discussions, and proceedings in connection with this Order and the Settlement, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum, or other tribunal other than as may be necessary to enforce the terms of this Order and/or the Settlement.

23. In the event that the Settlement fails to become effective in accordance with its terms, or if the Judgment is not entered or is reversed, vacated, or materially modified on appeal, this Order (except for this Paragraph) shall be null and void, the Settlement shall be deemed terminated pursuant to the terms of the Settlement, and the parties shall return to their prior positions as provided for in the Settlement.

Dated: New York, New York
November 13 2019

SO ORDERED:



Hon. Melissa A. Crane, J.S.C.

HON. MELISSA A. CRANE
J.S.C.