

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

KATHRYN THOME, *et al.*, on behalf of
themselves and all others similarly situated,

Plaintiffs,

- against -

THE JACK PARKER CORPORATION, *et al.*,

Defendants.

Index No.: 152510/2018

**[Proposed] Final Order and Judgment
Approving Class Action Settlement**

WHEREAS:

A. On **[INSERT DATE]**, Plaintiffs applied to the Court pursuant to Civil Practice Law and Rules (“CPLR”) Article 9 for an order preliminarily approving the settlement of this litigation (the “Action”) in accordance with the Stipulation and Agreement of Settlement dated **[INSERT DATE]** (the “Stipulation”) that, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of this Action (the “Settlement”) and for a judgment dismissing this Action with prejudice upon the terms and conditions set forth in the Stipulation.

B. In the Preliminary Approval Order of the Settlement of the Class Action dated **[INSERT DATE]** (the “Preliminary Approval Order”), this Court, among other things: (i) preliminarily approved the Settlement; (ii) scheduled a hearing for **[INSERT DATE]** (the “Settlement Hearing”) to consider whether to approve the Settlement as being fair, reasonable, adequate, and consistent with the New York City Rent Stabilization Law (“RSL”) and New York City Rent Stabilization Code (“RSC”), to enter final judgment thereon and to consider an award of attorneys’ fees and expenses; and (iii) directed that notice of the pendency of the Action, the

proposed Settlement and the Settlement Hearing, substantially in the form annexed as Exhibit [X] to the Stipulation (the “Notice”), be mailed (and to the extent possible, emailed) to all Class Members who could be identified with reasonable effort.

C. Lead Counsel has submitted an affirmation attesting that the Notice was disseminated in accordance with the Preliminary Approval Order.

D. Lead Counsel has submitted a list of all Class Members who properly and timely requested exclusion from the Class [a copy of which is attached as Exhibit 1 hereto] [or alternatively: No Class Member has timely requested exclusion from the Class].

E. The Court held a Settlement Hearing on [REDACTED] and has considered all prior proceedings in the Action, the Stipulation and the exhibits annexed thereto, any submissions made in connection with the proposed Settlement and all proceedings during the Settlement Hearing, and no party has terminated the Stipulation in accordance with paragraph [X] thereof.

NOW, IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. To the extent not defined herein, this Order and Final Judgment incorporates by reference the definitions in the Stipulation, and all terms not otherwise defined herein shall have the same meanings as set forth in the Stipulation.

NOTICE

2. The Court hereby determines that the Notice complied with the requirements of CPLR 904, 907 and 908 and due process and was the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all Class Members who could be located through reasonable effort. The Notice provided due and adequate notice of these proceedings, the Settlement, an award of

attorneys' fees and expenses, and the other matters set forth therein, to all persons entitled to such notice.

3. Due and adequate notice of the proceedings having been given to the Class Members, and a full opportunity having been offered to the Class Members to object to the proposed Settlement, to participate in the Settlement Hearing thereon or to request exclusion from the Class, it is hereby determined that all Class Members who have not requested exclusion (except as otherwise set forth in the Stipulation) are bound by this Order and Final Judgment (whether or not any Class Member has objected to the Settlement) and are barred from contesting the Stipulation, Settlement or this Order and Final Judgment.

4. Those persons identified in Exhibit 1 hereto shall be excluded from the Class and any benefits under the Settlement and shall not be bound by the Stipulation except as otherwise set forth therein. [Alternatively: No Class Member has timely requested exclusion from the Class.]

DECLARATORY RELIEF

5. The legal regulated rents for the Units that were occupied by Class Members as of April 2019 do not warrant further reduction or modification.

6. The Units occupied by Class Members as of the Effective Date shall all be subject to the RSL with such Class Members entitled to stabilized leases and rents, rights of renewal and succession, and other benefits under the law, such as the provision of the HCR rider with each lease, pursuant to RSL § 26-511(d). Any Class Member who is an occupant of a Unit as of the Effective Date shall remain rent stabilized during the tenancy, but the Unit shall be subject to deregulation upon such tenant's vacatur if otherwise permitted by law.

7. In the event a Class Member was supplied a J-51 Rider with each lease and lease renewal from the inception of the tenancy through the last lease in effect at the expiration of the J-51 tax benefits then that Unit will be deemed deregulated at the expiration of the lease in effect as of the Effective Date if otherwise permitted by law.

8. Past Overcharge Claims shall not include any amount based on any claim or calculation of treble damages, any other punitive damages, fines or interest (other than 9% interest as provided in the Stipulation). All claims for treble damages, punitive damages, fines and interest (other than 9% interest as provided in the Stipulation) under the RSL, RSC or any other provisions of law are deemed waived and released except as to Opt-Outs.

APPROVAL OF THE SETTLEMENT

9. Pursuant to CPLR 907 and 908, the Court finds that the Settlement as set forth in the Stipulation is in all respects fair, reasonable and adequate to each Class Member and consistent with the RSL and RSC, and the Settlement is hereby approved by the Court. In making this determination, the Court has considered, among other things, the benefits conferred on the Class by the Settlement, the risks faced by the Class in establishing liability and damages, and the value of settlement now in comparison to the likely probable duration, complexity and further expense of this litigation in the absence of a settlement. The Court further finds that the Settlement has been the product of arm's-length negotiations and has been entered into in good faith. The Parties thereto are directed to consummate the Settlement in accordance with the terms and conditions of the Stipulation.

10. In determining that the Settlement is in all respects fair, reasonable and adequate to each Class Member, and in approving the Settlement, the Court has considered that no [alternatively: X] objections have been raised by Class Members to the Settlement.

11. The Complaint against Defendants in this Action is dismissed on the merits and with prejudice, with each party to bear his, her or its own costs except for the payment of the attorneys' fees and reimbursement of expenses and the Incentive Award to Plaintiffs as provided for in Paragraph **[X]** below.

FEES APPROVED

12. The application by Lead Counsel for the award of attorneys' fees and reimbursement of expenses is granted, and said counsel are awarded legal fees equaling **[]** % of the Settlement Amount, and expenses of \$ **[]**. In addition, each named Plaintiff is awarded a Class Representative Incentive Award in the amount of \$ **[]**. Said fees and expenses and Class Representative Incentive Award shall be paid from the Settlement Amount in the manner prescribed in the Stipulation.

13. If the total Past Overcharge Amounts for all Eligible Class Members do not exceed the Net Cash Settlement Amount, any balance remaining shall revert to Defendant BPP Parker Tower Property Owner LLC.

14. Plaintiffs and all Class Members who have not requested exclusion are barred and enjoined from commencing, prosecuting, instigating or in any way participating in the commencement or prosecution of any action asserting any claims asserted in this Action, either directly, representatively, derivatively, or in any other capacity, against Defendants or any of the Released Defendants.

15. Neither the Stipulation nor any proceedings taken in accordance with the terms set forth therein shall be construed or deemed to be evidence, or any presumption, admission or concession, either (a) on the part of Plaintiffs, of the lack of merit of this Action, or (b) on the part of Defendants, of any violation of any statute, regulation or principle of common law, or of

any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, or any other action or proceeding, or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought in the Action, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding, whether civil, criminal, or administrative, except for any litigation or judicial proceeding arising out of or relating to the enforcement of this Stipulation or the Settlement. Any such evidence, admission or concession is expressly denied and disclaimed by each of the Plaintiffs and each of the Defendants.

16. Without in any way affecting the finality of this Order and Final Judgment, this Court shall retain continuing jurisdiction over this Action and the Parties to the Stipulation and the Class Members in order to: (a) effectuate the implementation of the Settlement; (b) enforce the terms of this Stipulation including, but not limited to, the releases provided herein; (c) hear all claims, defenses and counterclaims relating to the interpretation and enforcement of this Stipulation before and after the Effective Date as the Court deems appropriate; (d) review all challenges to final administrative determinations brought by Opt-Outs; (e) determine all other matters relevant to this Stipulation; (f) to enter any further orders as may be necessary or appropriate to effectuate the Stipulation, the Settlement, and the provisions of this Order and Final Judgment.

Dated: New York, New York

ENTER:

HON. ERIC SCHUMACHER, J. S. C.