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

IN RE GATEWAY PLAZA RESIDENTS LITIGATION	Index No. 651023/2014 Motion Seq. 14 Hon. Melissa A. Crane

MEMORANDUM OF LAW IN SUPPORT OF REPRESENTATIVE PLAINTIFFS' MOTION FOR FINAL SETTLEMENT APPROVAL, APPROVAL OF CLASS COUNSELS' APPLICATION FOR ATTORNEYS' FEES AND EXPENSES, AND APPROVAL OF CASE CONTRIBUTION AWARDS TO THE REPRESENTATIVE PLAINTIFFS

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I. INTRODUCTION

After more than five years of vigorously contested litigation, the parties have reached a settlement that provides extensive relief to the Class of current and former Gateway tenants. In particular, the Settlement[1] creates a monetary recovery of $10 million which – following disbursements of attorney's fees and other expenses and costs – will be distributed to Class members *pro rata*, either in cash or rent abatements, as a percentage of the total rent paid during the applicable class period. In addition, current tenants will receive a significant benefit in the form of a binding safeguard against future rent increases. It is estimated that this provision carries an additional monetary value of up to approximately $13 million. Additionally, and importantly, as the parties concur, this action already prompted approximately $20 million in capital expenditures designed to maintain and improve the Gateway complex and address the deficiencies identified in this suit. Those measures, implemented during the course of the litigation, significantly improved the habitability of the apartment units at Gateway Plaza – substantially resolving the Class' plea for injunctive relief.

As this Court recognized at preliminary approval, the settlement represents a very-favorable outcome for the Class. Now, following distribution of Notice, the Class' response has been resoundingly in favor of the Settlement. In fact, since disseminating Notice to the Class on December 18, 2019, not a single Class member has filed an objection to the Settlement, more than fiver hundred have already submitted proof of claim forms, and none have opted-out. Accordingly, the Court should grant final approval of the Settlement, finally certify the Class, and dismiss the action. Further, the Court should endorse Plaintiffs' application for modest case contribution

[1] Unless defined herein, all capitalized terms have the same meaning as defined in the Settlement Agreement.

awards for the Representative Plaintiffs and grant Class Counsel's application for attorney's fees and expenses.

II. BACKGROUND

A. History of Lawsuit, Discovery, and Settlement

On April 1, 2014, predecessor plaintiffs Maureen Koetz and Barbara Stoebel filed two class actions against defendant Marina Towers ("Marina Towers") and other related defendants, which were consolidated in this litigation on April 23, 2014. The action included claims for breach of the implied warranty of habitability under RPL§ 235-b as well as unjust enrichment; in addition to monetary damages, plaintiffs sought injunctive relief and attorneys' fees, costs, and disbursements. In essence, the suit alleged that defects in the complex's windows, insulation, and heating/cooling units (known as PTAC units) resulted in uninhabitable temperatures. In addition, Plaintiffs alleged that a faulty electrical submetering system resulted in excessive electricity costs for tenants.

On June 13, 2014, Ms. Stoebel and David Spencer filed a Consolidated Class Action Complaint. Then, on July 28, 2014, defendants Marina Towers and Gateway Residential Management filed a motion to dismiss plaintiffs' claims and to dismiss Gateway Residential Management from the action. Plaintiffs voluntarily withdrew their unjust enrichment claim against Marina Towers but otherwise opposed the motion. On December 3, 2015, the Court granted plaintiffs leave to amend the complaint in order to replead the unjust enrichment claim against Gateway Residential Management and denied defendants' motion to dismiss. Defendants appealed the December 3, 2015 Order but ultimately withdrew the appeal.

In accordance with the Court's Order, Ms. Stoebel and Mr. Spencer amended the complaint on January 5, 2016. On February 4, 2016, defendant Gateway Residential Management moved for an order dismissing the remaining claims against it for unjust enrichment. By order entered

December 9, 2016, the Court dismissed the claims against Gateway Residential Management and directed the Clerk of the Court to enter judgment dismissing it from the action.

On August 15, 2016, Ms. Stoebel and Ms. Spencer moved to withdraw as plaintiffs and proposed class representatives; they further sought an order permitting the intervention and substitution of Ninfa Segarra and Pauline Wolf to pursue the claims in their stead. On August 18, 2016, counsel informed the Court that Ms. Wolf no longer wished to act as a class representative. By order dated December 9, 2016, the Court permitted Ms. Stoebel and Mr. Spencer to withdraw and Ms. Segarra to intervene as the representative plaintiff. Consequently, the case proceeded under a Second Amended Consolidated Class Action Complaint with Ms. Segarra as the named plaintiff.

On January 23, 2017, Ms. Segarra moved for an order certifying a class in the Action and granting other relief. By Stipulation and Order entered by the Court on July 13, 2017, Ms. Segarra withdrew as plaintiff and thereby withdrew her class certification motion. The Order authorized Maureen Koetz to file a Third Amended Class Action Complaint substituting in as the named plaintiff and proposed class representative. She did so on July 17, 2017.

On July 20, 2017, Ms. Koetz refiled the motion for class certification. Marina Towers then filed successive motions to dismiss. On August 3, 2017, Marina Towers moved to dismiss the complaint's requests for injunctive relief on the basis that Ms. Koetz was a former tenant who lacked standing to seek injunctive relief. Subsequently, on August 28, 2017, Marina Towers moved to dismiss the complaint in its entirety, contending that Ms. Koetz had executed a written release—as part of Gateway's standard Early Lease Termination Agreement—which barred her from pursuing the claims. By order dated December 11, 2017, the Court dismissed Ms. Koetz from the action and denied her class certification motion as moot. The Court granted leave to name two new

class representatives: one for current tenants and one for former tenants.

On April 6, 2018, the current plaintiffs, Kelley Crosson (a current tenant) and Kathy Fernando (a former tenant) ("Plaintiffs" or "Representative Plaintiffs"), filed the operative Consolidated Fourth Amended Class Action Complaint (the "FAC"). The FAC asserts claims for violations of the implied warranty of habitability under RPL § 235-b and breach of the lease agreements applicable to residential tenants at Gateway Plaza. The FAC seeks monetary damages, injunctive relief, and attorneys' fees, costs and disbursements. Marina Towers answered the FAC on April 26, 2018, and raised counterclaims for attorneys' fees, costs and disbursements.

Filing of the FAC reinstituted class certification proceedings. The parties discussed limited supplemental briefing on issues specific to the Representative Plaintiffs, including typicality and adequacy. Further, on May 15, 2018, Plaintiff filed a motion for a declaratory judgment that Marina Towers' Early Lease Termination Agreements do not effectively bar RPL § 235-b claims and thus do not preclude class members from participating in the suit. Marina Towers opposed said motion on June 12, 2018, and Plaintiffs filed a Reply on June 19, 2018. On August 10, 2018, Marina Towers moved for summary judgment seeking dismissal of all remaining claims on the merits. By agreement, briefing on the motion for summary judgment was agreed to be postponed. Each of these motions—class certification, declaratory judgment, summary judgment—would remain pending for resolution in the absence of a settlement.

The motions contest complex issues of law, delve into expert analysis, and address fact discovery culled from the exchange of over 130,000 thousands of pages of documents and data along with six depositions and the inspection of approximately 27 apartments. With these motions pending, the parties re-engaged in their on-again off-again settlement discussions. Months of arm's length negotiations—informed by extensive discovery and the fleshing out of the parties' positions

in various motion papers—ultimately resulted in the agreement presented here, signed by the parties on October 30, 2019.

B. Preliminary Approval

On November 13, 2019, the Court granted preliminary approval of the parties' Settlement and authorized Notice to the Class. As part of its order, the Court certified the Class, concluding that the requisites of CPLR 901 were satisfied for settlement purposes. The Court further preliminarily approved the proposed Plan of Allocation set forth in the Notice.

C. Notice to the Class

Commencing on or before December 18, 2019, Class members began receiving Notice of the Settlement through various means, including *via*: first class mail to all non-current residents of Gateway Plaza, direct (under-door) delivery to all current Gateway Plaza residents; email delivery to all Class members for whom Marina Towers had an email address record (which accounts for a significant percentage of the Class because of Gateway's tenant portal system); publication in a widely-read downtown publication (*i.e.*, Downtown Express), establishment of a designated settlement website (*i.e.,* https://www.gatewayplazasettlement.com); posting on the Gateway Plaza Tenant Association website (*i.e.*, https://www.gpta.org/2019/12/class-action-settlement-agreement-update); and posting on the websites of each of the Class Counsel law firms (*i.e.*, www.nfllp.com/documents/Cases/Gateway-Plaza-Long-Form-Notice_2.pdf, www.safirsteinmetcalf.com/gateway, and www.sanfordheisler.com/case/gateway-plaza-residents-litigation). In addition, numerous publications have run stories about the Settlement with information pertinent to Class members.[2]

[2] *See* the Real Deal, "LeFrak settlement over scorching and freezing apartments adds up to $42M" (https://therealdeal.com/2019/12/18/lefrak-to-pay-tenants-42m-in-settlement-over-scorching-and-freezing-apartments); the Broadsheet, "Class-Action Suit on Behalf of Gateway Tenants Reaches Proposed Settlement" (https://www.ebroadsheet.com/class-action-suit-on-behalf-of-gateway-tenants-reaches-

D. The Class Members' Favorable Response to the Notice of Settlement

Class members' response to the Notice has been overwhelmingly positive. More than five hundred current and former tenants have already filed Proofs of Claim (even though the deadline for doing so is not until 45 days following final approval), and not a single Class member to date has objected or opted out of the Class. In addition, Class Counsel and the Claims Administrator have fielded dozens of calls and emails from Class members with questions about the settlement and claims process but there has not been a single complaint about the substance of the Settlement, the benefits achieved for the Class, or any other aspect of the Settlement terms.

III. KEY TERMS OF THE PARTIES' SETTLEMENT

A. Class Definition

The Class includes 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. According to the data obtained from Marina Towers, there are approximately 6,000 current and former tenants in the Class.

B. $10 Million Non-Reversionary Settlement Recovery and Class Member Payments

The Settlement provides for a non-reversionary $10 million cash recovery. Class members who submit claim forms will receive a *pro rata* share of the recovery based on the total rent they paid during the class period, either in cash or in rent abatements. The $10 million recovery alone represents approximately 1.95% of the gross rent paid by all tenants from April 1, 2008, through

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proposed-settlement); the Tribeca Citizen, "In the News: Gateway tenants win a lawsuit against landlord" (https://tribecacitizen.com/2020/01/07/in-the-news-gateway-tenants-win-a-lawsuit-against-landlord); and BatteryPark.TV We Inform, "LeFrak's Gateway Plaza loses $43 Million class-action" (https://batterypark.tv/real-estate/another-class-action-lawsuit-against-lefraks-gateway-plaza.html#more-51588).

final judgment. As informed by expert analysis, Plaintiffs applied a 15% adjustment to account for the additional, non-monetary relief provided to current tenants as described below. Accordingly, the *pro rata* shares for current tenants will be calculated based on a factor of 1.66% of the rent each of them paid during the class period; the factor for former tenants is 2.39%. Former tenants will receive a cash distribution whereas current tenants will receive the cash equivalent in the form of a rent credit.

C. Non-Monetary Relief to Class Members

Importantly, Marina Towers has already undertaken approximately $18 to $20 million of capital improvements during this litigation. The parties concur (i) that this class action was a substantial contributing factor as to both the timing and scope of those capital expenditures and (ii) that these improvements have significantly upgraded living conditions at the Gateway Plaza complex, including the habitability of all apartment units. The improvements consisted primarily of the complete replacement of all PTAC units, electrical submeters, and window systems in the apartments as well as well as the replacement of rooftop air units which help regulate the flow and temperature of air within the buildings. These actions were largely completed by August 2017 and specifically included items demanded by Plaintiffs in their pleas for injunctive relief in this suit as well as discussed by the parties during periodic settlement talks beginning in 2015. The capital improvements were directly targeted to address the habitability issues the Class complained of and that completion of these capital improvements has appreciably ameliorated the issues raised by Plaintiffs in this action. Tenant complaints regarding these issues have decreased considerably since 2017.

While Plaintiffs have endeavored to quantify the value of those capital improvements in terms of the costs expended, the benefit to Class members over the coming years will actually be

significantly greater. For example, it is nearly impossible to place a dollar value on what it means to a tenant to have adequate heat in the winter in an exposed property facing the Hudson River. The benefit, however, to the Class is considerable.

The Settlement also looks forward, providing prospective relief in the form of a two-year contractual limitation on future rent increases for all Gateway tenants. This provision is designed primarily as a backstop in the event that ongoing negotiations between Marina Towers and the Battery Park City Authority regarding the renewal and potential expansion of the QRS (Qualified Rent Stabilization) program in place at Gateway do not come to fruition or do not include all tenants. Existing QRS protections—which cover a portion of Gateway tenants—are set to expire at the end of June 2020. Under this Settlement provision, rent increases are capped at an average of 5% a year. Based on historical data of prior rent increases for market-rate tenants, the Contractual Rent Increase Limitation carries a potential monetary value to the Class of up to $13 million. It also prevents Marina Towers from immediately raising QRS tenants to market rates if the program expires.

D. Attorneys' Fees and Costs, Service Awards, and Payment to the Settlement Administrator

The Settlement allows for Class Counsel to seek an award of attorney's fees and expenses from the Cash Settlement Fund. As indicated in the Notice, Class Counsel seeks a fee of $3,500,000.00, plus $112,488.00 in reimbursable expenses.

Further, the Settlement provides for the Class Representatives—Plaintiffs Crosson and Fernando—to apply for Representative Plaintiffs' Compensatory Awards to compensate them for the time and expense they incurred in overseeing this litigation and for their services to the Class. Such awards, frequently known as service payments or incentive awards, are common in class litigation. Without Plaintiffs' willingness to step forward and take on the mantle of this case

(including by sitting for depositions and undertaking other discovery and litigation obligations), the Class could never have achieved the results realized through the Settlement. Here, in accordance with the class Notice, each Plaintiff seeks a modest award of $5,000.

Finally, notice and administration expenses (up to $100,000) will not be paid from the Settlement Fund. Instead, Marina Towers separately agreed to cover such expenses. Based on estimates provided by the settlement administrator, the parties anticipate that that amount will be sufficient to cover administration costs.

IV. FINAL CERTIFICATION OF THE CLASS IS APPROPRIATE

In its preliminary approval order, the Court certified the Class for settlement purposes. To effectuate the Settlement, the Court should grant final certification of the Class.

A. The Requisites of CPLR § 901 Are Satisfied

1. *Numerosity is Satisfied*

Generally, numerosity is established where the proposed class has at least 40 members. *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995); *see also, e.g.*, *Hoerger v. Bd. of Educ. of Great Neck Union Free Sch. Dist.*, 98 A.D. 274 (2d Dept. 1983) (44-member class); *Galdamez v. Biordi Constr. Corp.*, 13 Misc. 3d 1224A, 2006 WL 2969651 (Sup. Ct. N.Y. Co. 2006), *aff'd* 50 AD3d 357 (1st Dept. 2008) (class of between 30 and 70 satisfied numerosity).

Here, the Class easily hurdles the numerosity threshold. There are 1,712 apartments at the Gateway complex, some of which had multiple tenants during the class period. According to Marina Towers' records, there are a total of 6,046 Class members.

2. *Common Questions Predominate Over Individual Ones*

The predominance standard of CPLR 901(a)(1) requires only "predominance, not identity or unanimity, among class members." *Friar v. Vanguard Holding Co.*, 78 A.D.3d 83, 98 (2d Dept.

1980); *see also, e.g.*, *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016). Differences in class members' damages or specific experiences do not preclude certification. *E.g. Friar*, 78 A.D.3d at 98 (citing *Ansoumana v. Gristedes Operating Corp.*, 201 F.R.D. 81, 86 (S.D.N.Y. 2001)). Where, as here, class members allege deprivations "because of systemic conditions," common questions predominate even where they may have suffered their injuries "in varying manners"; "the fact that questions peculiar to each individual may remain after resolution of the common questions is not fatal." *Hurrell-Haring v. State of NY*, 81 AD3d 69, 73 (3d Dept. 2011). "When one or more of the central issues in the action are common to the class and can be said to predominate," the action should be certified "even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Tyson Foods*, 136 S. Ct. at 1045 (citing Wright Kane & Miller, *Federal Practice and Procedure*). Likewise, where common questions concern a "common course of conduct" on the part of the defendant, predominance is generally satisfied. *See, e.g., Freeman v. Great Lakes Energy Partners, LLC*, 12 AD3d 1170 (4th Dept. 2004).

Here, Plaintiffs and the Class allege that Marina Towers engaged in a common course of conduct in terms of maintaining the Gateway buildings and that the complex was pervaded by common defects. Common factual and legal questions include (i) the extent of the alleged defects during the class period; (ii) Marina Towers' course of conduct in responding to these alleged defects; (iii) whether Marina Towers systematically breached the warranty of habitability; (iv) whether Marina Towers systematically breached its standard, uniform lease agreements by failing to "provide" heat and cool air to tenants; (v) the appropriate measure of compensatory damages; and (vi) whether Marina Towers is liable to the Class for punitive damages. Resolution of these questions in a class proceeding "would achieve economies of time, effort, and expense, and

promote uniformity of decision as to persons similarly situated." *Globe Surgical Supply Co. v. GEICO Ins. Co*., 59 AD3d 129, 140 (2d Dept 2008).

3. *Plaintiffs' Claims are Typical of Those of the Class*

Plaintiffs' claims are typical of those of the Class because they arise from the same practice or course of conduct that gave rise to the remaining Class members' claims and are based on the same legal theories. *E.g. Lamarca v. Great Atl. & Pac. Tea Co*, 55 AD3d 487 (1st Dept. 2008). Plaintiffs and the members of the Class all allege that common structural conditions and defects led to class-wide breaches of Defendant's form leases and of the statutory warranty of habitability.

4. *Plaintiffs and their Counsel are Adequate Representatives of the Class and Will Fairly and Adequately Protect the Class' Interests*

The class is represented by one current and one former tenant. There is no indication that either of the Plaintiffs hold interests antagonistic to those of the Class members or that they are unable to represent the Class. *See, e.g., Marshall v. Roselli Moving & Storage, Co*., No. 103478/09, 2012 WL 274590, at *4-5 (Sup. Ct. N.Y. Co. Jan. 23, 2012).

Similarly, Class Counsel is highly experienced, qualified, and able to conduct the litigation on behalf of the Class. *See id*. The Court should appoint Newman Ferrara LLP, Safirstein Metcalf LLP, and Sanford Heisler Sharp LLP as Class Counsel.

5. *A Class Settlement is Superior to Other Potential Forms of Adjudication*

Class treatment is the superior method for the fair and efficient adjudication of the parties' controversy. Prosecuting a large number of individual actions based on the same course of conduct is highly inefficient and risks inconsistent results. Moreover, numerous Class members would likely be unable to pursue their claims. As a practical matter, a class action is the only realistic method of adjudication. *See, e.g., In re Coordinated Title Ins. Cases*, 2 Misc. 3d 1007(A), 2004 WL 690380, at *16-17 (Sup. Ct. Nassau Co. Jan. 8, 2004). Courts have frequently certified class

actions in similar breach of the warranty of habitability cases. *See Roberts v. Ocean Prime LLC*, 2016 N.Y. Slip. Op. 30102, 2016 WL 247427, at *4 (Sup. Ct. N.Y. Co. Jan. 21, 2016); *Richards v. 2 Gold, L.L.C.*, 2014 N.Y. Slip. Op. 31866, 2014 WL 3543541 (Sup. Ct. N.Y. Co. July 17, 2014) (finding class action superior to possibility of individual claims by over 800 tenants).

B. The CPLR § 902 Factors Support Certification

Each of the considerations enumerated in CPLR § 902 weigh strongly in favor of certification. First, Class members have a limited interest in controlling the prosecution of their own actions. Most Class members possess relatively modest damages that could be far outweighed by the costs of litigation, including the complex expert discovery and analysis needed to litigate the claims to final judgment. Second it would be impractical and inefficient to require tenants to pursue thousands of separate actions premised on the same conduct and conditions. Third, this class action is the central litigation commenced concerning this controversy. Only a handful of Class members have pursued separate proceedings—underscoring the impracticalities of doing so and the institutional barriers involved. Fourth, this action involves a single, residential apartment complex and it is desirable to concentrate the litigation in this forum. Finally, any potential manageability issues are obviated by the Settlement—which sets forth a fair and feasible method for resolving class members' claims and for compensating them in an equitable manner. "Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems… for the proposal is that there be no trial." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997).

Accordingly, the Court should grant final certification of the Class.

V. THE SETTLEMENT SHOULD BE APPROVED AS FAIR AND REASONABLE

"In determining whether to approve a class action settlement, courts examine the fairness

of the settlement, its adequacy, its reasonableness and the best interests of the class members." *Clemons v. A.C.I. Foundation, Ltd.*, No. 154573/2015, 2017 WL 1968654, at *2 (Sup. Ct. N.Y. Co. May 12, 2017) (quoting *Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 537 (Sup. Ct. N.Y. Co. 2010). New York courts examine the following factors: (1) the likelihood of success, (2) the extent of support from the parties, (3) the judgment of counsel, (4) the presence of bargaining in good faith, and (5) the nature of the issues of law and fact. *Gordon v. Verizon Commc'ns, Inc.*, 46 N.Y.S.3d 557, 566 (1st Dep't 2017) (citing *In re Colt Indus. S'holder Litig.*, 553 N.Y.S.2d 138, 141 (1st Dep't 1990), *aff'd as modified*, 566 N.E.2d 1160 (N.Y. 1991)).

In considering class settlements under CPLR 908, "New York's courts have recognized that its class action statute is similar to the federal statute and have looked to federal case law for guidance." *Fiala*, 899 N.Y.S.2d at 537 (citing cases); *see also, e.g.*, *In re Colt Indus. S'holder Litig.*, 553 N.Y.S.2d at 142 (applying federal law). Courts recognize a "strong policy of the law favoring settlement of litigation," *Civil Serv. Bar Ass'n Local 237, Int'l Bhd. of Teamsters v. City of NY*, 64 N.Y.2d 188, 198 (1984), "particularly in the class action context." *Wal-Mart Stores Inc v. Visa USA, Inc*., 396 F.3d 96, 116-17 (2d Cir. 2005). This policy undergirds the Court's inquiry. *E.g. Flores v. Mamma Lombardi's of Holbrook, Inc*., 104 F. Supp.3d 290, 298 (E.D.N.Y. 2015). Moreover, "a presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Fiala*, 899 N.Y.S.2d at 538 (citing *Wal-Mart Stores*).

A. The Settlement Achieves a Highly Favorable Result as Compared to the Likelihood of Success on the Merits and Potential Outcomes at Trial

"Courts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success on the merits against the amount and form of the relief offered in the settlement." *In re Colt Indus. S'holder Litig.*, 553 N.Y.S.2d at 142. "[T]he question for the Court is not whether the

settlement represents the highest recovery possible ... but whether it represents a reasonable one in light of the many uncertainties the class faces." *Flores*, 104 F. Supp.3d at 304 (citation omitted) (approving settlement that represented "a significant percentage" of class' ultimate possible recovery given success at trial and on appeal). This factor is easily satisfied given the excellent result achieved through settlement and the inherent risks involved in continued litigation.

As courts consistently recognize, the purpose of settlement is to avoid the uncertainty and risk inherent to litigation. *See*, *e.g. DeLeon v. Wells Fargo Bank, N.A.*, No. 12-cv-4494, 2015 WL 2255394 at *4 (S.D.N.Y. May 7, 2015) ("One purpose of a settlement is to avoid the uncertainty of a trial on the merits.") (citation omitted); *Clark v. Ecolab Inc.*, No. 07 Civ. 8623, 2010 WL 1948198, at *4 (S.D.N.Y. May 11, 2010). Here, Plaintiffs face considerable risks in establishing class-wide liability and in obtaining certification of the proposed class action. If liability is established, Plaintiffs will also have to establish class-wide damages. Moreover, but for the Settlement, Marina Towers would strongly dispute the propriety of class certification as it has in response to earlier, pre-settlement certification motions in this action. *See, e.g.*, *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (approval is favored where "it is not certain that the case would be certified in the absence of a settlement.").

Even if the Court were to grant certification of a class for litigation purposes, maintaining certification through trial could continue to present challenges. Marina Towers could move for decertification, which would result in further expense and delay. *DeLeon*, 2015 WL 2255394, at *4 ("A motion to decertify . . . would require extensive briefing, possibly followed by an appeal. Settlement eliminates the risk, expense, and delay inherent in this process."); *Shapiro v. JPMorgan Chase & Co.*, No. 11 Civ. 7961, 2014 WL 1224666, at *11 (S.D.N.Y. Mar. 24, 2014) ("This factor allows the Court to weigh the possibility that, if a class were certified for trial in this case, it would

be decertified prior to trial.") (citation omitted).

Weighing the benefits of the Settlement against the risks associated with proceeding in the litigation, the Settlement amount is more than reasonable. A settlement amounting to approximately 2% (plus) of all rent paid by thousands of Class members for almost twelve years—April 1, 2008 through final judgment—represents an excellent result that would be very difficult to achieve through further litigation. Unlike many other cases, this suit is not about a complete lack of heat for each and every apartment at any given time; rather, Plaintiffs allege that Gateway Plaza's heating units functioned inefficiently and were often neutralized or overpowered by structural issues (*e.g.*, deficient windows and insulation) that permitted infiltration of outside air. As set forth in its summary judgment papers, Marina Towers maintains that there is no basis for liability, much less on behalf of an entire class of tenants living in multiple buildings. Marina Towers contends that Plaintiffs' and Class members' apartments were consistently able to achieve habitable temperatures and that any deviations from applicable temperature standards resulted from tenants' own personal choices.[3] Even if Plaintiffs established class-wide liability, the damages assessed could potentially be sporadic in nature (predominantly in the winter months, particularly pronounced during colder years) and might vary considerably between buildings, and between units. It is difficult to predict what a likely damages outcome would be in terms of rent abatements, and it is possible that each Class member would need to come forward and provide evidence in a remedial stage of proceedings. The Settlement properly resolves these

[3] *Cf. Eke v. Aynaru*, No. 2001-430 RI C, 2002 WL 1275132 (N.Y. App. Term Mar. 15, 2002) ("tenant failed sufficiently to prove the dates, duration and intensity of the alleged deficiencies, relative to the outdoor temperatures, to permit the court to quantify the deprivation as an abatement. Moreover, tenant failed to demonstrate that an inadequate or malfunctioning heating system caused the deficiency, much less that there existed a mechanical defect necessitating a major repair, rather than the routine maintenance for which tenant is responsible under his lease."); *Steltzer v. Spesaison*, 161 Misc. 2d 507, 509 (Civ. Ct. Kings Co. 1994) (no rent abatement where tenant complained of being cold but other witnesses testified that the apartment was comfortable).

contingencies—and accounts for differences in Class members' tenure and the size of their apartments—by providing for rent abatements tied to the total rent paid by each tenant during the applicable period.

Plaintiffs note that rent abatements for lack of heat or hot water in individual tenant cases generally range from about 10 to 30 percent and are typically put in place for a limited period of time. *See, e.g.*, *OLR ECW, L.P. v. Soto*, 65 Misc.3d 1217(A), 2019 WL 5444564, at *5 (NYC Civ. Ct. Oct 23, 2019) ("The court awards a 10% abatement of the rent for the four months of December 2018 through March 2019 due to inadequate heat."); *13 E. 9th St. LLC v. Seelig*, 63 Misc.3d 1218(A), 2019 WL 1747004, at *4 (NYC Civ. Ct. Apr. 9, 2019) (for lack of hot water, imposing 15% rent abatement for half of the months from November 2013 to February 2019); *Parker 72d Assocs. v. Isaacs*, 436 N.Y.S.2d 542 (NYC Civ. Ct. 1980) (based on daily rental value of apartment, imposing 20% per diem abatement for 13 instances of no hot water and 30% per diem abatement for 17 instances of no heat); *Century Apts. Inc. v. Yalkowsky*, 106 Misc.2d 762, 765 (NYC Civ. Ct. 1980) (imposing 20% rent abatement for single month where no hot water was provided and noting that a 50% abatement is frequently granted where neither heat nor hot water is provided at all). A court commonly "assigns a percentage reduction based on the severity of the condition or conditions proven, applies that to the monthly rent and then multiplies that figure by the number of months during which the condition was proven to have existed." *OLR ECW*, 2019 WL 5444564, at *2 n.2. In this light, the replacement of the defective windows and inefficient PTAC units combined with a two percent year-round abatement for all 1,712 apartment units for a twelve-year period, plus forward-looking rent protection, represents an extraordinary outcome for the Class. The monetary fund alone is roughly the equivalent of at least an eight percent rent reduction for every Gateway unit for nearly every winter day for the past dozen years—without

tenants having to prove their case in court.[4]

"While there is a possibility that the Class could recover more money, including interest, after trial, the Settlement provides the significant benefit of a guaranteed payout to Class members, rather than speculative payment of a hypothetically larger amount years down the road." *Hosue v Calypso St. Barth, Inc.*, No. 160400/2015, 2017 WL 4011213, at *2 (Sup. Ct. N.Y. Co. Sep. 12, 2017) (citation omitted). And, as discussed above, the Plaintiffs and Class face great risks and significant obstacles in proving liability and damages on the class claims. *See Henry v. Little Mint, Inc*., No. 12 Civ. 3996, 2014 WL 2199427, at *10 (S.D.N.Y. May 23, 2014) (finding that settlement amount was reasonable, recognizing "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion"); *Wright v. Stern*, 553 F. Supp. 2d 337, 339 (S.D.N.Y. 2008) ("[t]here is simply no assurance that more years of litigation would result in any greater recovery.").

The Settlement provides substantial relief to the members Class and the monetary component of the Settlement will be distributed to them in a matter of months, rather than after years of further litigation and appeals. *See, e.g., Long v. HSBC USA Inc*., No. 14 Civ. 6233, 2015 WL 5444651, at *5 (S.D.N.Y. Sept. 11, 2015) (where settlement "assures immediate payment of substantial amounts to class members, even if it means sacrificing speculative payment of a hypothetically larger amount years down the road, [it] is reasonable under this factor.") (citation omitted); *see also Gilliam v. Addicts Rehab. Ctr. Fund*, No. 05 Civ. 3452, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008).

In addition to this monetary relief, the Settlement further provides for a substantial benefit in the form of a two-year backstop against future rent increases. And, the litigation has helped to

[4] The Proof of Claim form only requires class members to attest that they resided at Gateway Plaza.

bring about significant improvements in the habitability of the units and quality of life at the Gateway Plaza complex. These elements carry a combined estimated monetary value in the tens of millions of dollars. Class members have already begun to realize these benefits.

B. The Parties' Support for the Settlement is Overwhelming

The essential purpose of the two-stage settlement approval process is to provide class members notice of the settlement and an opportunity to weigh in. Now that this process is underway, the Class has spoken in one voice in favor of the Settlement. Here, over five hundred Class members have submitted claim forms to participate in the Settlement recovery, no exclusion requests have been received, and there are no objections. *See* Declaration of Notice Administrator/Epiq Representative, Lindsey Marquez (Epiq. Decl.), filed contemporaneously herewith.[5] Accordingly: "The second factor is satisfied because no class member objected." *Roth v. Phoenix Cos., Inc.*, 50 N.Y.S.3d 835, 838 (Sup. Ct. N.Y. Co. 2017); *see also NAACP v. Philips Electronics N. Am. Corp*., No. 156382/2015, 2018 WL 2436579, at *2 (N.Y. Sup. Ct. May 16, 2018) (second factor satisfied where there were thirty-one opt-outs and no objections: "The absence of class member objections may well evidence the fairness of the settlement.") (citations omitted). Thus, this factor strongly favors approval.

C. Experienced Counsel Recommend the Settlement

"New York courts grant significant weight to the judgment of experienced counsel in determining the fairness of a class action settlement." *NAACP v. Philips Electronics North America Corp*., No. 156382/2015, 2018 WL 2436579, at *2 (N.Y. Sup. Ct. May 16, 2018).

Here, Class Counsel has significant expertise in both landlord-tenant disputes and complex class litigation. *See* Declarations of Jeffrey M. Norton, Peter Safirstein, and Jeremy Heisler filed

[5] Counsel will update these figures once the opt-out and objection period is complete.

contemporaneously herewith. Counsel has reached a considered and informed judgment about the settlement, based on a comprehensive assessment of the case and the benefits and risks of settlement. Before filing the Complaint, Counsel engaged in an exhaustive pre-suit investigation, which included, but was not limited to, research and review of public and non-public information and records, interviews with witnesses, work with consultants and experts, property inspections, legal research on potential claims and defenses, and drafting the initial complaints. During the litigation, Class Counsel obtained and reviewed over 130,000 pages of documents from Marina Towers in addition to other evidence and documents obtained through other sources. Class Counsel worked regularly with consultants and engineering experts and engaged in joint property inspections and testing with counsel for Marina Towers and its engineering experts. In all, approximately 27 apartments at Gateway Plaza—including those of the Representative Plaintiffs—were inspected over four visits. In addition, Counsel took the depositions of the General Manager of Gateway Residential Management and the general contractor who oversaw the construction of Gateway Plaza. Counsel for Marina Towers took the depositions of the Representative Plaintiffs, as well as two former putative class representatives. Finally, Counsel have reviewed and considered the expert and factual affidavits submitted by Marina Towers in support of its motion for summary judgment as well as its legal arguments in favor of summary judgment. *Id.*

Based on this comprehensive review and analysis, Counsel has concluded that the Settlement confers substantial benefits on the Class members and is in the best interests of the Class. Thus, this factor also weighs in favor of approval. *See Gordon*, 46 N.Y.S.3d at 567 ("the parties were represented by counsel who were competent and experienced in the field of complex class action litigation . . . counsel were equipped to assist their respective clients in making a

reasonable and informed judgment regarding the fairness of the proposed settlement. Thus, this factor also weighs in favor of the proposed settlement."); *Roth*, 50 N.Y.S.3d at 838 ("The third factor is satisfied given counsels' experience and their exemplary and expeditious resolution of this case.").

D. The Parties Engaged in Good Faith, Arms' Length Bargaining

"With regard to the fourth factor, the presence of bargaining in good faith, negotiations are presumed to have been conducted at arm's length and in good faith where there is no evidence to the contrary." *Gordon*, 46 N.Y.S.3d at 567; *Roth*, 50 N.Y.S.3d at 838–39.

Here, the parties' negotiations were non-collusive and conducted in good faith at all times. As set forth above, all discussions were conducted in light of independent investigations and analysis informed by the review of extensive discovery. It took approximately three years from initial settlement talks to resolve this five-year litigation. As demonstrated repeatedly in court, the parties vigorously opposed each other and did not engage in collusive behavior. Ultimately, the parties' efforts laid the groundwork for an arm's-length deal.

The Representative Plaintiffs and Marina Towers first engaged in settlement discussions in the summer of 2015. Thereafter, counsel for the parties periodically engaged in numerous telephone calls and face-to-face meetings, including throughout the second half of 2015, the first half of 2016, and March 2017. During these preliminary meetings, documents were exchanged, proposals and counter-proposals were made, and the strengths and weaknesses of the claims were discussed and debated. Settlement negotiations restarted in late 2018, and continued through to the Execution Date as counsel for both parties and representatives of the Defendant negotiated the terms of the written Settlement Agreement. The negotiations included numerous telephone calls and several in-person meetings. Settlement negotiations between the parties invariably included

discussions about capital improvements and the appropriate level of rent abatements. At certain points, the parties also contemplated an extension of QRS benefits as part of the Settlement; however, as events evolved, those efforts shifted to implementing a contractual rent increase limitation as a backstop to QRS. Throughout the settlement negotiations, the Representative Plaintiffs were advised by various consultants and experts, including those with expertise in estimating potential damages in cases involving landlord-tenant disputes.

In sum, Plaintiffs and Class Counsel conducted protracted negotiations driven by their independent, informed views of the class members' interests formed over approximately five years of litigation. The proposed Settlement is the product of those negotiations and is thus procedurally fair.

E. The Settlement is Fair in Light of the Nature of the Issues of Law and Fact

The Settlement is reasonable and adequate in relation to the likelihood of success on the merits. The questions presented in this case, as suggested above, are complex and challenging such that they create substantial risk and uncertainty for the Class. In light of the nature of the issues, "litigating the case to conclusion would be complex, lengthy, and expensive"; Marina Towers would fight the action vigorously through class certification and summary judgment motion practice, pre-trial and trial proceedings, and one or more potential appeals—meaning that "it would undoubtedly be years before the issues were resolved." *Michels v. Phoenix Home Life Mutual Ins*., No. 95/5318, 1997 WL 1161145, at *29 (Sup. Ct. N.Y. Co. Jan. 7, 1997). In this context the settlement represents an excellent outcome for the Class that provides Class members substantial and immediate relief.

Consequently, the Settlement is fair, reasonable, and adequate and in the best interests of the Class. The Court should grant final approval of the Settlement.

VI. THE COURT SHOULD GRANT PLAINTIFFS' APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

A. The Application

In accordance with the parties' Settlement and Notice, Class Counsel seeks reasonable attorney's fees of $3,500,000, or approximately 8% of the overall value of the Settlement (or 35% of the Cash Settlement Fund), and reimbursement of $112,584.45 in out-of-pocket litigation costs. Notably, costs do not include settlement administration expenses which will be separately paid by Marina Towers in an amount up to $100,000. This represents a substantial benefit to the Class. *Cf. Lopez v. The Dinex Group, LLC*, No. 155706/2014, 2015 WL 5882842, at *4 (Sup. Ct. N.Y. Co. Oct. 06, 2015) ("The Court approves Plaintiffs' request for the Claims Administrator to be paid out of the settlement fund . . . Claims Administrator fees in this amount are routinely found reasonable, given the extensive work that has been and will continue to be done in administering the Settlement.")

B. Counsel Should Be Reimbursed for Costs Incurred in Prosecuting this Action

Class Counsel seek reimbursement of reasonable and necessary litigation expenses totaling $112,584.45. *See* Norton Decl. at ¶¶ 12, 59, 62. These costs were reasonably incurred in prosecuting this action on behalf of the Class Members and should be approved by the Court. "It is well-established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses." *E.g. In re Marsh ERISA Litig.*, 265 F.R.D. 128, 150 (S.D.N.Y. 2010).

Counsel's expenses generally fall into the following categories: expert costs; e-discovery expenses, including computer-assisted document organization and hosting; filing fees; court reporter fees; and meals and travel. The costs accumulated by Counsel in litigating this case are typical for a complex class action, were incidental and necessary to the litigation, and were

reasonably related to the investigation, prosecution, and settlement of the class action. *See id.* ("Litigating complex contingent cases such as this one requires counsel to incur significant expenses."). Moreover, because Counsel "was proceeding on a contingent-fee basis, they had a strong incentive to keep expenses at a reasonable level," which they did here. *Id.*

C. The Court Should Grant Counsel's Application for Fees of $3,500,000, Less than its Reasonable Lodestar

Under the common fund doctrine, courts award attorneys' fees to class counsel who obtain a settlement on behalf of a class. In making that determination, New York courts apply "well-established" factors: (1) the time and labor required; (2) the difficulty of the questions involved; (3) the skill required to handle the issues presented; (4) the experience, ability and reputation of counsel; (5) the proposed amount of fees; (6) the benefit resulting to the putative class from the services; (7) the customary fee charged for similar services; (8) the contingency or certainty of compensation; (9) the results obtained; (10) the responsibility involved; and (11) the stage of the litigation at which the settlement occurred. *See Gordon*, 46 N.Y.S.3d at 572; *Roth*, 50 N.Y.S.3d at 840 (same). "The overarching principle is that a settlement court should have discretion to award attorney's fees in an amount commensurate with the degree of benefit obtained by the class as a result of the litigation." *Roth*, 50 N.Y.S.3d at 840 (quoting *Gordon*, 50 N.Y.S.3d at 573).

These factors amply warrant an award of $3,500,000. Counsel is seeking less than its full lodestar, making the request eminently reasonable. Reducing the requested award would fail to adequately compensate Counsel for the extensive efforts undertaken to reach the Settlement. Such an award would also be supported under the percentage approach, particularly in light of the extensive non-monetary relief realized through the litigation and Settlement.

1. *Class Counsel Devoted Significant Time and Labor to this Case (Factor 1)*

Since Class Counsel began investigating this matter in early 2014, Counsel has devoted

over **5,195** hours to the successful pursuit of this matter. *See* Norton Decl. at ¶ 62. Counsel's work in this matter included extensive investigation, discovery, motion practice, and settlement negotiations. *See* Norton Decl. at ¶¶ 612-68.

Here, "[t]he work that Class Counsel has performed in litigating and settling this case demonstrates their commitment to the class and to representing the best interests of the class. Class Counsel has committed substantial resources to prosecuting this case." *Clemons*, 2017 WL 1968654, at *4; *see also Hosue*, 2017 WL 4011213, at *4. Counsel's dedication to this matter and expenditure of substantial time, effort, and resources has undoubtedly brought this complex litigation to a successful resolution.

Counsel's lodestar provides compelling support for the reasonableness of the requested fee. Counsel's collective lodestar to date equals **$3,730,996.50**, significantly exceeding its fee request. *See* Norton Decl. at ¶ 62. This means that counsel seeks a fractional, or negative multiplier. Courts have frequently awarded comparable fees in analogous cases. *See, e.g.*, *Wright*, 553 F. Supp. 2d at 342, 347 (approving $8 million fee, representing over 38% of total monetary relief of $20.7M—which also included $999,999.79 in litigation expenses—less than counsel's full lodestar: "These amounts are fair and reasonable. They cover some ten years of time and expenses"); *Wren v. RGIS Inventory Specialists*, No. C–06–05778, 2011 WL 1230826 (N.D. Cal. Apr. 1, 2011) (awarding fee of over $11.3 million, approximately 42% of fund, based on counsel's lodestar).[6] *Cf. Hosue*,

[6] *See further Frank*, 228 F.R.D. at 188-89 (awarding 38.26% fee, less than counsel's lodestar); *Erie Co. Retirees Ass'n v. Cnty. of Erie*, 192 F. Supp. 2d 369, 383 (W.D. Pa. 2002) (awarding fees of 38 percent of total recovery, less than counsel's lodestar); *Betancourt v. Advantage Human Resourcing, Inc.*, No. 14-cv-1788, 2016 WL 344532, at *8-9 (N.D. Cal. Jan. 28, 2016) (awarding requested fee of 34.3% of fund, less than counsel's lodestar); *Campbell v. PricewaterhouseCoopers, LLP*, No. 2:06-cv-2376, Dkt. 655 (E.D. Cal. May 8, 2015) (awarding $2 million fee out of $5 million settlement (40%), plus additional $910,822.23 in expenses; counsel had stated that the requested fee represented a substantial negative lodestar multiplier); *In re Nucoa Real Margarine Litig.*, No. CV 10-00927, 2012 WL 12854896 (C.D. Cal. June 12, 2012) (under lodestar method, awarding approximately 45 percent of total recovery in consumer class action).

2017 WL 4011213, at *4 (finding fee particularly reasonable where counsel sought no multiplier); *Lopez*, 2015 WL 5882842, at *7 (finding lodestar multiplier of 3.15 to be fair and reasonable; citing cases approving multipliers up to 7.6). Moreover, Counsel's lodestar will increase even further as it expends more time and labor in connection with settlement approval and administration. *See, e.g., Lopez*, 2015 WL 5882842, at *8 ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but also for time that they will be required to spend administering the settlement going forward also supports their fee request.").

2. *The Issues Involved in this Litigation Are Complex and Difficult, Requiring a High Degree of Skill and Responsibility on the Part of Counsel (Factors 2, 3, 10)*

Class litigation is "inherently complex" and fraught with costs, delays, and other associated contingencies. *E.g. In re Austrian & German Bank Holocaust Litig.,* 80 F.Supp.2d 164, 174 (S.D.N.Y. 2000), *aff'd,* 236 F.3d 78 (2d Cir. 2001). This case is no exception. There are thousands of Class members—tenants of 1,712 apartments over a 12-year period—each of whom possess fact-intensive claims under statutory and common law. *Cf. Henry*, 2014 WL 2199427, at *13; *Johnson v. Brennan*, No. 10 Civ. 4712, 2011 WL 4357376, at *8 (S.D.N.Y. Sept. 16, 2011). The issues involved are thorny, requiring detailed expert analysis of liability and damages. For example, the case entails complicated assessments as to the nature and extent of structural defects and their impact upon Gateway units, measured against applicable temperature control regulations. These challenges were only enhanced by the repeated withdrawal and substitution of representative plaintiffs over the course of the litigation. The five-year duration of this action and the time and costs expended by Counsel to date are testament to its complexity. *See Sykes v. Harris*, No. 09 Civ. 8486, 2016 WL 3030156, at *16 (S.D.N.Y. May 24, 2016).

Class Counsel successfully navigated these issues and contingencies over more than five years of litigation, ultimately achieving this highly favorable Settlement.

3. *Counsel's Experience, Ability, and Reputation Warrant the Fee (Factor 4)*

Both Class Counsel and the counsel for Marina Towers have a high standing at the bar and a reputation for zealous and effective advocacy.

Newman Ferrara specializes in complex, multi-party litigation and real estate litigation, with the partners litigating this case, Jeffrey Norton and Lucas Ferrara, well known as top practitioners in the fields of class actions and landlord tenant law, respectively. In addition to acting as lead counsel in numerous class actions over the past two decades involving securities fraud, shareholder rights, and consumer protection, Mr. Norton is an adjunct professor of law at Pace University School of Law where he teaches courses on class actions and mass tort litigation. Similarly, Mr. Ferrara is the co-author of the treatise *Landlord and Tenant Practice in New York* and has contributed a chapter to West's *New York State Administrative Procedure and Practice* and an adjunct professor of law at New York Law School where he teaches landlord and tenant law. As illustrated in Newman Ferrara's firm bio (*See* Norton Decl., Ex. A), the firm has handled some of the nation's most significant class actions recovering hundreds of millions of dollars for investors and consumers. Furthermore, the high quality of the firm's work has been noted by Judges. For example, in shareholder case involving Hewlett-Packard Company, U.S. District Judge Vaughn R. Walker (ret.), sitting as the arbitrator on a fee application, noted that "the filings, oral argument and general demeanor of [Newman Ferrara and its co-counsel] reflect that they are highly experienced, knowledgeable, hardworking, efficient and reputable counsel of high standing and ability." Judge Walker noted additionally that [the lawyers'] contributions to the case "demonstrate the high caliber of their work and the quality of time and effort they expended on

achieving the corporate governance revisions… Their efforts to litigate in an efficient, constructive manner and to cooperate with other counsel resulted in decreased litigation expenses that substantially benefitted HP and its shareholders." *See Riccardi v. Lynch*, Case No. 12-6003-CRB (N.D. Cal.), Docket No. 252 (October 23, 2014).

Furthermore, Newman Ferrara's unique combination of real estate and class action experience has led to significant success – not just in this case but in dozens of other tenant-based class actions. For instance, the firm recently prevailed before the New York Court of Appeals in *Maddicks v. Big City*, 34 NY3d 116 (2019) (matter dealing with pre-certification motions to dismiss and listed as one of the top five Court of Appeals decisions for 2019 by the New York Law Journal), and before the Appellate Division, First Department in *Hess v. EDR Assets*, 171 AD3d 498 (1st Dept 2019) (methodology for determining legal regulated rent in tenant class action), *Simpson v. 16-26 East 105*, 176 AD3d 418 (1st Dept 2019) (default formula not a penalty barred by CPLR 901(b)), and *Quinn v. Parkoff*, __ AD3d ___, 2019 WL 6481864 (1st Dept 2019) (multi-building tenant class action alleging rent overcharges, properly pleaded). In addition, Newman Ferrara has achieved class certification in multiple tenant class actions, including, *Yang v. Creative Indus. Corp.*, 2018 NY Slip Op 33209[U], (Sup Ct, NY Co. 2018), *Najera-Ordonez v. 260 Partners, L.P.*, 2018 WL 4835497 (Sup Ct, NY Co. 2018), *Gomes v. Vermyck LLC*, 2019 NY Slip Op 32578[U] (Sup Ct, Queens Co. 2019), *Tribbs v. 326-338 E 100th LLC*, 2019 NY Slip Op 32048[U] (Sup Ct, NY Co. 2019), and *Montera v. KMR Amsterdam LLC*, 2019 NY Slip Op 31668[U] (Sup Ct, NY Co. 2019).

Safirstein Metcalf is a boutique plaintiffs' class action law firm headed by Peter Safirstein and Elizabeth Metcalf. *See* Safirstein Decl., Ex. A. Both were formerly at the class action powerhouses, Milberg LLP (and predecessor entities), Bernstein Litowitz Berger & Grossmann

LLP, and Morgan & Morgan, where they prosecuted some of the largest and most important class actions recovering millions of dollars for the classes they represented. Since forming Safirstein Metcalf LLP in 2016, the firm has served as lead or co-lead counsel in numerous class actions and has achieved significant settlements. *Id.* Mr. Safirstein is a former Special Assistant United States Attorney (SDNY) and former Assistant United States Attorney (SDFL) and has participated in complex trials on behalf of the United States of America. *Id.*

Sanford Heisler Sharp LLP has been repeatedly recognized as "very experienced in complex class and collective litigation." *E.g. Zolkos v. Scriptfleet, Inc.*, No. 12 CV 8230, 2014 WL 7011819, at *5 (N.D. Ill. Dec. 12, 2014). Since 2004, it has served as lead or co-lead counsel in more than 50 class and collective actions throughout the United States, including numerous consumer cases, and has consistently received top accolades from the legal community. Through its vigorous, high-caliber representation, SHS has generated hundreds of millions of dollars in recoveries to class members. *See* Heisler Decl.

While each firm possesses strong legal credentials, together they formed a formidable team. Class Counsel brought all of their collective experience and skill to bear in representing the Class and achieving this Settlement. Thus, this factor also weighs in favor of the fee request. *See*, *e.g.*, *Wright*, 553 F. Supp. 2d at 347 (approving requested fee given "the quality of the representation provided by class counsel and the depth of their commitment").

4. *The Proposed Fee is Well on a Par with the Customary Fees Charged for Similar Services (Factors 5, 7)*

Counsel seek an award of fees in the amount of $3,500,000, or 35% of the Cash Settlement Fund. This is a fairly standard contingency fee, *see Lopez*, 2015 WL 5882842, at *5 (citing *In re*

Lawrence, 24 N.Y.3d 320 (2014) (approving 40% retainer agreement)),[7] and well within the range of reasonable fee awards in class cases. *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 587-88 (S.D.N.Y. 2008) (collecting cases approving awards of 30% to 45%); *Peck v. AT&T Corp*., No. 601587/2000, 2002 WL 34683873, at *11 (Sup. Ct. N.Y. Co. July 26, 2002) ("Class action fees traditionally fall in the range of 15%-50%.").[8] As set forth above, fees in this range are frequently granted, particularly when they equal or exceed counsel's lodestar. *See also, e.g.*, *Winingear v. City of Norfolk*, No. 2:12-cv-560, 2014 WL 3500996, at *6-7 (E.D. Va. July 14, 2014) (approving award fee equivalent to 35% of fund and 1.6 times lodestar; noting that "this Court has routinely approved percentage recoveries in FLSA cases approaching forty percent of the total recovery."); *Worthington v. CDW Corp*., No. C-1-03-649, 2006 WL 8411650, at *5-6 (S.D. Ohio May 22, 2006) (granting 38 1/3% of gross fund, substantially more than but "reasonably related to" the estimated lodestar and "solidly within the typical 20 to 50 percent range" for fee awards); *In re Iowa Ready-Mix Concrete Antitrust Litig*., No. C 10–4038, 2011 WL 5547159 (N.D. Iowa Nov. 9, 2011) (36.04% of fund, or $6,666,666.67, 1.35 times lodestar); *In re Combustion, Inc*., 968 F. Supp. 1116 (W.D. La. 1997) (36% fee, significant multiplier over lodestar).[9]

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[7] *See further, e.g., Durant v. Traditional Investments, Ltd*., No. 88 Civ. 9048, 1992 WL 203870, at n.7 (S.D.N.Y. Aug. 12, 1992) ("contingent fee agreements up to 40 percent have been held reasonable and not unconscionable.") (citing 7 N.Y.Jur.2d *Attorneys at Law* § 139 (1980)); *Lincoln Adventures LLC v. Those Certain Underwriters at Lloyd's, London Members*, Civ. No. 08-00235, 2019 WL 4877563, at *8 (D.N.J. Oct. 3, 2019) (finding requested fee to be consistent with the marketplace: "Attorneys regularly contract for contingent fees between 30% and 40%"); *Francisco v. Numismatic Guar. Corp. of Am*., No. 06-61677, 2008 WL 649124, at *14 (S.D. Fla. Jan, 31, 2008) ("In private litigation, attorneys regularly contract for contingent fees between 30% and 40% directly with their clients"); *In re Merry-Go-Round Enters., Inc.*, 244 B.R. 327 (Bankr. D. Md. 2000) (upholding 40% retainer in bankruptcy case, resulting in $71.2M fee).

[8] Accord: NEWBERG ON CLASS ACTIONS, (3rd Ed.) § 14.03, at 14-13 ("No general rule can be articulated on what is a reasonable percentage of a common fund. Usually 50% of the fund is the upper limit on a reasonable fee award… although somewhat larger percentages are not unprecedented.").

[9] *See further Faircloth v. Certified Fin. Inc*., No. Civ.A. 99–3097, 2001 WL 527489 at * (E.D. La. May 16, 2001) (award of 35% of fund, almost three times lodestar); *Fernandez v. Victoria Secret Stores, LLC*, No. CV 06-04149, 2008 WL 8150856, at *16 (C.D. Cal. July 21, 2008) (34% of $8.5 million fund, 1.82 times lodestar); *Melvin Barnes et al. v. Canadian Nat'l Ry. Co., et al.*, No. 1:04-cv-01249, 2010 Jury Verdicts LEXIS 52233 (N.D. Ill. Jan. 7, 2010) (approving consent judgment awarding costs and fees

Notably, if the value of non-monetary relief realized through this litigation and settlement is considered, the requested percentage fee would significantly decrease. *See, e.g., Sheppard v. Consol. Edison Co. v. N.Y., Inc.*, No. 94-CV-0403, 2002 WL 2003206, at *7 (E.D.N.Y. Aug. 1, 2002) (valuing non-monetary injunctive relief at "an estimated $5 million" when considering the reasonableness of class counsel's fee request); *cf. In re U.S. Bancorp Litig.*, 291 F.3d 1035 (8th Cir. 2002) (awarding 36% of fund, and noting that fee would be 25% if additional "pourover" amount had been paid into fund rather than in product refunds).[10] Here, the non-monetary benefits realized through the litigation and Settlement have a monetary value of up to approximately $33 million. Even were the Court to discount this amount by a whopping 90%, the overall value of the settlement would be raised to $13 million and Counsel's fee request would represent approximately 27% of the relief achieved. This percentage would be significantly below the fees awarded in legions of class cases in state and federal courts in New York and across the country.

At minimum, when determining the appropriate percentage of the fund to award in fees, the Court should adjudge the prospective non-monetary measures achieved in this case to be part of the results obtained for the class. These additional measures carry substantial value that should not be disregarded. *See, e.g.*, *Poertner v. Gillette Co.*, 618 F. App'x 624, 628-30 (11th Cir. 2015) (holding that the lower court properly considered non-monetary programmatic relief as "part of the settlement pie" for the purposes of assessing attorneys' fees); *Petrovic v. Amoco Oil Co*., 200 F.3d 1140, 1157 (8th Cir. 1999) (upholding determination that proposed fee was reasonable, "particularly given that significant nonmonetary benefits are also being given to the class").[11] In

amounting to $1.5M (approximately 42.9 percent) of a $3.5M common fund in a race discrimination class action).

[10] *See also Shaffer v. Cont'l Cas. Co*., 362 F. App'x 627, 631-32 (9th Cir. 2010) (in case with no cash fund, relying on estimated value of class benefits and awarding percentage fee that exceeded lodestar).

[11] *See further In re Pacific Enters. Sec. Litig*., 47 F.3d 373, 379 (9th Cir. 1995) (finding that, when determining appropriate fee, district court did not abuse its discretion by taking into account the fact the

such cases, courts frequently grant fees equivalent to or exceeding the award requested here. *See, e.g.*, *Carlson v. C.H. Robinson Worldwide, Inc.*, No. Civ. 02–3780, 2006 WL 2671105 (D. Minn. Sept. 18, 2006) (awarding $5.35 million in fees (35.67% of $15M fund), plus $1,602,216 in costs; noting: "In addition to monetary relief, the settlement provides for substantial programmatic relief."); *Hooker v. XM Sirius Radio, Inc.*, No. 4:13–cv–003, 2017 WL 4484258, at *3 (E.D. Va. May 11, 2017) ("When awarding attorneys' fees, courts consider the value of all benefits to the class—claimed and unclaimed, monetary and nonmonetary"); *id.* at *5 ("Awarding 35 percent of the cash fund, which amounts to $12.25 million in attorneys' fees, is reasonable and adequate to compensate Class Counsel for their efforts in obtaining both the monetary and nonmonetary benefits for the class"; noting that the award includes "a percentage enhancement to account for additional nonmonetary benefits' value"); *Rippee v. Boston Mkt. Corp.*, No. 05-CV-1359, Doc. No. 70, at 7-8 (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a $3.75 million cash settlement, taking into account the additional benefit provided to the class by programmatic relief).[12]

In short, an award of $3,500,000 (or 35% of the Cash Settlement Fund) is fully justified—particularly in light of the substantial additional relief created by Counsel for the benefit of Gateway tenants.

5. *Counsel Has Achieved an Outstanding Result for the Class (Factors 6, 9)*

As set forth above, Class Counsel has obtained an excellent result for the Class, which includes twelve years of compensation for alleged breaches as well as a valuable backstop on

class counsel had secured non-monetary benefits beyond the class fund); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 775 (11th Cir. 1991) (relevant factors for determining appropriate percentage award include "any non-monetary benefits conferred upon the class by the settlement").

[12] *See also, e.g., Ortiz v. Home Depot U.S.A., Inc.*, No. 5:09-cv-03485, 2012 U.S. Dist. LEXIS 13009 (N.D. Cal. Feb. 2, 2012) (approving an award of $500,000, approximately 54.9 percent of the total recovery, in a case involving programmatic relief component and a total fund of $910,000). In fact, courts frequently grant robust fee awards in cases where a class settlement provides no monetary relief.

future rent increases. The litigation was also a significant impetus for extensive capital improvements and repairs that substantially remedy the issues faced by Gateway tenants. These wide-ranging benefits strongly support an award of $3.5 million, less than Counsel's lodestar and a reasonable percentage of the monetary settlement recovery.

It is critical to note that this litigation served important societal objectives of enforcing the statutory warranty of habitability, spurring meaningful measures to ameliorate the conditions at Gateway, and ensuring that tenants receive significant compensation for alleged prior breaches.[13] In such cases, robust fee awards advance public policy purposes "of encouraging plaintiffs' attorneys to act as private attorneys general and discouraging wrongdoing." *E.g. Michels*, 1997 WL 1161145, at *31; *see also Lopez*, 2015 WL 5882842, at *6 ("Public policy further favors approving a common fund attorneys' fee award in wage and hour class actions. If not, wage and hour abuses would go without remedy because attorneys would be unwilling to take on the risk.") (citations omitted); *Gascho v. Global Fitness Holdings, LLC*, 822 F.3d 269, 287 & n.6 (6th Cir. 2016) ("Consumer class actions… have value to society more broadly, both as deterrents to unlawful behavior—particularly when the individual injuries are too small to justify the time and expense of litigation—and as private law enforcement regimes that free public sector resources. If we are to encourage these positive societal effects, class counsel must be adequately compensated").

[13] In enacting RPL § 235-b, the Legislature recognized a paucity of low- to middle-income housing in New York and the "vastly superior bargaining position" of landlords relative to tenants; this dynamic left tenants "virtually powerless to compel the performance of essential services." *Park W. Mgmt. Corp. v. Mitchell*, 47 N.Y.2d 316, 324-25 (1979). Hence, the statute "was designed to give rise to an implied promise on the part of the landlord that both the demised premises and the areas within the landlord's control are fit for human occupation at the inception of the tenancy and that they will remain so throughout the lease term." *Id.* at 327. "It incentivizes landlords to keep apartments livable and to make prompt mitigation efforts to remedy issues that arise." *Adler v. Ogden Cap Properties LLC*, 42 Misc. 3d 613, 624 (Sup. Ct. N.Y. Co. 2013).

6. *Counsel Undertook this Litigation on a Purely Contingent Basis (Factor 8)*

Counsel undertook this litigation on a contingency basis. It thus performed millions of dollars in legal services and laid out various litigation costs, at set forth above, with no assurance of ever being compensated for its efforts. Taking on this lengthy, time-consuming litigation diverted Counsel from accepting other, potentially-lucrative work. Counsel should be rewarded for the risks it has incurred in prosecuting this matter to a successful conclusion. "No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *City of Providence v. Aeropostale, Inc*., No. 11 Civ. 7132, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) (citing *City of Detroit v. Grinnell Corp*., 495 F.2d (2d Cir. 1974)). "If not for the attorneys' willingness to endure for many years the risk that their extraordinary efforts would go uncompensated, the settlement would not exist." *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig*., 991 F. Supp.2d 437, 441 (S.D.N.Y. 2014). Adequately compensating attorneys for undertaking such risks facilitates access to the courts for victims of housing violations and similar misconduct. *Lopez*, 2015 WL 5882842, at *7.

Here, Counsel will actually be receiving less than they would have from a client paying on an hourly basis. And, as set forth above, requested fee would be reasonable under a contingency retainer. This factor thus confirms the reasonableness of the fee.

7. *The Settlement Occurred at an Advanced Stage of Litigation (Factor 11)*

This action settled only after five years of litigation, attesting to its hard-fought nature and the absence of collusion. In addition, the extensive discovery and analysis undertaken here ensures that Class Counsel had a well-informed, fully-vetted view of the strengths and weaknesses of the

case and the advantages and possible detriments of settlement. Finally, as set forth above, Class Counsel has expended millions of dollars in fees and costs. Because of the contingent nature of this case, Class Counsel has had an incentive at all times to litigate efficiently and to limit out-of-pocket expenses. All of its expenditures were reasonably tailored to the needs of the litigation and compelled by the circumstances as they arose. Class Counsel should be adequately compensated for its labor and the risks it has taken over the five-year course of this action.

8. *No Class Members Have Objected to the Fee Award (Additional Consideration)*

Finally, the Notice apprised Class members that Class Counsel would seek a fee of up to $3,500,000 (or 35% of the fund). No members have objected to or otherwise taken issue with this fee. Courts consider such a response to constitute class members' recognition of the value of the services performed by Counsel and to reflect the class' approval and endorsement of the fee. This class response is "entitled to great weight." *See, e.g., Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (lack of objection following notice "confirms the reasonableness of requested fees"; "this overwhelmingly positive response by the Class attests to the approval of the Class with respect to the Settlement and the fee and expense application."); *In re Veeco Instruments Secs. Litig.*, No. 05 MDL 01695, 2007 WL 4115808, at *1, 10 (S.D.N.Y. Nov. 7, 2007); *In re Xcel Energy, Inc. Secs., Derivative, & "ERISA" Litig.*, 364 F. Supp.2d 980, 1002 (D. Minn. 2005) (lack of objection to fee "can be read as an endorsement of the results received and the services rendered by plaintiffs' counsel"). The Class members' positive reaction underscores the reasonableness of Counsel's fee request.

In sum, all relevant factors and considerations fully support Counsel's fee request. The Court should approve the award as fair and reasonable, and as necessary and appropriate to attract competent counsel to pursue similar public interest cases.

VII. THE REPRESENTATIVE PLAINTIFFS ARE EACH ENTITLED TO A REASONABLE $5,000 CASE CONTRIBUTION AWARD

"Service awards, also called enhancement or incentive awards, are common in class actions." *Mills v. Capital One, N.A.*, No. 14-cv-01937, 2015 WL 5730008, at *17 (S.D.N.Y. Sept. 30, 2015). Such payments "serve the dual functions of recognizing the risks incurred by named plaintiffs and compensating them for their additional efforts." *Id. See also Charles*, 2017 WL 6539280, at *2-3 ("Such awards reward the named plaintiffs for the effort and inconvenience of consulting with counsel… and for participating in discovery"; they also recognize the risks—including the potential for retaliation—that class plaintiffs have undertaken "for the benefit of the class as a whole") (citations omitted); *Lopez*, 2015 WL 5882842, at *3.[14]

Here, the modest $5,000 case contribution awards requested by Plaintiffs Crosson and Fernando would fully serve these aims. Without these Plaintiffs' willingness to step forward and prosecute the action on behalf of the Class, this Settlement would not have been possible. The unusual posture of this action provides powerful support for the awards. Ms. Crosson and Ms. Fernando did not only assume the risks and substantial burdens inherent in a class leadership position; they bravely donned the mantle of Representative Plaintiffs even after a series of prior plaintiffs withdrew from the case and other potential plaintiffs balked at putting their names to the suit. Thus, case contribution awards are particularly necessary to reward their risks and efforts on

[14] *See also, e.g., Aponte v. Comprehensive Health Mgmt., Inc.*, No. 10 Civ. 4825, 2013 WL 1364147, at *7 (S.D.N.Y. Apr. 2, 2013) ("the service awards recognize the risks that the named Plaintiffs and opt-ins faced by participating in a lawsuit against their current or former employer and the efforts they made on behalf of the class, including producing documents, responding to interrogatories, and preparing for and having their depositions taken."); *Hosier v. Mattress Firm, Inc.*, No. 3:10-cv-294-J-32, 2012 WL 2813960, at *5 (M.D. Fla. June 8, 2012) ("Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation," including the "inherent risk" of retaliation) (citation omitted); *Silverstein v. AllianceBernstein LP*, No. 09–cv–05904, 2013 WL 7122612, at *28 (S.D.N.Y. Dec. 20, 2013); *Toure v. Amerigroup Corp.*, No. 10-cv-05391, 2012 WL 3240461, at *7-8 (E.D.N.Y. Aug. 6, 2012); *Parker v. Jekyll & Hyde Entm't Holdings, L.L.C.*, No. 08-cv-07670, 2010 WL 532960, at *1-2 (S.D.N.Y. Feb. 9, 2010).

behalf of the Class and to encourage similar tenants to act as private attorneys general in similar cases. *See, e.g.*, *Asare v. Change Group N.Y., Inc.*, No. 12 Civ. 3371, 2013 WL 6144764, at *14 (S.D.N.Y. Nov. 18, 2013) ("Courts acknowledge that class representatives play a crucial role in bringing justice to those who would otherwise be hidden from judicial scrutiny").[15] Moreover, even though they stepped into the case at a relatively-advanced stage, Plaintiffs have done substantially more than lend their names to the action: they have consulted with and advised Class Counsel, participated in discovery, and prepared and sat for depositions. In addition, both Ms. Crosson and Ms. Fernando had their apartments inspected by the parties' experts.

It is more than reasonable for the Class to compensate the Plaintiffs, collectively, a total of $10,000 out of the $10 million recovery. This amount represents a mere .1% of the cash fund – a minimal amount for keeping the case alive, assuming the risks and obligations of Representative Plaintiff status, and bringing about the Settlement on behalf of the Class.

A. Courts Have Often Awarded Service Payments in Amounts Similar to or Larger Than Those Applied for Here

The amounts sought here are well within – or *below* – the range of awards approved as reasonable. *See, e.g., Lopez*, 2015 WL 5882842, at *3 (service awards of $20,000 and $10,000—totaling $50,000 out of $1.4 million fund); *Mancia*, 2016 WL 833232, at *2-3 (approving $15,000 service award, "well within the range awarded by court[s] in similar matters"); *Charles*, 2017 WL

[15] *See further Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) ("Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit."); *UFCW Local 880-Retail Food v. Newmont Mining Corp.*, 352 Fed. Appx. 232, 235-36 (10th Cir. 2009) (incentive awards justified: (1) "when necessary to induce individuals to become named representatives"; and (2) as "an award for personal risk incurred or additional effort and expertise provided for the benefit of the class."); *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009) ("Such awards are discretionary and are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general."); *Parker*, 2010 WL 532960, at *1 ("The enhancement awards provide an incentive to seek enforcement of the law despite these dangers"—i.e. retaliation and blacklisting).

6539280, at *3 ("The service award totaling $10,000.00 for Plaintiff is reasonable and well within the range awarded by courts in similar matters.") (citing cases); *Clemons*, 2017 WL 1968654, at *20 (approving $10,000 service payment to class representative); *Hosue*, 2017 WL 4011213, at *3 (award of $5,000 for named plaintiff) (citing cases); *Fernandez*, 2015 WL 3932897, at *3 ($5,000 service awards for each of three class representatives, $15,000 out of $275,000 fund).

B. The Requested Contribution Awards are Amply Justified

The requested awards are more than justified. The Representative Plaintiffs have devoted substantial time and effort to the prosecution of this case, including by consulting with Class Counsel, participating in discovery, having their depositions taken, and volunteering to have their apartments inspected. *See Charles*, 2017 WL 6539280, at *2 (awarding $10,000 to the plaintiff "given the significant contributions he made to advance the prosecution and resolution of the lawsuit."); *Clemons*, 2017 WL 1968654, at *2 ($10,000 service payment was reasonable given the class representative's "significant contributions"). Moreover, in the context of this action, the Representative Plaintiffs have assumed a greater-than-usual risk of adverse consequences. *Cf. Lopez*, 2015 WL 5882842, at *3. Plaintiffs in housing cases, like employment actions, are acutely vulnerable to retaliation or blacklisting. *Cf. Sorrentino v. ASN Roosevelt Center LLC*, 584 F. Supp.2d 529, 533 (S.D.N.Y. 2008) (finding risk of coercion in landlord-tenant relationship). Here, numerous plaintiffs or potential plaintiffs have dropped out of the case, but Ms. Crosson and Ms. Fernando saw it through.

The contribution awards sought are necessary not only to recognize the significant role each of the individuals played in the prosecution of this matter, but also to generally encourage similar individuals to play an active role in the private enforcement of public rights.

C. The Proposed Awards are Reasonable and Appropriate in Proportion to the Class Fund as Well as to the Individual Settlement Benefits to the Class Members

The case contribution awards, which total just .1% of the cash receovery, are modest and reasonable in proportion to the Settlement. They would have only a negligible impact on class members' settlement payments—approximately $1.65 per Class member. Moreover, the awards are consistent and in line with the anticipated individual settlement payments. For example, a $5,000 award would be roughly equivalent to the settlement distribution to a hypothetical class member who paid a total of $250,000 in rent over the twelve-year class period— *e.g.*, a tenant who paid approximately $4,200 per month for five years or $2,600 per month for eight years.

Accordingly, the requested awards—which are warranted by the Representative Plaintiffs' contributions to the case—are amply justified in the context of the overall settlement. They do not meaningfully erode the settlement benefits to the Class. Nor is this a case in which the Representative Plaintiffs receive an undue windfall while class members obtain only scraps. Rather, because the Representative Plaintiffs have helped bring about an excellent settlement, it is appropriate to provide them modest recompense.

D. The Class Members Have Approved the Case Contribution Awards

Significantly, *none* of the Class members has voiced any objection to the proposed Representative Plaintiff awards. This is a strong indication that Class members value the efforts and sacrifices that the Representative Plaintiffs made on their behalf. *See*, *e.g., McReynolds v. Merrill Lynch*, No. 1:05-cv-6583 (N.D. Ill. Dec. 6, 2013) (granting $75,000-$250,000 service awards; taking the lack of objection "as an indication that the Settlement Class values the efforts of the Class Representatives and Steering Committee Members on behalf of the class"); *Sewell v. Bovis Lend Lease LMB, Inc.*, 2012 WL 1320124, at *15 (S.D.N.Y. Apr. 16, 2012) ("No class members have filed any objections to the proposed service awards established under the Settlement

Agreement."); *Castro v. Sanofi Pasteur, Inc*., Civ. No. 11–7178, 2017 WL 4776626, at *10 (D.N.J. Oct. 23, 2017) (approving $100,000 awards to each of three plaintiffs and noting lack of objections); *In re Packaged Ice Antitrust Litig*., No. 08–MDL–01952, 2012 WL 5493613, at *9 (E.D. Mich. Nov. 13, 2012) ("Importantly, the Notice to the Class advised that Class Counsel would seek incentive awards in these amounts and no Class Members objected."). This factor weighs strongly in favor of approving the requested payments.

VIII. CONCLUSION

After years of contested litigation, the parties have reached a favorable settlement that should be approved by the Court in all respects. The Settlement provides substantial benefits to the Class members and avoids the risks and uncertainty of additional protracted litigation; it meets all of the requisites for approval. In addition, the Court should award reasonable contribution awards and attorney's fees and costs. The requested amounts represent reasonable compensation for the services that Plaintiffs and Class Counsel provided to the Class and the efforts, expenditures, and risks they undertook in prosecuting this action and realizing the Settlement.

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