

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

IN RE GATEWAY PLAZA RESIDENTS LITIGATION

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

**JUDGMENT AND ORDER OF DISMISSAL**

This matter came on for hearing upon the application of the Settling Parties for approval of the Settlement set forth in the Stipulation of Settlement, dated as of October 30, 2019. Due and adequate notice having been given to the Class, and the Court having considered the Stipulation of Settlement, all papers filed and proceedings held herein and all oral and written comments received regarding the proposed settlement, and having reviewed the entire record in the action, and good cause appearing therefor;

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Court, for purposes of this Judgment and Order of Dismissal with prejudice (the “Judgment”), adopts the following defined terms:
  - A. “Action” means the consolidated putative class action pending in this Court under the caption *In re Gateway Plaza Residents Litigation*, Index No. 651023/2014, including, without limitation, all cases consolidated with the foregoing as of the Final Settlement Date.

- B. “Attorneys’ Fees and Expenses Award” means the amounts awarded to Class Counsel to compensate them for their fees and expenses in connection with investigating, prosecuting, and settling the Action. The Attorneys’ Fees and Expense Award shall be paid exclusively out of the Net Cash Settlement Amount.
- C. “Authorized Claimant” means a Class Member (or the representative of such Class Member including, without limitation, agents, administrators, executors, heirs, predecessors, successors, affiliates (as defined in 17 C.F.R. Part 210.1 02.b) and assigns) who submits a timely and valid Proof of Claim.
- D. “BPCA” means the Battery Park City Authority.
- E. “Cash Settlement Account” means an interest-bearing Escrow Account, established by Class Counsel, maintained by the Escrow Agent under the control of Class Counsel, into which the Net Cash Settlement Amount shall be paid. The Cash Settlement Account shall be maintained as a Qualified Settlement Fund, as defined below. All monies in the Cash Settlement Account, including all interest accruing thereon, shall be deemed to be in the custody of the Court and will remain subject to the jurisdiction of the Court until such time as it is distributed to Authorized Claimants.
- F. “Claim” means any and all actions, causes of action, proceedings, adjustments, executions, offsets, contracts, judgments, obligations, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, variances, covenants, trespasses, damages, demands (whether written or oral), agreements, promises, liabilities, controversies, costs, expenses, attorneys’ fees and losses whatsoever, whether in law, in admiralty or in equity and whether based on any federal law, state law, foreign law or common law right of action or otherwise, foreseen or unforeseen, matured or unmatured, known or unknown, accrued or not accrued, existing now or to be created in the future.
- G. “Class” or “Class Members” means, subject to the exclusions set out in this Section, all persons who (i) reside at Gateway Plaza as of the Final Settlement Date (the “Current Tenants”), or (ii) do not reside at Gateway Plaza as of the Final Settlement Date but resided at Gateway Plaza for any period of time between April 1, 2008, and the Final Settlement Date (the “Former Tenants”). The terms “Current Tenants,” “Former Tenants,” “Class,” and “Class Members” do not include:
- (i) Persons who submit valid and timely requests for exclusion from the Class; or

- (ii) Persons who are or were Marina Towers Releasees and Related Party Releasees, and each of their employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; and the Family Members of each of the foregoing.
- H. “Class Counsel” means the firms of Newman Ferrara LLP, Safirstein Metcalf LLP, and Sanford Heisler Sharp, LLP, collectively.
- I. “Class Period” means the period of time from April 1, 2008, through the Final Settlement Date, inclusive.
- J. “Co-Lead Counsel” means the firms of Newman Ferrara LLP and Safirstein Metcalf LLP.
- K. “Complaint” means the Consolidated Fourth Amended Class Action Complaint filed in the Action on April 6, 2018.
- L. “Controlling Interest” means a beneficial ownership interest, directly or indirectly, in more than 50% of the total outstanding voting power of any class or classes of capital stock that entitle the holders thereof to vote in the election of the Board of Directors of such entity; provided that any disputes as to whether any person has a Controlling Interest in an entity shall, for purposes of determining whether a Controlling Interest exists under the Settlement Agreement and for that purpose only, be submitted to the Court for resolution. The person with an alleged controlling interest shall, as the case may be, bear the burden of proof as to whether its interest in an entity is or was a Controlling Interest for purposes of the Settlement Agreement.
- M. “Distribution Amount” means the Net Cash Settlement Amount less (i) the Attorneys’ Fees and Expenses Award; (ii) the Representative Plaintiffs Compensatory Award; (iii) all Tax Expenses (if any); and (iv) any other payment necessary to effectuate the Settlement or otherwise authorized by the Court.
- N. “Escrow Account” means the bank accounts maintained by the Escrow Agent into which the Cash Settlement Account shall be deposited.
- O. “Escrow Agent” means Co-Lead Counsel.

- P. “Fairness Hearing” means the hearing held on \_\_\_\_\_, at which the Court considered whether this Settlement Agreement is fair, reasonable, and adequate and, therefore, should be approved by the Court.
- Q. “Family Members” means an individual’s father, mother, grandfather, grandmother, sister, brother, spouse, domestic partner, son, and/or daughter.
- R. “Final,” when used in connection with any court order or judgment, means that the relevant order or judgment will be final: (i) if no appeal is taken therefrom, on the date on which the time to appeal therefrom (including any potential extension of time) has expired, and (ii) if any appeal is taken therefrom, on the date on which all appeals therefrom have been finally disposed of, such that the time to appeal therefrom (including any potential extension of time) has expired, in a manner resulting in an affirmance of the Judgment. For purposes of this Section, an “appeal” includes appeals as of right, discretionary appeals, interlocutory appeals, petitions for rehearing or reargument, petitions for rehearing en banc, proceedings involving petitions for writs of certiorari, mandamus, or prohibition, and any other proceedings of like kind.
- S. “Final Settlement Date” means the date on which this order becomes Final.
- T. “Gateway Residential Management” means Gateway Residential Management LLC.
- U. “Gateway Plaza” means the residential apartment complex that contains six buildings located at 345, 355, 365, 376, 385, and 395 South End Avenue, New York, New York.
- V. “Hearing Order” means the order entered by the Court on \_\_\_\_\_, concerning notice, administration and the Fairness Hearing.
- W. “The LeFrak Organization” means LeFrak Organization Inc. and LeFrak Organization LLC, collectively.
- X. “Legal Proceedings” means any action pending as of the date of execution of the Stipulation of Settlement against Marina Towers in any federal court, state court, or forum for arbitration.
- Y. “Marina Towers” means Marina Towers Associates, L.P.
- Z. “Net Cash Settlement Amount” means the Settlement Amount, less the Rent Abatement Portion, which shall be paid by Marina Towers into the

Cash Settlement Account pursuant to the terms of the Settlement Agreement.

- AA. “Notice” means the notice, as approved by the Court on \_\_\_\_\_, that was made available to members of the Class informing them of the Settlement contemplated by this Settlement Agreement.
- BB. “Notice and Administrative Expenses” means all expenses associated with the administration of the Settlement contemplated by this Settlement Agreement, which shall be paid by Marina Towers in addition to the Settlement Amount up to a maximum amount set forth below, including, but not limited to, the expenses associated with: printing and mailing the Notice to Class Members; publishing the Summary Notice; assisting Class Members with filing Proofs of Claim; processing Proofs of Claim; and setting up and maintaining the toll-free telephone number.
- CC. “Plan of Allocation” means the terms and procedures for allocating the Distribution Amount among, and distributing the Distribution Amount to, Authorized Claimants as set forth in the Notice, or such other Plan of Allocation as the Court shall approve.
- DD. “Proof of Claim” means the form, as approved by the Court, that was mailed and/or provided to Class Members with the Notice, pursuant to which such Class Members will submit a claim under the procedures set out in the Settlement Agreement.
- EE. “Qualified Settlement Fund” means a fund within the meaning of Treasury Regulations § 1.468B-1.
- FF. “Releases” means the releases and waivers set forth in Section VIII of the Settlement Agreement .
- GG. “Released Claims” means:
1. with respect to the release by each Plaintiff Releasor, all Claims arising out of, in any way related to, or in connection with the claims or allegations that were asserted or could have been asserted in this Action by or on behalf of the Class or such Plaintiff Releasor against any Marina Towers Releasee or Related Party Releasee (both of which terms are defined below), whether known or unknown, arising from the beginning of the world until the Final Settlement Date, whether arising under state, federal or foreign law as claims, cross-claims, counterclaims, or third-party claims, and whether asserted in the Complaint, in this Court, in any federal or state court, or in any other court, arbitration proceeding, administrative agency, or other forum in the United States or

elsewhere, including, for example, any Claims relating to heating, air conditioning, electricity, electricity charges, insulation, PTAC units, fungal growth, and condensation on windows and window sills; and.

2. with respect to the release by each Marina Towers Releasee, all Claims, known or unknown, arising out of, in any way relating to, or in connection with the institution, prosecution, assertion, settlement, or resolution of the Action or the Released Claims, including any counterclaims asserted, except a claim to enforce the Releases or other terms and conditions contained in this Settlement Agreement or any Court order (including but not limited to the Judgment) entered pursuant thereto.

HH. “Releasee” means:

1. with respect to Marina Towers, each and every one of the following: Marina Towers, its present and former parents, subsidiaries, divisions, affiliates (as defined in 17 C.F.R. Part 210.1 02.b), employees, members, general and limited partners, principals, officers, and directors; its present and former attorneys, advisors, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; its predecessors, estates, heirs, executors, trusts, trustees, administrators, successors and assigns; and any Person which is or was related to or affiliated with any of the foregoing or in which any of the foregoing Persons has or had a Controlling Interest, and the present and former employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents of each of them (together, the “Marina Towers Releasees”);
2. with respect to Gateway Residential Management, the LeFrak Organization, and the BPCA: Gateway Residential Management, the LeFrak Organization, and the BPCA, and each of their present and former parents, subsidiaries, divisions, affiliates (as defined in 17 C.F.R. Part 210.1 02.b), employees, members, general and limited partners, principals, officers, and directors; their present and former attorneys, advisors, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; their predecessors, estates, heirs, executors, trusts, trustees, administrators, successors and assigns; and any Person which is or was related to or affiliated with any of the foregoing or in which any of the foregoing Persons has or had a Controlling Interest, and the present and former employees, members, general and limited

partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents of each of them (together, the “Related Party Releasees”); and

3. with respect to the Plaintiffs, each and every one of the following: Kelley Crosson, Kathy Fernando, all other Class Members who do not exclude themselves from the Class, and each of their Family Members, agents, representatives, assigns, heirs, estates, executors, administrators, beneficiaries, trusts, and trustees (together, the “Plaintiff Releasees”).

II. “Releasers” means:

1. with respect to the Plaintiffs, each and every one of the following: Kelley Crosson, Kathy Fernando, all other Class Members who do not exclude themselves from the Class, and each of their Family Members, agents, representatives, assigns, heirs, estates, executors, administrators, beneficiaries, trusts, and trustees (together, the “Plaintiff Releasers”); and
2. with respect to Marina Towers, each and every one of the following: Marina Towers, its present and former parents, subsidiaries, divisions, affiliates (as defined in 17 C.F.R. Part 210.1 02.b), employees, members, general and limited partners, principals, officers, and directors; its present and former attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents; its predecessors, estates, heirs, executors, trusts, successors and assigns; and any Person which is or was related to or affiliated with any of the foregoing or in which any of the foregoing Persons has or had a Controlling Interest, and the present and former employees, members, general and limited partners, principals, officers and directors, attorneys, advisors, trustees, administrators, fiduciaries, consultants, representatives, accountants and auditors, insurers, and agents of each of them (together, the “Marina Towers Releasers”).

JJ. “Rent Abatement Portion” means such portion of the Settlement Amount that, under the Plan of Allocation, shall be provided by Marina Towers to Current Tenants in the form of an abatement against the Current Tenant’s rent obligations.

- KK. “Representative Plaintiffs” means Kelley Crosson and Kathy Fernando, each in both her individual capacity and in her capacity as a representative of the Class.
- LL. “Representative Plaintiffs’ Compensatory Award” means a cash award to the Representative Plaintiffs in this Action designed to compensate such Representative Plaintiff for the time and expense involved in overseeing this litigation. The Representative Plaintiff Compensatory Award shall be paid exclusively out of the Net Cash Settlement Amount.
- MM. “Settlement” means the entire agreement between the Settling Parties set forth in the Settlement Agreement.
- NN. “Settlement Agreement” means the Stipulation of Settlement between the Settling Parties, dated October 30, 2019, and any accompanying Exhibits, including any subsequent amendments thereto and any Exhibits to such amendments.
- OO. “Settlement Amount” means ten million dollars (\$10,000,000.00) dollars which Marina Towers has agreed to pay in cash or in rent abatement in order to resolve this Action.
- PP. “Settling Parties” means (i) the Representative Plaintiffs on behalf of the Class and (ii) Marina Towers.
- QQ. “Summary Notice” means the notice described in Section III.C. of the Settlement Agreement.
- RR. Any term used herein and not defined should be construed consistent with the definitions set forth in Section I.F of the Settlement Agreement.

2. The Court has jurisdiction over the subject matter of this Action, the Representatives Plaintiffs, all Class Members, and Marina Towers.

3. The Court finds that the distribution of the Notice, and publication of the Summary Notice (i) was effected in accordance with the Order Preliminarily Approving Settlement and Approving the Form and Manner of Notice, dated \_\_\_\_\_ (the “Preliminary Order of Approval”), (ii) constituted the best notice practicable under the circumstances to all persons within the definition of the Class; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise



Class Members of the pendency of the Action, of the effect of the Settlement Agreement, including the release of the right of Class Members to exclude themselves from the Class, and of the right of Class Members to appear at the Fairness Hearing; and (iv) that such notice fully met the requirements of the New York Civil Practice Law and Rules, the United States Constitution (including the Due Process Clause), the Constitution of the State of New York, the Rules of the Court, and any other applicable law.

4. The Court approves as final all terms of the Settlement set forth in the Settlement Agreement, including specifically, without limitation, the amount of the settlement, which includes a payment of \$10,000,000.00 in cash and rent abatement; the Releases set forth therein; and the dismissal, with prejudice, of all the Released Claims against the Releasees as fair, just, reasonable, and adequate as to the Settling Parties. The Settling Parties are directed to perform in accordance with the terms set forth in the Settlement Agreement.

5. Except as to any individual claim of those Persons (identified in Exhibit A hereto) who have validly and timely requested exclusion from the Class, all of the Released Claims are hereby dismissed with prejudice. The Settling Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Settlement Agreement. Regardless of whether or not a Class Member receives any cash distributions from the settlement or executes and delivers the Proof of Claim provided for in the Stipulation, each and all Class Members, on behalf of themselves and their respective predecessors, successors and assigns, is hereby deemed to have fully, finally, and forever released, relinquished, and discharged all of the Marina Towers Releasees and Related Party Releasees from the Released Claims.

6. By operation of this Judgment, the Representative Plaintiff, Class Members, and Class Counsel are fully, finally, and forever released and discharged from all Claims that any of the Marina Towers Releasees have, had, or may have that arise out of, relate to, or are based in any way upon the institution, prosecution, assertion, or resolution of, this Action or the Released Claims.

7. Only those Class Members filing valid and timely Proofs of Claim and Release shall be entitled to receive any distributions or rent abatement from the Settlement. The Proofs of Claim and Release to be executed by the Class Members shall contain a release whereby the Class Member releases all Marina Towers Releasees and Related Party Releasees from all Released Claims. The Proof of Claim shall be substantially in the form and content of Exhibit C to the Preliminary Order of Approval. All Class Members shall be bound by the releases set forth herein, in the Judgment, and in Exhibit C, whether or not they submit a valid and timely Proof of Claim.

8. Neither Marina Towers, nor its counsel, shall have any responsibility for, interest in, or liability whatsoever with respect to: (a) the provisions of the Class Notice, locating Class Members, soliciting settlement claims or claims administration; (b) the investment, management or distribution of the Cash Settlement Account; (c) the design, administration, or implementation of the Plan of Allocation; (d) the determination or administration of taxes; or (e) any expenses, costs, or losses incurred in connection with (a), (b), (c), or (d). No person shall have any claim of any kind against Marina Towers, or its counsel, with respect to the matters set forth in this paragraph.

9. The Court finds and concludes that the amount of the Settlement set forth in Paragraph 4 herein, as well as the other terms of the Settlement, reflect a good faith settlement of Representative Plaintiffs' and the Class's claims, reached voluntarily after consultation with experienced legal counsel. Neither the Settlement Agreement nor the Settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Agreement or the Settlement: (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Releasees; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any releasee in any civil, criminal or administrative proceeding in any court, administrative agency or other tribunal. Releasees may file the Stipulation and/or the Judgment from this action in any other action that may be brought against them in order to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction or any theory of claim preclusion or issue preclusion or similar defense or counterclaim.

10. The Court finds that the Representative Plaintiffs and Class Counsel adequately represented the Class for purposes of entering into and implementing the settlement.

11. The Court reserves exclusive and continuing jurisdiction over this Action, the Representative Plaintiffs, the Class, and all releasees for the purposes of: (1) supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Plan of Allocation, and this Judgment; (2) supervising the distribution of the Settlement Amount.

12. The Court authorizes the Settling Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Settlement Agreement and all exhibits attached to the Settlement Agreement as (i) are not materially inconsistent with this Judgment and (ii) do not materially limit the rights of Class Members under this Settlement Agreement; provided that any modification in the Plan of Allocation that involves an amount equal to or less than ten percent (10%) of the total distribution amount involved in the Plan of Allocation shall be deemed to be materially consistent with the Judgment and shall be deemed not to materially limit the rights of Class Members under this Settlement Agreement.

13. All Plaintiff Releasors are hereby permanently barred and enjoined from filing, commencing, prosecuting, intervening in, participating in (as class members or otherwise), or receiving any benefits or other relief from, any other lawsuit, arbitration or other proceeding or order in any jurisdiction that is based upon any Released Claims, including, but not limited to, any Claim that is based upon, arises out of, or relates to the Action or the transactions and occurrences referred to in the Complaint. All persons or entities are likewise barred and enjoined from organizing any Plaintiff Releasors for purposes of pursuing as a purported class action (including by seeking to amend a pending complaint to include class allegations, or by seeking class certification in a pending action) any lawsuit that is based upon any Released Claims, including, but not limited to, any Claim that is based upon, arises out of, or relates to the Action or the transactions and occurrences referred to in the Complaint.

14. The Plan of Allocation set forth in the Notice is hereby approved as fair, reasonable and equitable.

15. Class Counsel are hereby awarded \$ \_\_\_\_\_ from the Settlement Amount set forth in Paragraph 4 herein for services rendered in connection with prosecution of this litigation, inclusive of \$ \_\_\_\_\_ as reimbursement for expenses to be paid consistent with Section IX.1 of the Stipulation.

16. Each Representative Plaintiff is hereby granted a Compensatory Award of \$ \_\_\_\_\_ to be paid consistent with Section IX.2 of the Stipulation.

17. Nothing in this Judgment shall preclude any action to enforce the terms of the Stipulation.

18. In the event the Final Settlement Date does not occur, then this Judgment shall be rendered null and void and shall be vacated and, in such event, all orders entered and releases given in connection herewith shall be null and void.

Dated: New York, New York  
\_\_\_\_, 20\_\_

**SO ORDERED:**

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