

**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

**SUPPLEMENTAL
AFFIRMATION OF
JEFFREY M. NORTON**

Jeffrey M. Norton, an attorney duly admitted to practice law before the Courts of the State of New York, hereby affirms that the following statements are true under the penalties of perjury pursuant to CPLR 2106:

1. I am a member of the law firm Newman Ferrara LLP, Co-Lead Counsel for Representative Plaintiffs and the Class in this action. I respectfully submit this Supplemental Affirmation in further support of Representative Plaintiffs' motion for final settlement approval, approval of Class Counsel's application for attorneys' fees and expenses, and approval of case contribution awards for the Representative Plaintiffs.

2. Pursuant to the Court's Preliminary Approval Order, the deadline for any objections to the Settlement, and any requests for exclusion from the Settlement Class ("opt-outs"), was January 31, 2020. To the extent there were any objections, the Preliminary Approval Order also provided that Class Counsel could file a response to the same on or before February 21, 2020.

3. Class Counsel is pleased to report that, since disseminating Notice to the Class on December 18, 2019, there has not been a single objection to any aspect of the Settlement, including its substantive terms, the application for case contribution awards for the Representative Plaintiffs, or Class Counsel's application for attorney's fees and expenses.

4. Indeed, the response has been overwhelmingly positive. After sending Notice to over 6000 potential Class members via direct mail, email, and publication, nearly 1500 hundred

claim forms have already been submitted (and they continue to have until April 16, 2020 to do so). Especially notable is the fact there were only four opt-outs (*i.e.*, less than .0006%)¹ and none of those individuals expressed any dissent to the Settlement.

5. Accordingly, based on the overwhelming demonstration of support, the Representative Plaintiffs respectfully submit that the Court should grant final approval of the Settlement, finally certify the Class, and dismiss the action. Further, the Court should endorse the application for modest case contribution awards for the Representative Plaintiffs, and Class Counsel's application for attorney's fees and expenses.

NOTICE AND RESPONSE OF THE CLASS

6. 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.nflfp.com/documents/Cases/Gateway-Plaza-Long-Form-Notice_2.pdf,

¹ Initially, there were ten opt-outs (with only seven of those being valid) and Class Counsel made efforts to reach out to those seven individuals requesting exclusion to ensure that the request was not based on any concern or misconception about the Settlement. As of the date of this filing, four of those individuals have so far corresponded with Class Counsel and, based on those communications, three elected to withdraw their request for exclusion and file a proof of claim.

www.safirsteinmetcalf.com/gateway, and www.sanfordheisler.com/case/gateway-plaza-residents-litigation).

7. On or about January 8, 2020, the parties advised the Court that they had become aware of a minor typographical error in the Notice. Specifically, the Notice stated that “Gateway Plaza is a residential apartment complex that contains six buildings located at 345, 355, 365, 376, 385, and 395 South End Avenue, New York, New York.” (Emphasis added). The reference to “376” was intended to be (and should have been) identified as “375” since there is no 376 South End Avenue.

8. Although the parties agreed that it was highly unlikely any Class members would be confused by the typographical error in the Notice (since tenants generally are aware of the address configuration of Gateway Plaza, and, more importantly, the Notice defines the Class as including *all* residential tenants of Gateway Plaza during the Class Period), out of an abundance of caution, the parties jointly proposed a targeted supplemental notice program to current and former tenants of 375 South End Avenue advising them of the error and their presumptive inclusion in the Class, and that the terms of the Notice applied to them.

9. That supplemental notice effort, which was approved by the Court, involved:(a) delivering a postcard addendum to the Notice; (b) posting the same addendum on the Settlement website, the websites of Class Counsel, and the Gateway Plaza website; and (c) updating the online versions of the Notice to reflect the correct information.

10. The aforementioned supplemental notice measures were completed on or before January 27, 2020. Notably, only two (non-objecting) Class members raised the issue of the address error in the Notice but, for both, it was for the purpose of alerting counsel and not to express a concern that they, as current or former residents of 375 South End Avenue, were excluded from

the Class. Additionally, both individuals were informed of the correction and the supplemental notice effort.

11. As noted above, Class members' response to the Notice has been overwhelmingly positive. Nearly 1500 current and former tenants have already filed Proofs of Claim (even though the deadline for doing so is not until April 16, 2020 (*i.e.*, 45 days following final approval), not a single Class member objected, and only four Class members submitted requests for exclusion.

12. In addition, Class Counsel and the Claims Administrator have fielded hundreds of calls and emails from Class members with questions and concerns about the Settlement and the 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.

FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

13. The purpose of the two-stage settlement approval process is to provide Class members notice of a settlement and an opportunity to weigh in. Now that this process is complete, it is indisputable that the Class has spoken in one voice in favor of the Settlement as there are no objectors, only four opt-outs, and nearly 1500 claims filed already. Thus, based on the positive response from the Class, we respectfully submit the Settlement should be fully and finally approved.

14. **No objections to the Class:** 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. Based on data obtained from Marina Towers, more than 7,000 potential Class members have been sent Notice. In its preliminary approval order, the Court certified the Class for settlement purposes, and, as previously described, the requisites of CPLR

§§ 901 and 902 are duly satisfied. Because no Class members have come forward to argue otherwise, we respectfully submit that Court should grant final certification of the Class in order to effectuate the Settlement.

15. **No objections to the relief obtained on behalf of the Class or to the Plan of Allocation:** As described in the Notice, the Settlement provides for significant monetary and non-monetary relief, including a non-reversionary \$10 million cash recovery for rent abatements (with pro-rata benefits provided to former tenants in the form of a cash payment and to current tenants in the form of a rent credit), \$18 to \$20 million of capital improvements already received during this litigation, and prospective relief in the form of a two-year contractual limitation on future rent increases for all Gateway tenants (a benefit which carries a potential monetary value to the Class of up to \$13 million). The Plan of Allocation set forth in the Notice provides an explanation as to how monetary benefits will be calculated and allocated to the members of the Class on a pro-rata basis. Now that Class members have been given an opportunity to review the terms of the Settlement, ask questions about the Settlement, and object to the Settlement (or elect to opt out), it is a testament to the substantial benefits achieved that not a single objection has been filed and that there are merely four opt-outs. Considering the size of the Class and issues involved, those are remarkable results that weigh strongly in favor of approval.

16. **No objections to plaintiffs' application for an award of attorneys' fees and expenses:** In accordance with the parties' Settlement and Notice, Class Counsel is seeking 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.²

² As provided in the Settlement Agreement, costs do not include settlement Notice and Administration expenses which are being separately paid by Marina Towers in an amount up to \$100,000. However, due to the supplemental

17. As argued previously, Counsel's collective lodestar of \$3,730,996.50, which exceeds the request and excludes considerable additional time expended by Class Counsel on Notice and Administration matters since the application was initially made, provides additional compelling support for the reasonableness of the requested fee. *See, e.g., Lopez v. The Dinex Group, LLC*, No. 155706/2014, 2015 WL 5882842, *8 (Sup. Ct. N.Y. Co. Oct. 06, 2015) ("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."). Moreover, the fact that Class Counsel is seeking a fractional, or negative, multiplier militates in favor of approval. *See, e.g., Wright v. Stern*, 553 F. Supp. 2d 337, 347 (S.D.N.Y. 2008) (approving \$8 million fee when it representing over 38% of total monetary relief of \$20.7 when it was less than counsel's full lodestar).

18. The amount of fees being sought by Class Counsel was disclosed in the Notice and no Class members have objected to or otherwise taken issue with the request. 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"). Here, the Class members' positive

notice described in Section II(A), above, and certain tenant data processing that was more involved than initially contemplated, there remains a reasonably possibility that the Notice and Administration costs may slightly exceed \$100,000 by the time the claims process is complete. If that occurs, Class Counsel will seek approval for an additional expense allocation from the Court to cover the difference prior to distribution of Settlement proceeds to the Class. Plaintiffs submit that because the Class is typically responsible for such costs in the normal course, that application should not present an issue. *See 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.").

reaction to the work done, and the significant relief obtained by Class Counsel, underscores the reasonableness of the fee and expense application. Accordingly, we respectfully submit that Class Counsel's application for an award of attorneys' fees and expenses should be granted.

19. **No objections to the Representative Plaintiffs' case contribution awards:** Finally, as provided for in the Settlement Agreement, and as disclosed in the Notice, the Representative Plaintiffs, Kelley Crosson and Kathy Fernando, are seeking case contribution awards in the amount of \$5000 each. As demonstrated previously, such awards are common in class actions in recognition of a class representative's time, commitment, and sacrifice to the litigation and well within the range of reasonableness. *See Mills v. Capital One, N.A.*, No. 14-cv-01937, 2015 WL 5730008, *17 (S.D.N.Y. Sept. 30, 2015); *Charles v. Avis Budget Car Rental, LLC*, No. 152627/2016, 2017 WL 6539280, at *2-*3 (N.Y. Sup. Ct. Dec. 21, 2017) (a \$10,000 service award reasonable "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").

20. Significantly, no Class member questioned the reasonableness of, or voiced any objection to, the proposed Representative Plaintiff awards. Thus, based on the strong justification for such awards and the lack of objection by the Class, we respectfully submit that the Court should approve \$5,000 case contribution awards for Ms. Crosson and Ms. Fernando, respectively.

Dated: New York, New York
February 21, 2020

s/ Jeffrey M. Norton
Jeffrey M. Norton