

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

BRUCE HACKNEY AND TIMOTHY  
SMITH, on behalf of themselves and all others  
similarly situated,

Plaintiffs,

-v-

UDR 10 HANOVER LLC

Defendant.

Index No.: 159652/2019

~~Proposed~~ **Final Order and  
Judgment Approving Class Action  
Settlement**

**WHEREAS:**

A. On April 9, 2023 Plaintiffs applied to the Court pursuant to Civil Practice Law and Rules (“CPLR”) Article 9 for an order preliminarily approving the settlement of this litigation (the “Action”) in accordance with the Stipulation and Agreement of Settlement dated February 28, 2023 (the “Stipulation”) that, together with the exhibits annexed thereto, sets forth the terms and conditions for a proposed settlement of this Action (the “Settlement”) and for a judgment dismissing the Class Action Complaint dated October 4, 2019, filed by the Plaintiffs in this Action (the “Complaint”) with prejudice upon the terms and conditions set forth in the Stipulation.

B. In the Preliminary Approval Order of the Settlement of the Class Action, dated April 27, 2023 (the “Preliminary Approval Order”), this Court, among other things: (i) certified the following class for purposes of settlement: all tenants at the Building residing, or who previously resided, in Units that were treated as deregulated during the period when 421-g tax benefits were being received by the owner of the Building, except that the Class shall not include

(a) any tenants who vacated before October 4, 2015 (the “Class”) nor (b) any tenants who first resided in the Unit after the 421-g Program Expiration Date; (ii) appointed Newman Ferrara LLP as lead counsel for the Class (“Lead Counsel”); (iii) preliminarily approved the Settlement; (iv) set the Bar Date, as defined in paragraph 25 of the Stipulation, as June 30, 2023; (v) scheduled a hearing for August 16, 2023 (the “Settlement Hearing”) to consider whether to approve the Settlement as being fair, reasonable, adequate, and consistent with the New York City Rent Stabilization Law (“RSL”) and New York City Rent Stabilization Code (“RSC”), to enter final judgment thereon and to consider any application for payment of the fees and costs of AB Data, Ltd. (“Claims Administrator”), an award of attorneys’ fees and expenses, and a Class Representative Incentive Award to Plaintiff; and (vi) directed that notice of the pendency of the Action, the proposed Settlement and the Settlement Hearing, substantially in the form annexed as Exhibit E to the Stipulation (the “Notice”), be mailed to all Class Members who could be identified with reasonable effort, along with a summary notice for publication, substantially in the form annexed as Exhibit F to the Stipulation (the “Summary Notice”).

C. On July 27, 2023, the Court signed a Stipulation of Adjournment and Order (the “Supplemental Notice Order”), directing that certain Class Members who had inadvertently not been provided notice, be provided notice, and that the Bar Date for such Class Members was September 27, 2023.

D. Lead Counsel has submitted an affidavit from the Claims Administrator appointed by the Preliminary Approval Order attesting that the Notice and Summary Notice were disseminated in accordance with the Preliminary Approval Order and the Supplemental Notice Order.

E. No Class Member has timely requested exclusion from the Class.

F. The Court held a Settlement Hearing on 10/25/23 and has considered all prior proceedings in the Action, the Stipulation and the exhibits annexed thereto, any submissions made in connection with the proposed Settlement and all proceedings during the Settlement Hearing, and no party has terminated the Stipulation in accordance with paragraph 39 thereof.

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

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

**NOTICE**

2. The Court hereby determines that the Notice and Summary Notice complied with the requirements of CPLR § 904, Rules 907 and 908 and due process and were the best notice practicable under the circumstances and constituted due and sufficient notice to all persons entitled thereto, including individual notice to all Class Members who could be located through reasonable effort. The Notice and Summary Notice provided due and adequate notice of these proceedings, the Settlement, the application of Lead Counsel for the payment of the Claims Administrator's fees and costs, an award of attorneys' fees and expenses and an award of incentive fees to Plaintiffs, and the other matters set forth therein, to all persons entitled to such notice.

3. Due and adequate notice of the proceedings having been given to the Class Members, and a full opportunity having been offered to the Class Members to object to the proposed Settlement, to participate in the Settlement Hearing thereon or to request exclusion from the Class, it is hereby determined that all Class Members who have not requested exclusion

(except as otherwise set forth in the Stipulation) are bound by this Order and Final Judgment (whether or not any Class Member has objected to the Settlement) and are barred from contesting the Stipulation, Settlement or this Order and Final Judgment.

4. No Class Member has timely requested exclusion from the Class.

#### **THE CLASS**

5. Paragraphs 1, 2, 3 and 4 of the Preliminary Approval Order pertaining to class certification, appointment of Class Representatives and appointment of Lead Counsel and the Claims Administrator are hereby confirmed and made a part of this Order and Final Judgment.

#### **APPROVAL OF THE SETTLEMENT**

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

7. In determining that the Settlement is in all respects fair, reasonable and adequate to each of the Releasing Parties and each member of the Class, and in approving the Settlement,

the Court has considered that no objections have been raised by Class Members to the Settlement.

8. The Complaint against Defendant in this Action is dismissed on the merits and with prejudice, with each party to bear his, her or its own costs, except for the payment of the fees and costs of the Claims Administrator previously agreed to by the Parties and hereby approved by the Court, and the payment of the attorneys' fees and reimbursement of expenses and the Incentive Award to Plaintiffs as otherwise provided for in Paragraph 10 below.

**DECLARATORY RELIEF REWARDED**

9. Declaratory Relief is awarded to the Parties as follows:
- a. Any Unit occupied by a member of the Sub-Class shall be subject to the RSL or RSC for the duration of that member's tenancy, until a vacancy occurs.
  - b. The maximum legal regulated rent permitted to be charged pursuant to the RSL and RSC ("Legal Rent") for each of the Units shall be calculated using a base date of October 4, 2015, that date being four years prior to the filing of the complaint in this Action ("Base Date"). The amount of monthly Rent (as defined as the agreed upon sum set forth in the lease or otherwise paid for use of the Unit, and does not include utility charges, late fees amenity fees and other ancillary fees) actually charged on the Base Date, as evidenced by (a) the amount of monthly Rent set out in the written lease for the Unit on the Base Date; or (b) if no written lease is available on the Base Date, then the amount of Rent set forth in the reasonably available rent roll shall be the base date Rent ("Base Date Rent"). In the event there was no lease in effect on the Base Date, the Base Date Rent shall be the Rent included in the first executed lease after the Base Date.

- c. Past Overcharge Amount for Past Rent Claims shall not include any amount based on any claim or calculation of treble damages, any other punitive damages, fines or interest. All claims for treble damages, punitive damages, fines and interest (other than 9% simple interest referenced in paragraph 5.c of the Stipulation) under the RSL, RSC or any other provisions of law are deemed waived and released as to the Past Rent Claims. The Court finds that on the facts and circumstances of the Action, an award of treble damages, punitive damages, fines and interest (other than 9% simple interest referenced in paragraph 5.c of the Stipulation) would not be warranted if the Action proceeded to trial. All claims for treble damages, punitive damages, fines and interest under the RSL, RSC or any other provisions of law are deemed waived and released. The Past Overcharge Amount shall be reduced by any amount due and owing to the landlord by a Class Member.

**FEES APPROVED**

10. The application by Lead Counsel for the award of attorneys' fees and reimbursement of expenses is granted, and said counsel are awarded legal fees of \$ 859,375.00, equaling 27.5% of the Settlement Amount, and expenses of \$492.50. Said fees and expenses shall be deducted from the Settlement Amount in the manner prescribed in the Stipulation.
- a. The application by Lead Counsel for an award of Class Representative Incentive Award to the Class Representative for his/her efforts in connection with the prosecution of the Action, to which no objection was filed, is granted, and the Class Representatives are awarded \$10,000.00 each, on account of his or her

participation in the Action, to be paid from the Settlement Amount in accordance with the Stipulation.

- b. The application by Lead Counsel for an award of the Claims Administrator's fees and costs for the continuing administration of the Settlement is granted in the amount of up to \$ 90,000.00, to be paid from Settlement Amount in accordance with the Stipulation.
- c. If the total Past Overcharge Amount for all Eligible Class Members does not exceed the Net Cash Settlement Amount, any balance remaining in the Cash Settlement Account shall be paid back to Defendant.

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

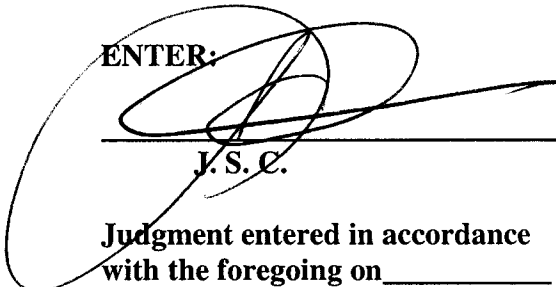
12. Neither the Stipulation nor any proceedings taken in accordance with the terms set forth therein shall be construed or deemed to be evidence, or any presumption, admission or concession, either (a) on the part of Plaintiffs, of the lack of merit of this Action, or (b) on the part of Defendant, of any violation of any statute or regulation or principle of common law, or of any fault, liability, or wrongdoing as to any facts or claims alleged or asserted in the Action, or any other action or proceeding, or that any person or entity has suffered any damages as a result of any matter that underlies any of the allegations or claims that were or could have been brought in the Action, and shall not be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used by any person in the Action, or in any other action or proceeding,

whether civil, criminal, or administrative, except for any litigation or judicial proceeding arising out of or relating to the enforcement of this Stipulation or the Settlement. Any such evidence, admission or concession is expressly denied and disclaimed by each of the Plaintiffs and Defendant.

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

Dated: New York, New York  
October 25, 2023

ENTER:

  
\_\_\_\_\_  
J. S. C.  
Judgment entered in accordance  
with the foregoing on \_\_\_\_\_

Date: 21 st Nov. 2023

  
\_\_\_\_\_  
Clerk of the Court





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ORDER AND JUDGMENT

