

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

**Order for Preliminary Approval of
 Class Action Settlement**

Plaintiffs Bruce Hackney and Timothy Smith on behalf of themselves and the proposed Class, by and through their counsel, and Defendant UDR 10 Hanover (“Defendant”, and together with the Plaintiff, the “Parties”) having applied pursuant to New York Civil Practice Law and Rules (“CPLR”) Rules 907 and 908 for: (a) an order preliminarily approving the proposed settlement (the “Settlement”) of the putative class action lawsuit titled *Bruce Hackney and Timothy Smith v UDR 10 Hanover LLC*, Index No. 159652/2019 (the “Action”); (b) determination of certain matters in connection with the proposed Settlement; and (c) for dismissal, with prejudice, of the putative class action complaint dated October 4, 2019, filed by Plaintiffs in this Action (the “Complaint”), in accordance with the terms and conditions of the Stipulation and Agreement of Settlement entered into by the Parties dated February 28, 2023 (the “Stipulation”); and

The Court¹ having read and considered the Stipulation and accompanying affirmations and exhibits, and the Parties having consented to the entry of this Preliminary Approval Order,

¹ Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Stipulation.

IT IS HEREBY ORDERED THAT:

1. A class is preliminarily certified pursuant to CPLR §§ 901 and 902 of 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 any tenants who vacated before October 4, 2015.

2. For purposes of the Settlement, this Court preliminarily finds and concludes that the numerosity, typicality, commonality and adequacy requirements of CPLR Article 9 are satisfied, and that in accordance with Article 9, common issues of fact and law predominate that make certification of the Action as a class action superior to other available methods for the fair and efficient adjudication of the Action. Specifically, Plaintiffs have alleged and, for purposes of this Settlement only, Defendant has agreed not to dispute that:

- a. The Class is so numerous that joinder of all members is impracticable; the class includes the approximately 1,090 current and former tenants of 493 Units at the Building.
- b. Here are questions of law or fact common to the Class which predominate over any questions affecting only individual members, including:
 - i. whether the Defendant must restore to rent-stabilized status Units that were deregulated pursuant to the Rent Regulation Reform Acts of 1993 and 1997 while the Building was receiving 421-g benefits;
 - ii. whether and to what extent Plaintiffs and members of the Class are entitled to damages;
- c. The claims or defenses of the Class Representatives are typical of the claims or defenses of the Class because they are a present tenant of the Building who paid

market rates for a Unit that was deregulated while the Building was receiving 421-g benefits. The Class Representatives' claims arose out of the same facts and course of conduct and are based on the same legal theory—the Defendant's charging of market rents despite receiving 421-g benefits—as other Class members.

- d. The Class Representatives will fairly and adequately protect the interests of the Class. The Class Representatives are aligned in interest with the Class he represents and has actively pursued the Action since its inception, and their counsel have ample experience as lead counsel in complex class actions and have invested substantial time and resources to pursue this litigation.
- e. A class action is superior to other available methods *-i.e.*, requiring Class Members to file hundreds of individual actions -for the fair and efficient adjudication of the controversy against the Defendant.

3. The Court has also considered other matters relevant to class certification pursuant to CPLR § 902 and finds that they, on balance, weigh in favor of certifying the Class for settlement purposes at this time.

4. The Court appoints Plaintiffs as Class Representatives of the Class and the firm of Newman Ferrara LLP as Lead Counsel for the Class. AB Data, Ltd. is appointed as the Claims Administrator to perform the functions set forth in the Stipulation.

5. The Court preliminarily approves the Stipulation and the declaratory relief sought therein as being fair, reasonable, adequate, consistent with the RSL and RSC and in the best interests of the Class, subject to final determination at the Settlement Hearing.

6. The Bar Date, as defined in paragraph 25 of the Stipulation, shall be June 30, 2023.
7. The Settlement Hearing shall be held on the 16th day of August in the year 2023 at 2 p.m., in the Supreme Court of the State of New York, New York County, 71 Thomas Street, Room 103, to:
 - a. determine whether the Settlement should be finally approved by the Court as fair, reasonable, adequate and in the best interests of the Class;
 - b. determine whether an Order and Final Judgment should be entered pursuant to the Stipulation in the form attached as Exhibit C to the Stipulation;
 - c. consider Plaintiffs' application for an award of attorneys' fees and expenses and awards for the Class Representatives; and
 - d. rule on such other matters as the Court may deem appropriate.
8. The Court reserves the right to adjourn the Settlement Hearing, including, without limitation, the consideration of the application for attorneys' fees.
9. The Court reserves the right to approve the Settlement at or after the Settlement Hearing with such modification(s) as may be consented to by the Parties without further notice to the Class.
10. Within twenty (20) business days after the date of entry of this Order, the Claims Administrator shall cause a notice of the Settlement Hearing in substantially the form annexed as Exhibit E to the Stipulation (the "Notice") to be mailed to all Class Members. Notice to the Class shall also be made by publication in the *New York Post* substantially in the form attached as Exhibit F to the Stipulation. To the extent such information is known and reasonably available as of the date of this Order, Defendant shall supply to the Claims Administrator, in a

confidential manner, each Class Member's current or last known residential address, current or last known email address, and social security number (to facilitate locating and providing the Notice to former tenant Class Members who may have changed residences multiple times and to representatives of Class Members who may be incapacitated or deceased), which information the Claims Administrator shall destroy after all of its duties under this Stipulation are fulfilled. Lead Counsel shall, at least ten (10) business days before the Settlement Hearing, file with the Court an appropriate affidavit with respect to the preparation, mailing and publication of the Notice.

11. The form and method of notice herein is the best notice practicable and constitutes due and sufficient notice of the Settlement Hearing to all persons entitled to receive such a notice.

12. All proceedings in the Action, other than such proceedings as may be necessary to carry out the terms and conditions of the Settlement are hereby stayed and suspended until further order of the Court. Pending final determination of whether the Settlement should be approved, Plaintiffs, and all Class Members, 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 the Action, either directly, representatively, derivatively, or in any other capacity, against Defendant or any of the parties released in the Stipulation.

13. Any Class Member who objects to the Settlement, the Order and Final Judgment to be entered in the Action, and/or Lead Counsel's application for attorneys' fees, or who otherwise wishes to be heard, may appear in person or by such Class Member's attorney at the Settlement Hearing and present evidence or argument that may be proper and relevant; provided, however, that, except for good cause shown, no person shall be heard and no papers, briefs, pleadings or other documents submitted by any person shall be considered by the Court unless

not later than June 30, 2023 such person files with the Court and serves upon all counsel listed below: (a) a written notice of intention to appear containing a notarized statement attesting to the fact that such person is a member of the Class, and setting forth the Unit(s) in the Building in which the member resides or resided and the dates of said residence; (b) a detailed statement of such person's specific position with respect to the matters to be considered at the Settlement Hearing and the grounds therefore; and (c) copies of any papers such person intends the Court to consider. Such filings shall be served by first class mail upon the following counsel:

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and then filed with the Clerk of the Supreme Court of the State of New York.

14. Unless the Court otherwise directs, no person shall be entitled to object to the approval of the Settlement, any judgment entered thereon, the adequacy of the representation of the Class by Plaintiffs and Lead Counsel, any award of attorneys' fees, or otherwise be heard, except by serving and filing a written objection and supporting papers and documents as described above. Any person so objecting shall submit themselves to the personal jurisdiction of this Court for discovery purposes pursuant to the CPLR upon three days' written notice, including, without limitation, submitting to a sworn deposition at a place to be determined by


Lead Counsel, interrogatories and other written questions, and requests for production of documents, regarding the objector's standing to object and the basis for such objection. Any person who fails to object in the manner described above shall be deemed to have waived the right to object (including any right of appeal) and shall be forever barred from raising such objection in this or any other action or proceeding.

15. If the Settlement, including any amendment made in accordance with the Stipulation, is not approved by the Court or shall not become effective for any reason whatsoever, the Settlement (including any modification thereof made with the consent of the Parties as provided for in the Stipulation), and any actions taken or to be taken in connection therewith (including this Order and any judgment entered herein) shall be terminated and shall become void and of no further force or effect and any settlement monies deposited by Defendant shall be returned to Defendant within three (3) business days of such termination. In that event, neither the Stipulation, nor any provision contained in the Stipulation, nor any action undertaken pursuant thereto, nor the negotiation thereof by any party shall be deemed an admission or received as evidence in this or any other action or proceeding.

16. 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.

Dated: 4/26/23



J. S. C.
HON. JAMES E. d'AUGUSTE