

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

WILLIAM DUGAN, MASHA D’YANS,  
GEORGETTE GAGNON, LOWELL D. KERN,  
MICHAEL MCCURDY, JOSE PELAEZ,  
TRACY SNYDER, MICHAEL J. WALSH,  
LESLIE M. MACK, ANITA ZITIS, and JAMES  
DOERR, on Behalf of Themselves and All Other  
Persons Similarly Situated,

Plaintiffs,

-against-

LONDON TERRACE GARDENS, L.P.

Defendant.

Index No. 603468/2009

**ORDER FOR PRELIMINARY APPROVAL  
OF SETTLEMENT OF CLASS ACTION**

Class Counsel and Defendant London Terrace Gardens, L.P. (the “Defendant”), 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 *Dugan v. London Terrace Gardens L.P.*, Sup. Ct. N.Y. Co., Index No. 603468/2009 (the “Action”); (b) determination of certain matters in connection with the proposed Settlement; and (c) for dismissal, with prejudice, of the Class Action Complaints filed by the Plaintiffs in the Action in accordance with the terms and conditions of the Stipulation and Agreement of Settlement entered into by Class Counsel and Defendant dated December 28, 2023 (the “Stipulation”);<sup>1</sup> and the Court having read and considered the Stipulation and accompanying exhibits, and Class Counsel and Defendant having consented to the entry of this Preliminary Approval Order,

<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Stipulation.

## IT IS HEREBY ORDERED THAT:

1. Any previous class certification findings by the Court are superseded by the Settlement as reflected in this court's order. A class (the "Class") is preliminarily certified pursuant to CPLR 901 and 902 of all current and former tenants who signed a non-rent-stabilized lease and who paid a rent for a unit ("Unit") at 415, 425, 435, 445 and 455 West 23rd Street, and 420, 430, 440, 450 and 460 West 24th Street, New York, New York ("Buildings"), pursuant to a non-rent stabilized lease, that was not calculated pursuant to the RSL and RSC, between November 13, 2005 and June 30, 2014, that exceeded the amount allowed by the Rent Stabilization Law and Code.

2. For purposes of the Settlement and consistent with the class certification order in this action dated September 9, 2013, 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, Class Counsel has 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 as the class includes hundreds former and current tenants.

(b) There are questions of law or fact common to the Class which predominate over any questions affecting only individual members, including:

- i. if the Defendant must restore the units to rent-stabilized status, what should be the formula for setting the current legally permissible rent-stabilized rents; and

ii. whether the Defendant must reimburse Class Members for rent overcharges they paid during the period the apartments were deregulated, and what the formula for determining such rent overcharges should be.

(c) Class Counsel will fairly and adequately protect the interests of the Class as it has ample experience as Class Counsel in complex class actions and has invested substantial time and resources to pursue this litigation.

(d) A class action is superior to other available methods – *i.e.*, requiring Class Members to file 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 the firms of Himmelstein McConnell Gribben & Joseph LLP, Emery Celli Brinckerhoff Abady Ward & Maazel LLP, and Bernstein Liebhard LLP as Class Counsel for the Class (“Class Counsel”). JND Class Action Administration is appointed as the Claims Administrator to perform the functions set forth in the Stipulation.

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

6. The Settlement Hearing shall be held on November 14, 2024 at 10:00 a.m., in the Supreme Court of the State of New York, New York County, 71 Thomas Street, New York, New York, 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 B to the Stipulation;

(c) consider Class Counsel's application for an award of attorneys' fees and expenses; and

(d) rule on such other matters as the Court may deem appropriate.

7. The Court reserves the right to adjourn the Settlement Hearing, including, without limitation, the consideration of the application for attorneys' fees.

8. 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 Class Counsel and Defendant without further notice to the Class.

9. Defendant shall provide JND Class Action Administration with a list of class members including last known addresses. Within twenty (20) days of being provided with such class member list, JND Class Action Administration 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. To the extent such information is known as of the date of this Order, Defendant shall supply to JND Class Action Administration, in a confidential manner, each Class Member's current or last known residential address and current or last known email address (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 JND Class Action Administration shall destroy after all of its duties under this Stipulation are fulfilled. JND Class Action Administration, at

least ten (10) business days before the Settlement Hearing, shall file with the Court an appropriate affidavit with respect to the preparation and mailing of the Notice.

10. 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.

11. Within ten (10) days of the date of this Order, Defendant shall deposit into a separate interest-bearing escrow account maintained by the Claims Administrator the amount of \$100,000, which will be used for the administration of the Settlement (“Administrative Account”) subject to the provisions of paragraph 12(d) of the Stipulation.

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, 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 Class 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 thirty (30) calendar days prior to the Settlement Hearing such person 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:

Ronald Languedoc  
William Gribben  
HIMMELSTEIN MCCONNELL  
GRIBBEN & JOSEPH LLP  
15 Maiden Lane – 17th Floor  
New York, NY 10038  
(212) 349-3000

Stanley D. Bernstein  
Joseph R. Seidman, Jr.  
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Robert Goldstein  
Paul Gruber  
BORAH GOLDSTEIN  
ALTSCHULER NAHINS &  
GOIDEL LLP  
377 Broadway  
New York, NY 10013  
Tel: (212) 431-1300

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 Class Counsel, any award of attorneys' fees, or otherwise be heard, except by serving a written objection and supporting papers and documents as described above. 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 Class Counsel and Defendant 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. 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.

Dated: June 24, 2024

  
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J.S.C. Richard G. Latn