

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

YOU COULD GET A PAYMENT FROM A CLASS AND COLLECTIVE ACTION SETTLEMENT IF:

YOU WERE EMPLOYED BY AVALONBAY COMMUNITIES, INC. AS A NON-EXEMPT “MAINTENANCE EMPLOYEE” (DEFINED AS A MAINTENANCE SUPERVISOR, MAINTENANCE TECHNICIAN 1, MAINTENANCE TECHNICIAN 2, MAINTENANCE TECHNICIAN 3, GROUNDSKEEPER, HOUSEKEEPER, MAINTENANCE ASSISTANT, PORTER, POOL MAINTENANCE TECHNICIAN, RS MAINTENANCE ASSOCIATE, OR COMMUNITY COORDINATOR) AT ANY AVALONBAY PROPERTY IN NEW YORK STATE ANYTIME SINCE OCTOBER 30, 2009.

PLEASE NOTE THAT, IF YOU HAVE PREVIOUSLY FILED A PLAINTIFF CONSENT FORM (“OPT-IN FORM”) IN THE CASE OF *TIMOTHY TANSKI V. AVALONBAY COMMUNITIES, INC.* (DOCKET NO. 15-CV-06260, U.S. DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK), YOU MUST STILL REVIEW THIS NOTICE AND SUBMIT A SIGNED, VALID COPY OF THE ENCLOSED CLAIM FORM BY THE SPECIFIED DEADLINE TO BE ELIGIBLE TO RECEIVE A SETTLEMENT PAYMENT.

A Federal Court authorized this Notice. This is not a solicitation from a lawyer.

Current and former Maintenance Employees of AvalonBay Communities, Inc. (“Plaintiffs”) sued the company (“AvalonBay” or “Defendant”) claiming that it violated the federal Fair Labor Standards Act and the New York Labor Law. The Plaintiffs sought recovery of alleged unpaid overtime wages, damages for alleged violations of the New York Labor Law and the Fair Labor Standards Act and damages for Defendant’s alleged failure to provide accurate wage statements pursuant to the New York Labor Law.

- The Plaintiffs and Defendant have entered into a settlement agreement regarding the above claims, subject to Court approval. Defendant has agreed to pay a total of \$299,500.00 that will be used to pay current and former employees who qualify and attorneys’ fees and costs. Defendant expressly contests and denies the allegations made by the Plaintiffs, and denies any liability or damages. Defendant has nevertheless decided to settle the case in order to avoid the burden and expense of continuing the lawsuit.
- You are receiving this Notice because you may be eligible to receive a payment based on the settlement agreement. You are not guaranteed to receive a payment just because you have received this Notice. You must meet the eligibility criteria under the settlement.

If you return a valid attached Claim Form by **JULY 8, 2019**, and if you are eligible under the settlement to receive a payment, then you are a Qualified Settlement Recipient and your settlement allocation will be based on:

the number of weeks you worked for AvalonBay as a non-exempt Maintenance Employee at any property in New York State during either: (i) the period from October 30, 2009 through the date the Court grants the Motion for Preliminary Approval of the Settlement; or (ii) if you previously returned an opt-in form, the period from April 27, 2013 through the date the Court grants the Motion for Preliminary Approval of the Settlement, whichever is longer. Any leaves of absence will be excluded from the number of compensable workweeks.

We cannot estimate your payment at this time because your payment depends on the number of Qualified Settlement Recipients.

- The Court has not decided who is right and who is wrong. Your legal rights may be affected whether you act or don't act, and you have a choice to make now:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT	
PARTICIPATE	In order to participate in the monetary recovery provided by the settlement, you must complete and return the enclosed Claim Form by <u>JULY 8, 2019</u> . Even if you previously returned an opt-in form in connection with this lawsuit, if you do not return a Claim Form by this date, you will not receive a settlement payment and you will give up certain rights.
EXCLUDE YOURSELF	If you wish to exclude yourself ("opt-out") from the settlement, you must follow the directions outlined in Paragraph 13 below. If you exclude yourself, you will receive no payment and you cannot object to the settlement. Your exclusion request must be postmarked no later than <u>JULY 8, 2019</u> .
OBJECT	If you believe that the settlement is not fair or reasonable, you can write to the Court to express your views. You must object in writing in order to appear at the Fairness Hearing to speak to the Court about the fairness of the settlement. If the Court rejects your objection, you will still be bound by the terms of the settlement for claims under New York law. Your objection must be postmarked no later than <u>JUNE 10, 2019</u> .

- Your rights and options – and the deadlines to exercise them – are explained in this Notice.
- The Court in charge of this case still has to decide whether to approve the settlement. Payments will be made if the Court approves the settlement and after any appeals are resolved. Please be patient.

BASIC INFORMATION

1. Why did I get this Notice?

You have received this Notice because: (a) you previously returned an opt-in form in the lawsuit *Timothy Tanski v. AvalonBay Communities, Inc.* and/or (b) Defendant's records show that you work or worked at an AvalonBay property in New York State as an overtime-eligible Maintenance Employee (i.e., a Maintenance Supervisor, Maintenance Technician I, Maintenance Technician II, Maintenance Technician III, Groundskeeper, Housekeeper, Maintenance Assistant, Porter, Pool Maintenance Technician, RS Maintenance Associate, or Community Coordinator) between October 30, 2009 and the present.

The Court ordered that you be sent this Notice because you have a right to know about a proposed settlement and all your options before the Court decides whether to approve the settlement. The lawsuit is known as *Timothy Tanski v. AvalonBay Communities, Inc.*, Docket No. 15-cv-06260, and it is pending in the United States District Court for the Eastern District of New York.

2. What is this lawsuit about?

This lawsuit is about whether the Defendant properly paid employees at AvalonBay communities in accordance with federal and state labor laws. In particular, this Notice relates to claims that the Defendant violated federal and New York State law by failing to pay eligible employees premium overtime pay – at a rate 1.5 times employees' hourly wage rate – for all hours worked in excess of 40 per workweek, due to the classification of some time as Non-Productive Hours.

Defendant denies that it violated any laws or did anything wrong. The Court has not issued any decision in this case.

3. What is a Class and Collective Action?

A class and collective action is a lawsuit where one or more persons (“Class and Collective Representatives”) (in this case Timothy Tanski) sue not only for themselves, but also for other people who have similar claims. These other people are known as Class and Collective Members. In a class and collective action, one court resolves the issues for all Class and Collective Members, except for those who exclude themselves from the Class and Collective.

4. Why is there a settlement?

The Court did not decide in favor of Plaintiffs or Defendant. The Plaintiffs think they could have won if they went to trial. The Defendant thinks the Plaintiffs would not have won anything from a trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the costs, delays, and uncertainties associated with a trial, and the people affected will get compensation.

The Class and Collective Representative and Class and Collective Counsel think the settlement is the best result for all potential Class and Collective Members. Class and Collective Counsel is satisfied that the terms and conditions of the settlement are fair, reasonable and adequate, and that the settlement is in the best interest of the Class and Collective Representative and the Class and Collective Members.

WHO IS IN THE SETTLEMENT?

5. How do I know if I am part of the settlement?

You are automatically a member of the Class if you were employed by AvalonBay as a Maintenance Employee in New York State at any time between October 30, 2009 and March 29, 2019, (the date the Court granted the Motion for Preliminary Approval of the Settlement). You are a member of the Collective if you previously returned an opt-in form in the *Timothy Tanski v. AvalonBay Communities, Inc.* lawsuit and you were employed as a Maintenance Employee in New York State at any time since April 27, 2013.

Regardless of whether you previously submitted an opt-in form in this litigation, in order to be eligible to receive a monetary award from the settlement, you must now complete and return the enclosed Claim Form (as described in Paragraph 9 below). If you return a complete and valid copy of the enclosed Claim Form by **JULY 8, 2019**, and you do not opt out of the settlement, you will be a “Qualified Settlement Recipient.” Being a Qualified Settlement Recipient does not automatically entitle you to recover from this settlement (as is further explained in Paragraph 8 below).

6. I’m still not sure if I am included?

If you are still not sure whether you are included, you can call Class and Collective Counsel, Hach Rose Schirripa & Cheverie, LLP at (212) 213-8311 for more information.

THE SETTLEMENT BENEFITS – WHAT YOU GET

7. What does the settlement provide?

Defendant has agreed to pay \$299,500.00, subject to the Court’s Approval of the settlement and deductions for requested Class and Collective Counsel fees and litigation costs, incentive payment to the Class and Collective Representative, administration costs, and employment taxes.

8. How much will my payment be?

If you return a valid Claim Form by **JULY 8, 2019**, and if you are eligible under the settlement to receive a payment, then you are a Qualified Settlement Recipient and your settlement allocation will be calculated as follows:

The number of weeks you worked as a non-exempt Maintenance Employee, excluding any leave periods, at any AvalonBay property in New York State during the Relevant Time Period, divided by (ii) the number of weeks as a non-exempt Maintenance Employee in New York State during the Relevant Time Period by all class members who submit Claims Forms multiplied by (iii) the Net Settlement Amount (as described in Question 7 above).

The Relevant Time Period is either October 30, 2009 through March 29, 2019, the date the Court granted the Motion for Preliminary Approval of the Settlement or, if you previously submitted an opt-in form, the period from April 27, 2013 through March 29, 2019, whichever is longer.

We cannot estimate your payment at this time because your payment depends on the number of Qualified Settlement Recipients, and the Court needs to approve the service awards and attorneys' fees and costs.

HOW YOU GET A PAYMENT

9. How can I get my payment?

In order to be eligible to receive the payment identified above, you must return the enclosed Claim Form to:

Tanski FLSA Settlement
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

by **JULY 8, 2019**. If you choose to exclude yourself (as explained in Paragraph 13 below), or you fail to return the Claim Form prior to the **JULY 8, 2019** deadline, then you will not receive a payment.

10. When will I receive my payment?

The Court will hold a hearing on August 8, 2019 at 11 a.m. to decide whether to approve the settlement. If the Court approves the settlement and there are no appeals, within twenty (20) days, funds will be disbursed to the Participating Class Members. If you receive a settlement check, you must deposit or cash your settlement check within one hundred and twenty (120) calendar days after it is mailed to you. The funds from any uncashed checks will be distributed to a nonsectarian non-profit charitable organization.

11. How will my payment be taxed?

You will be responsible for paying taxes due on any settlement payment to you. Thirty percent (30%) of your settlement payment is attributable to overtime claims, and will be treated as wages (with payroll taxes withheld and a W-2 Form issued). The remaining seventy percent (70%) will be treated as non-wage income representing payment for alleged liquidated damages and statutory penalties (with no taxes withheld and a 1099 Form issued). Neither Class and Collective Counsel nor Defendant or Defendant's counsel makes any representations concerning the tax consequences of this settlement, and you are advised to seek your own personal tax advice regarding the tax implications of the settlement.

12. What am I giving up to get a payment or stay in the Collective or Class?

Unless you exclude yourself (as explained in Paragraph 13 below), you will remain in the Collective or Class. That means that you will release the overtime and wage statement claims discussed in Paragraph 2 above, regardless of whether you return a Claim Form or receive a settlement payment. Releasing your claims means that you cannot sue, continue to sue, or be party to any other lawsuit against Defendant about the legal issues in this case and the Court's orders will apply to you and legally bind you. Unless you exclude yourself from the settlement (as explained in Paragraph 13 below), you will release the overtime and wage statement claims discussed in paragraph 2 above.

EXCLUDING YOURSELF FROM THE SETTLEMENT

If you want to keep the right to sue or continue to sue Defendants on your own about the legal issues in this case, then you must exclude yourself from the Class. The process of excluding yourself is also sometimes referred to as “opting out” of the Class.

13. How do I opt out of the settlement?

To exclude yourself from the settlement, you must mail a written, signed statement including your name, address, telephone number(s), position(s) held during your employment with AvalonBay, the name(s) of any New York State property or properties at which you worked for AvalonBay, and the start and end dates of your employment with AvalonBay to:

Class Action Opt-Outs
ATTN: Tanski FLSA
PO BOX 58220
1500 John F Kennedy Blvd. Suite C31
Philadelphia, PA 19102

This written statement must also state: “I, [NAME], was or am employed by AvalonBay between [START DATE] and [END DATE]. I hereby exercise my right to opt out of the *Tanski v. AvalonBay Communities, Inc.* Settlement, knowing that by doing so I waive any and all rights I may have to participate in that Settlement and to be paid any portion of the settlement proceeds that I would otherwise be eligible to receive under that Settlement.” The written opt-out statement must be postmarked no later than **JULY 8, 2019**. If you ask to be excluded, you will not receive a settlement payment, and you cannot object to the settlement. You will not be legally bound by anything that happens in this lawsuit. You may also be able to sue (or continue to sue) Defendant in the future, but Plaintiffs’ Counsel Hach Rose Schirripa & Cheverie LLP could not represent you. If you wish to exclude yourself in order to file an individual lawsuit against Defendant, you should speak to a lawyer as soon as possible because your claims are subject to a statute of limitations.

14. If I don’t exclude myself can I sue Defendant for the same thing later?

No. Unless you exclude yourself, you give up any rights to sue Defendant for the Fair Labor Standards Act and New York Labor Law claims litigated in this case.

15. If I exclude myself, can I get money from this settlement?

No. If you exclude yourself, you will not receive any money from this settlement. You may sue, continue to sue, or be part of a different lawsuit against Defendant regarding the same claims.

THE LAWYERS REPRESENTING YOU

16. Do I have a lawyer in this case?

The Court has decided that the law firm of Hach Rose Schirripa & Cheverie LLP, 112 Madison Avenue, 10th Floor, New York, NY 10016, (212) 213-8311, is qualified to represent you and all Class and Collective Members. These lawyers have been designated as “Class and Collective Counsel” in this lawsuit. More information about Hach Rose Schirripa & Cheverie LLP, their practice, and their lawyers’ experience is available at www.hrsclaw.com.

17. How will the lawyers be paid?

Class and Collective Counsel will ask the Court to approve payment of up to 33 1/3 % of the settlement amount to them for attorneys’ fees. The fees would pay Class and Collective Counsel for investigating the facts, litigating the case, and negotiating the settlement. Class and Collective Counsel will also ask the Court to approve payment of up to \$4,632.18 for their out-of-pocket costs. The Court may award less than these requested amounts to Class and Collective Counsel. Class and Collective Counsel will take their percentage of fees from the total settlement payment before making individual settlement allocations, and before settlement payments are distributed.

OBJECTING TO THE SETTLEMENT

You can tell the Court if you don't agree with the settlement, or some part of it.

18. How do I tell the Court that I don't like the settlement?

If you are a Class or Collective Member, you can object to the settlement if you don't like any part of it. You can give reasons why you think the Court should not approve it. The Court will consider your views. To object, you must send a written statement including your name, address, and telephone number(s) to the Claims Administrator at,

Class Action Objections
ATTN: Tanski FLSA
PO BOX 58220
1500 John F Kennedy Blvd. Suite C31
Philadelphia, PA 19102

including all reasons for the objection. The written objection statement must be postmarked no later than **June 10, 2019**. Any reasons not included in the statement will not be considered by the Court.

19. What is the difference between objecting to the settlement and excluding myself?

Objecting is simply telling the Court that you do not like something about the settlement. You can object if you stay in the Collective and Class. Excluding yourself is telling the Court that you do not want to be part of the Collective or Class. If you exclude yourself, you have no basis to object because the case no longer affects you.

THE COURT'S FAIRNESS HEARING

The Court will hold a Fairness Hearing on August 8, 2019 at 11 a.m. at the United States District Court for the Eastern District of New York, 100 Federal Plaza, Central Islip, New York 11722. You may attend and you may ask to speak if you file a timely objection, but you don't have to. At this hearing, the Court will consider whether the settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the settlement. We do not know how long the Court's decision will take.

20. Do I have to come to the hearing?

No. Class and Collective Counsel will represent you at the hearing. You are welcome to come at your own expense. If you send an objection, you do not have to come to Court. As long as you mailed your written objection on time, the Court will consider it. You may also pay your own lawyer to attend, but it is not necessary.

21. May I speak at the hearing?

If you file a timely objection to the settlement, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must include the words "I intend to appear at the Fairness Hearing" in your written objection, which must be filed according to the procedure described in Paragraph 18, above. Your testimony at the Fairness Hearing will be limited to those reasons that are included in your written objection. You cannot speak at the hearing if you exclude yourself from the settlement.

GETTING MORE INFORMATION

22. Are more details available?

You can obtain more information about the settlement or obtain a copy of the settlement agreement by contacting Class and Collective Counsel at 112 Madison Avenue, 10th Floor, New York, New York 10016, (212) 213-8311.

DATED: May 9, 2019