

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

Plaintiff:

KATHERINE KATZ, et al.

vs.

Defendants:

AVALONBAY COMMUNITIES, INC.

CIVIL ACTION NO: 2:15-cv-02740-JLL-
JAD

FERRARA LAW GROUP, P.C.

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**ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT AND DIRECTING DISSEMINATION OF CLASS
NOTICE**

THIS MATTER having been brought before the Court upon Motion of Class Counsel for an Order pursuant to Federal Rule of Civil Procedure 23(e), seeking preliminary approval of a class action settlement, and directing dissemination of class notice (the "Motion"); and

WHEREAS Defendant AvalonBay Communities, Inc. ("AvalonBay" or "Defendant") does not oppose Plaintiffs' Motion;

The Court having considered the pleadings and other papers on file, the argument of counsel, and for good cause shown;

IT IS on this 24th day of June, 2019, ORDERED that the Motion is GRANTED, subject to the following terms and conditions:

1. The proposed Stipulation of Class Action Settlement dated May 24, 2019 (the "Settlement Agreement"), submitted with the Motion, is preliminarily approved as being within the range of potential final approval.
2. American Legal Claim Services, LLC is appointed as the Claims Administrator.
3. A final hearing (the "Fairness Hearing") shall be held before this Court on September 25, 2019 at 10 a.m., in Courtroom 2D of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey, to review and consider any objections and the validity of requests for exclusion, and to determine whether (a) the Settlement Agreement should receive final approval as fair, reasonable, adequate and in the best interests of the Class; (b) orders granting final approval of the Settlement Agreement, entering final judgment and dismissing the Second Amended Class Action Complaint with prejudice as provided in the Settlement Agreement, should be entered; (c) applications of Plaintiffs' counsel for the payment of attorneys' fees and expenses as provided in the Settlement Agreement are reasonable and should be approved; and (d) applications for incentive awards to Plaintiffs as outlined in the Settlement Agreement are reasonable and should be approved. The Fairness Hearing may be postponed, adjourned or continued by further Order of this Court, without further notice to the parties or the members of the Class.
4. At the Fairness Hearing the Court will consider and determine whether the Settlement Agreement should be finally approved as fair, adequate and reasonable in light of any objections presented by the Class Members and the parties' responses to any such objections.

5. Any Class Member who has not timely filed a written request for exclusion from the Class pursuant to paragraph 6 of this Order may object to the fairness, reasonableness or adequacy of the settlement. Any member of the Class who so objects may appear at the Fairness Hearing, in person or through counsel, to show cause why the settlement should not be approved as fair, reasonable and adequate.

a. Each Class Member who wishes to object to any term of the Settlement Agreement must do so in writing by filing a written objection with the Clerk of the Court and mailing it to counsel for all parties at the addresses set forth in the Settlement Agreement. Any such objection must be filed with the Clerk of the Court and received by counsel for the parties no later than 30 days after the date of the Settlement Notice set forth in Exhibit A of the Settlement Agreement.

b. The objection must:

- i. Identify the Class Member by name;
- ii. Identify the unit within the River Mews Building that the Class Member was a resident or occupant on January 21, 2015;
- iii. Identify the Class Member's current street address and current electronic mail address, if any;
- iv. Attach copies of any materials that will be submitted by or on behalf of the objecting Class Member to the Court or presented at the Fairness Hearing;
- v. Be personally signed by the Class Member, and
- vi. Clearly state in detail the legal and factual grounds for the objection and if represented by counsel, such counsel's name, address, and telephone number.

c. Any objection that fails to satisfy the requirements of this paragraph, or that is not properly and timely submitted, shall not be effective, will not be considered by this Court, and will be deemed waived, and those Class members shall be bound by the final determination of this Court.

6. Any person included within the Class who wishes to be excluded, or to "opt out," from membership in the Class must do so in writing by mailing a request for exclusion from the settlement to the Clerk of the Court, so that such request is postmarked no later than 30 days from the date of the Settlement Notice set forth in Exhibit A of the Settlement Agreement.

a. Such request must (i) be personally signed by the Class Member, (ii) indicate that the Class Member is a member of the Class by identifying the unit within the River Mews Building that the Class Member was a resident or occupant on January 21, 2015, (iii) clearly express the Class Member's desire to be excluded (or to "opt out") from the Class, and (iv) include the Class Member's name, address and telephone number, and, if represented by counsel, counsel's name, address and telephone number.

b. Any person within the Class who wishes to be excluded from the Class can only exclude himself or herself and, except for minors, cannot opt out for any other person. No person within the Class may authorize another person to opt out on his or her behalf.

c. Any Class Member who has filed an objection to this fairness, reasonableness or adequacy of the settlement pursuant to paragraph 5 of this Order shall be deemed not to have opted out of the Class pursuant to this paragraph. In the event and to the extent that the Parties advise the Court that a Class Member has made a submission to the Court and the Parties which appears to assert both an objection to the fairness reasonableness or adequacy of the

proposed settlement, and a statement of intent to opt out of the Class, such Class Member shall be deemed to have objected to the settlement.

d. Any request for exclusion that fails to satisfy the requirements of this paragraph, or is not properly or timely submitted, shall not be effective, and the person making such a request shall be deemed to have waived all rights to opt out of the Settlement, and shall be a Class Member for all purposes pursuant to this Order.

7. Except for good cause shown, no person (other than the parties and their respective representative and counsel) may appear or be heard at the Fairness Hearing, or file papers, briefs or other submissions regarding the Fairness Hearing, unless no later than 20 days before the date of the Fairness Hearing, such person or their counsel files with the Clerk of the Court and simultaneously serves on counsel for all parties at the addresses set forth in the Settlement Agreement a timely, written notice of request to appear at the Fairness Hearing.

a. Such notice must state the name, address and telephone number of the Class Member, as well as the name, address and telephone number of any counsel who wishes to appear on behalf of the Class Member. The notice must also indicate that the Class Member has previously or contemporaneously objected to the settlement in compliance with paragraph 5 of this Order.

b. Any request to appear that fails to satisfy the above requirements, or that is not properly and timely submitted, shall not be effective and will not be considered by this Court, and the person who made such a request shall not be permitted to appear or be heard at the Fairness Hearing, or otherwise comment further on the settlement

8. The Court finds that the manner and content of (a) the Settlement Notice set forth in Exhibits A and B of the Settlement Agreement, and (b) the proposed Claim Form attached as

Exhibit C of the Settlement Agreement, will provide the best notice practicable to the Class under the circumstances. All costs incurred in connection with the preparation and dissemination of the notices to the Class as provided for in the Settlement Agreement shall be borne by AvalonBay.

9. If the Settlement Agreement is finally approved, the Court shall enter a separate Order finally approving the Settlement Agreement, entering judgment and dismissing the Second Amended Class Action Complaint. Such Order and Judgment shall be fully binding with respect to all members of the Class.

10. In the event that the proposed settlement is not finally approved by this Court, or in the event that the Settlement Agreement becomes null and void pursuant to the terms or is otherwise not consummated, this Order and all related Orders shall likewise become null and void, shall have no further force and effect, and shall not be used or referred to for any purposes whatsoever in this action or in any other case or controversy. In such event, the Settlement Agreement and all negotiations and proceedings directly related to the Settlement Agreement shall be deemed to be without prejudice to the rights of all of the Parties, who or which shall be restored to their respective positions preceding the execution of the Settlement Agreement.

11. The Parties shall abide by the following scheduled dates:

a. Within 20 days of entry of this Order, the Settlement Notice and a Claim Form shall be mailed by a claims administrator to all members of the Class for whom AvalonBay has records of such persons' mailing or e-mail addresses, as follows:

i. To the extent AvalonBay has an operative e-mail address for a Class Member, the claims administrator will send e-mail notification to that Class Member solely by means of providing, within the body of the e-mail, the text contained in Exhibit B of the Settlement Agreement, along with an attachment of the Settlement Notice and Claim Form.

ii. To the extent AvalonBay has a mailing address for a Class Member, the claims administrator will send direct mail notice to those Class Members, postage prepaid, enclosing a hard copy of the Settlement Notice.

b. The parties shall file and serve papers in support of final approval of the settlement, including any responses to proper and timely objections filed thereto, by August 30, 2019.

c. Plaintiffs' counsel shall file any applications for attorneys' fees, costs and litigation expenses, or incentive awards to Plaintiffs as provided for in the Settlement Agreement, by August 30, 2019.

12. Neither the Settlement Agreement, or any of its terms or provisions, nor any of the related negotiations or proceedings connected with it shall be construed as an admission or concession by AvalonBay of the truth of any of the allegations made by Plaintiffs in this action, or of any liability, fault or wrongdoing of any kind. Neither the Settlement Agreement nor any submission by any Party in connection with Plaintiffs' motion for preliminary or final approval of the Settlement or Plaintiffs' application for an award of attorneys' fees, expenses and incentive awards, any appeal from such motions or application, or any related motions or proceedings may be used in these actions or in any other proceeding for any purpose other than specified in the Settlement Agreement.

13. This Court hereby enters a Preliminary Injunction barring and enjoining Plaintiffs and all Class Members, to the extent permissible by existing law, from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, or receiving any benefits from any other lawsuit, arbitration or administrative, regulatory or other proceeding in law or equity that asserts, arises from, concerns, or is in any way related to the

Released Claims identified in the Settlement Agreement, until such time as this Court has ruled on the fairness of the settlement terms following the Fairness Hearing.



HONORABLE JOSEPH A. DICKSON, U.S.M.J.