

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

ALESSANDRO DEMARCO, et al., on behalf of  
themselves and all others similarly situated,

Plaintiffs,

v.

AVALONBAY COMMUNITIES, INC., et al.,

Defendants.

Consolidated Civil Action

No. 2:15-cv-00628-JLL-JAD

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*Interim Co-Lead Counsel for Plaintiffs*

**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 Interim Co-Lead Counsel for Plaintiffs 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;

WHEREAS the Court having considered the pleadings, the submissions of the parties, and the other papers on file, and for good cause shown;

IT IS THEREFORE on this 13th of March, 2017, ORDERED that the Motion (**dk. 125**) is GRANTED, subject to the following terms and conditions:

1. The proposed First Amended Stipulation Of Class Action Settlement (the “Settlement Agreement”), submitted with the Motion (see *dk. 125-3*), is preliminarily approved as being within the range of potential final approval.
2. Based upon the submissions of the parties, and for purposes of this settlement only, the Court conditionally makes the following findings:
  - a. The members of the Settlement Class (as defined in the Settlement Agreement) are so numerous as to make joinder impracticable.
  - b. There are questions of law and fact common to the Settlement Class, and such questions predominate over any questions affecting only individual Settlement Class Members for purposes of the Settlement.
  - c. Plaintiffs’ claims and the defenses to such claims are typical of the claims of the Settlement Class Members and the defenses to such claims for purposes of this settlement.
  - d. Plaintiffs are members of the Settlement Class, and Plaintiffs and their counsel can fairly and adequately protect, and have fairly and adequately protected, the interests of the Settlement Class Members in this action with respect to this settlement.
  - e. The proposed class action settlement is superior to all other available methods for fairly and efficiently resolving these actions.

f. To effectuate the settlement, the class definition shall be as follows: All residents and occupants of the Russell Building at Avalon at Edgewater as identified on the operative lease agreements as of January 21, 2015, whose property in a Russell Building apartment or storage unit was destroyed by The Fire.

g. For settlement purposes only, the Court preliminarily approves Plaintiffs Ebony Cooley and Digna Gutierrez as representatives of the Settlement Class.

3. This action is preliminarily certified as a class action for settlement purposes only pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3). If the Court does not finally approve the settlement, AvalonBay retains the right to assert that the action may not be certified as a class action, and no party shall rely on this preliminary approval as support for the certification of a class in this or any other action.

4. Lite DePalma Greenberg, LLC, Chimicles & Tikellis LLP, and Wilentz, Goldman & Spitzer, P.A. are appointed as Class Counsel and shall jointly serve in the role of Plaintiffs' Co-Lead Counsel.

5. Engle Martin & Associates is appointed as the Claims Adjuster, and Class Action Administration is appointed as the Claims Administrator.

6. A final hearing (the "Fairness Hearing") shall be held before this Court on 7/11/17, 2017 at 10:30 AM in Courtroom 5D 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) this action meets each of the prerequisites for class certification set forth in Federal Rule of Civil Procedure 23(a), and may properly be maintained as a class action on behalf of the Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (b) the Settlement Agreement should receive final approval as fair, reasonable,

adequate, and in the best interests of the Settlement Class; (c) orders granting final approval of the Settlement Agreement, entering final judgment and dismissing the Consolidated Class Action Complaint with prejudice as provided in the Settlement Agreement, should be entered; (d) 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 (e) 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 Settlement Class.

7. 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 Settlement Class Members and the parties' responses to any such objections.

8. Any Settlement Class Member who has not timely filed a written request for exclusion from the Settlement Class pursuant to paragraph 9 of this Order may object to the fairness, reasonableness, or adequacy of the settlement. Any member of the Settlement 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 Settlement 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 45 days after the date of the Settlement Notice set forth in Exhibit A of the Settlement Agreement.

b. The objection must:

- i. Identify the Settlement Class Member by name;
- ii. Identify the unit within the Russell Building that the Settlement Class Member was a resident or an occupant on January 21, 2015;
- iii. Identify the Settlement 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 Settlement Class Member to the Court or presented at the Fairness Hearing;
- v. Be personally signed by the Settlement 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 Settlement Class Members shall be bound by the final determination of this Court.

9. Any person included within the Settlement Class who wishes to be excluded, or to "opt out," from membership in the Settlement Class must do so in writing by mailing a request for exclusion from the settlement to the Clerk of the Court and mailing it to counsel for all parties at the addresses set forth in the Settlement Agreement, so that such request is postmarked no later than 45 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 Settlement Class Member, (ii) indicate that the Settlement Class Member is a member of the Settlement Class by identifying the unit within the Russell Building that the Settlement Class Member was a resident

or occupant on January 21, 2015, (iii) clearly express the Settlement Class Member's desire to be excluded (or to "opt out") from the Settlement Class, and (iv) include the Settlement 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 Settlement Class who wishes to be excluded from the Settlement Class can only exclude himself or herself and, except for minors, cannot opt out for any other person. No person within the Settlement Class may authorize another person to opt out on his or her behalf.

c. Any Settlement Class Member who has filed an objection to the fairness, reasonableness, or adequacy of the settlement pursuant to paragraph 8 of this Order shall be deemed not to have opted out of the Settlement Class pursuant to this paragraph. In the event and to the extent that the Parties advise the Court that a Settlement Class Member has made a submission to the Court that 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 Settlement Class, such Settlement 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 Settlement Class Member for all purposes pursuant to this Order.

10. The parties may file a reply to any objections to the Settlement Agreement within 10 days of the deadline to file such objections.

11. 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 Settlement Class Member, as well as the name, address, and telephone number of any counsel who wishes to appear on behalf of the Settlement Class Member. The notice must also indicate that the Settlement Class Member has previously or contemporaneously objected to the settlement in compliance with paragraph 8 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.

12. 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 Settlement Class under the circumstances. All costs incurred in connection with the preparation and dissemination of the notices to the Settlement Class as provided for in the Settlement Agreement shall be borne by AvalonBay.

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

14. 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 these actions 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.

15. 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 Settlement 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 Settlement Class Member, the claims administrator will send an e-mail notification to that Settlement 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 Settlement Class Member, the claims administrator will send direct mail notice to those Settlement 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 June 5, 2017.



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 June 5, 2017.

16. 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.

17. This Court hereby enters a Preliminary Injunction barring and enjoining Plaintiffs and all Settlement 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 JOSE L. LINARES, U.S.D.J.