

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

SHARON RENEE WHEELER, et al., as private attorney generals on behalf of the general public	)	CASE NO. BC 237274
	)	Honorable Carl J. West
	)	Department 311
	)	
Plaintiffs,	)	<b>CLASS ACTION</b>
vs.	)	
	)	<b>NOTICE OF SETTLEMENT OF CLASS ACTION</b>
AVALONBAY COMMUNITIES, INC., et al.,	)	
	)	
Defendants.	)	

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**THIS NOTICE MAY AFFECT YOUR RIGHTS PLEASE READ IT CAREFULLY**

**TO ALL PERSONS WHO WERE RESIDENTS AT AVALON AT MEDIA CENTER (FORMERLY KNOWN AS LAKESIDE APARTMENTS) AT ANY TIME BETWEEN JULY 1, 1999 AND JANUARY 31, 2002:**

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY. YOUR RIGHTS MAY BE AFFECTED BY PROCEEDINGS IN THIS ACTION. PLEASE NOTE THAT IF YOU ARE A CLASS MEMBER, YOU MAY BE ENTITLED TO SHARE IN THE PROCEEDS OF THE SETTLEMENT DESCRIBED IN THIS NOTICE. TO CLAIM YOUR SHARE OF THIS FUND, YOU MUST SUBMIT A VALID PROOF OF CLAIM POSTMARKED ON OR BEFORE DECEMBER 10, 2003.

This Notice has been sent to you pursuant to §382 of the California *Code of Civil Procedure*, California *Rules of Court* 1859 and 1861, and an Order of the Superior Court of California for the County of Los Angeles (the "Court"). The purpose of this Notice is to inform you of the proposed settlement of this class action litigation and of the hearing to be held by the Court to consider the fairness, reasonableness, and adequacy of the settlement. This Notice is not intended to be, and should not be construed as, an expression of any opinion by the Court with respect to the truth of the allegations in the Action or the merits of the claims or defenses asserted. This Notice describes the rights you may have in connection with the settlement and what steps you may take in relation to the settlement and this class action litigation.

This action was filed on September 22, 2000 by Representative Plaintiffs Steven Christopher Anderson, Bonnie J. Mound, and Jason D. Egan, on behalf of persons who were residents at Lakeside Apartments and is entitled *Sharon Renee Wheeler, et al. v. AvalonBay Communities, Inc., Anchor Pacifica, and Olympus April Joint Venture ("DEFENDANTS"), et al.*

The Defendants have denied and continue to deny the claims and contentions alleged by the Representative Plaintiffs in the Action. Nonetheless, the Defendants have concluded that further conduct of the Action would be protracted and expensive, and that it is desirable that the Action be fully and finally settled in the manner upon the terms and conditions set forth in this Settlement Agreement. The Defendants have also taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Action and have, therefore, determined that it is desirable and beneficial to them that the Action be settled in the manner and upon the terms and conditions set forth in the Settlement Agreement.

In the Complaint, the Representative Plaintiffs asserted that they were exposed to excessive noise, dust and debris from construction which affected their quiet enjoyment, toxic material in the apartments including, without limitation, exposure to bioaerosols emanating from mold, mildew and fungus and/or pesticides, asbestos, and/or other chemicals, or termites, or that they were otherwise harmed as a result of their tenancy at Lakeside Apartments.

The proposed settlement creates a fund in the amount of \$293,750.00 in cash. The Representative Plaintiffs believe that the proposed settlement is a good recovery under all of the circumstances of this case. Plaintiffs' Counsel believe that the claims asserted against Defendants in the Action are meritorious. Plaintiffs' Counsel recognize, however that the outcome of the Class Action is uncertain and that pursuing this action against the Defendants through trial involves both substantial risk and inevitable cost and delay. Based on an evaluation of the facts and law in support of provable damages to the Settlement Class, and a weighing of risks and benefits, Plaintiffs' Counsel believes that the settlement set forth in the Settlement Agreement dated September 12, 2003 is in the best interest of the Settlement Class and is fair, reasonable and adequate.

## **NOTICE OF HEARING ON PROPOSED SETTLEMENT**

A settlement hearing will be held on December 22, 2003 at 1:30 p.m. before the Honorable Carl J. West, Department, 311, Los Angeles Superior Courthouse, 600 S. Commonwealth Avenue, Los Angeles, California 90005 (the "Settlement Hearing"). The purpose of the Settlement Hearing will be to determine: (a) whether the settlement consisting of \$293,750.00 in cash should be approved as fair, just, reasonable and adequate to the Settlement Class; (b) whether the proposed plan to distribute the settlement proceeds (the "Plan of Allocation") is fair, just, reasonable, and adequate; (c) whether the application by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of expenses out of the settlement proceeds should be approved; (d) whether the Representative Plaintiffs should receive incentive awards out of the settlement proceeds and (e) whether the Action should be dismissed with prejudice.

The Court may adjourn or continue the Settlement Hearing without further notice to the Settlement Class.

## **SUMMARY OF THE PROPOSED SETTLEMENT**

The Representative Plaintiffs and the Defendants have entered into an agreement entitled Class Action Settlement Agreement which, if approved by the Court, resolves the claims of the Settlement Class Members against Defendants. The Court granted preliminary approval of the Class Action Settlement Agreement on September 12, 2003. The Class Action Settlement Agreement is on file with the Los Angeles County Superior Court, and may be obtained from the Class website at [www.aogllp.com](http://www.aogllp.com) or by contacting Plaintiffs' Counsel, Mike Arias, Esq., Arias, Ozzello & Gignac, LLP, 6701 Center Drive West, Suite 1400, Los Angeles, California 90045.

In summary, the Class Action Settlement Agreement provides that Defendants will pay Two Hundred Ninety Three Thousand, Seven Hundred and Fifty Dollars (\$293,750.00) in complete satisfaction of all claims related to any promise, representation, warranty, contract or any other obligation requiring the Defendants to pay any further compensation to any Settlement Class Member. A portion of the Settlement Fund will be used for certain administrative expenses, including payment of any taxes assessed against the Settlement Funds and costs associated with the processing of claims submitted. In addition, as explained below, a portion of the Settlement Fund may be awarded by the Court to Plaintiffs' Counsel as attorneys' fees and for reimbursement of out-of-pocket expenses. In addition, the Representative Plaintiffs may request that the Court award them some compensation for bringing the Action. The balance of the Settlement Fund (the "Net Settlement Fund") will be distributed according to the Plan of Allocation described below to the Settlement Class Members who submit a timely Proof of Claim and Release Forms.

## **PLAN OF ALLOCATION**

The Net Settlement Fund will be distributed to Settlement Class Members who submit valid, timely and approved claims ("Authorized Claimants"). You will be eligible to participate in the distribution of the Net Settlement Fund, if and only if, you were a resident of Avalon at Media Center, formerly known as Lakeside Apartments between July 1, 1999 and August 13, 2003. Additionally, you will be required to declare, under penalty of perjury, that your residency exposed you to excessive noise, dust and debris from construction which affected your quiet enjoyment, toxic material in the apartments including, without limitation, exposure to bioaerosols emanating from mold, mildew and fungus and/or pesticides, asbestos and/or other chemicals, or termites, or you otherwise claim that you were harmed as a result of your tenancy at Lakeside Apartments.

The amount to be paid per claim is not known at this time and will not be known until all timely filed claims have been approved. The amount distributed to each of the approved claimants from the settlement funds will be based on the number of months they resided at Avalon at Media Center, formerly known as Lakeside Apartments, during the class period. Once the total number of months for all approved claimants have been determined by the Claims Administrator, the net settlement proceeds (less attorney fees, costs, incentive payments and claims administration fees and costs) will be divided by the total months of residency of all approved claimants to determine the exact dollar amount per month of residency. That figure will be multiplied by each of the approved claimant's months of residence to determine the total amount to be allocated to each of the claimants.

The Court has reserved jurisdiction to allow, disallow or adjust the claim of any Settlement Class Member on equitable grounds.

## **PARTICIPATION IN THE CLASS**

If you fall within the definition of the Settlement Class, you will be bound by any judgment entered with respect to the settlement in the Action whether or not you submit a Proof of Claim. If you choose, you may enter an appearance individually and through your own counsel at your own expense.

TO PARTICIPATE IN THE DISTRIBUTION OF THE NET SETTLEMENT FUND, YOU MUST TIMELY COMPLETE AND RETURN THE PROOF OF CLAIM AND RELEASE FORM THAT ACCOMPANIES THIS NOTICE. The Proof of Claim and Release form must be postmarked on or before December 10, 2003, and delivered to the Claims Administrator at the address on

the claim form. Unless the Court orders otherwise, if you do not timely submit a valid Proof of Claim, you will be barred from receiving any payments from the Net Settlement Fund, but will in all other respects be bound by the provisions of the Settlement Agreement and the Judgment.

#### REQUEST TO BE EXCLUDED FROM THE SETTLEMENT CLASS

If you fall within the above description of the Settlement Class, you have a choice whether or not to remain a member of the Settlement Class. Either choice will have its consequences, which you should understand before making your decision.

If you qualify as a member and want to be included in the Settlement Class, you need to file a claim form. If you want to remain a member of the Settlement Class, you should not send a request for exclusion. By remaining a member of the Settlement Class, your claims against the Defendants as alleged in the Action, will be determined in this case and cannot be present in any other lawsuit.

In the alternative, you may request to be excluded from the Settlement Class. To do so, you must mail a written request to:

Arias, Ozzello & Gignac, LLP  
6701 Center Drive West, Suite 1400  
Los Angeles, California 90045

The request for an exclusion must be signed and must state: (1) your name and current address and telephone number and your social security number; and (2) that you wish to be excluded from the Settlement Class. TO BE VALID, A REQUEST FOR EXCLUSION MUST STATE ALL OF THE FOREGOING INFORMATION, AND YOUR EXCLUSION REQUEST MUST BE POSTMARKED ON OR BEFORE NOVEMBER 15, 2003. If you submit a valid and timely request for exclusion, you shall have no rights under the settlement, shall not share in the distribution of the Net Settlement Fund, and will not be bound by the Settlement Agreement or the Judgment. If more than five requests for exclusion are received, Defendants have the right to rescind the settlement, recover all settlement funds, and void the settlement agreement.

#### DISMISSAL AND RELEASES

If the proposed settlement is approved, the Court will enter a Final Judgment and Order of Dismissal with Prejudice ("Judgment"). The Judgment will dismiss the Released Claims with prejudice as against all Defendants and its Related Persons for the period of July 1, 1999 through August 13, 2003. The judgment will provide that all Settlement Class Members shall be deemed to have released and forever discharged all Released Claims (to the extent members of the Settlement Class have such claims) against all Released Persons collectively ("Defendants Releasees") and barring and permanently enjoining all Settlement Class Members from alleging asserting or prosecuting any Released Claims against any of the Defendants' Releasees. The Judgment will also provide that all Defendants shall be deemed to have released and discharged all Settlement Class Members and their Related Persons from all claims arising from or related to the institution, prosecution or resolution of the Action.

The Representative Plaintiffs shall expressly waive and each of the Settlement Class Members shall be deemed to have, and by operation of the Judgment shall have, expressly waived any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, which is similar, comparable or equivalent to California *Civil Code* §1542. The Representative Plaintiffs and Settlement Class Members may hereafter discover facts in addition to or different from those which he, she or it now knows or believes to be true with respect to the subject matter of the Released Claims, but the Representative Plaintiffs shall expressly and each Settlement Class Member, upon the Effective Date, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever settled and released any and all Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, whether or not concealed or hidden, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law or rule, without regard to the subsequent discovery or existence of such different or additional facts. The Representative Plaintiffs acknowledge, and the Settlement Class Members shall be deemed by operation of the Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the settlement of which this release is a part.

#### ATTORNEYS' FEES, LITIGATION COSTS AND EXPENSES.

At the Settlement Hearing, Plaintiffs' Counsel will request the Court to award attorneys' fees from the Settlement Fund in the amount of not more than 25% of the gross settlement, plus reimbursement of the expenses, which were advanced in connection with the Action, plus interest thereon. Settlement Class Members are not personally liable for any such fees or expenses. In addition, the three (3) Representative Plaintiffs also seek awards not to exceed \$30,000 in total for their efforts on behalf of the Settlement Class.

To date, Plaintiff's Counsel have not received any payment for their services in conducting this Action on behalf of Representative Plaintiffs and the members of the Settlement Class, nor have counsel been reimbursed for their out-of-pocket expenses. The fee requested by Plaintiffs' Counsel will compensate counsel for their efforts in achieving the Settlement Fund for the benefit of the Settlement Class, and for their risk in undertaking this representation on a wholly contingent basis.

**CONDITIONS FOR SETTLEMENT**

The settlement is conditioned upon the occurrence of certain events described in the Settlement Agreement. Those events include, among other things: (a) entry of the Judgment by the Court, as provided for in the Settlement Agreement; and (b) expiration of the time of appeal from or alter or amend the Judgment. If, for any reason, any one of the conditions described in the Settlement Agreement is not met, the settlement might be terminated and, if terminated, will become null and void, and the parties to the Settlement Agreement will be restored to their respective positions as of the date of the Settlement Agreement.

**THE RIGHT TO BE HEARD AT THE HEARING**

Any Settlement Class Member who properly and timely objects to any aspect to the settlement, the Plan of Allocation, the incentive award to the Representative Plaintiffs or the application for attorneys' fees or expenses, may appear and be heard at the Settlement Hearing. Any such person must submit a written notice of objection, received on or before November 15, 2003, by each of the following:

CLERK OF THE COURT  
SUPERIOR COURT OF CALIFORNIA  
CENTRAL CIVIL WEST DEPARTMENT 311  
600 S. COMMONWEALTH AVENUE  
LOS ANGELES, CA 90005

MIKE ARIAS, ESQ.  
ARIAS, OZZELLO & GIGNAC, LLP  
6701 CENTER DRIVE WEST, SUITE 1400  
LOS ANGELES, CALIFORNIA 90045  
Counsel for Settlement Class Plaintiffs

RUDY R. PERRINO, ESQ  
GORDON & REES, LLP  
4695 MACARTHUR COURT, SUITE 1200  
NEWPORT BEACH, CALIFORNIA 92660  
Counsel for AvalonBay Communities  
and Individuals Bernard Ward,  
Jason Peterson, Fredia Murphy and James Wilden

The notice of objection must demonstrate the objecting person's membership in the Settlement Class and contain a statement of the reasons for objection. Only Settlement Class Members who have submitted written notices of objection in this manner will be entitled to be heard at the Settlement Hearing, unless the Court orders otherwise. Any Settlement Class Member who does not object in the manner provided above shall be deemed to have waived such objection.

**ADDITIONAL INFORMATION**

The information provided in this Notice is only a summary of the case, the settlement, and the matters relating to them. For more information, you may review the complete court files at the Clerk's office for the Los Angeles County Superior Court, located at 600 S. Commonwealth Avenue, Los Angeles, CA 90005.

Should you have any questions with respect to this Notice, the Settlement Agreement or any of the applications for fees, costs and expenses, you should direct them to Plaintiffs' Counsel, or if you choose, your own attorney. PLEASE DO NOT CONTACT THE COURT REGARDING SUCH QUESTIONS.

Dated: September 17, 2003

Honorable Carl J. West  
Judge of the Superior Court  
State of California, County of Los Angeles