

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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VICENTE BAHENA, JONAS BAHENA, JOSE CRUZ AYALA, and	:
RAFAEL RODRIGUEZ, <i>on behalf of themselves and all others similarly</i>	:
<i>situated,</i>	:
	:
Plaintiffs,	:
	:
-against-	:
	:
PARK AVENUE SOUTH MANAGEMENT LLC, <i>et al.</i> ,	:
	:
Defendants.	:
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Case No.: 1:15-cv-1507

**NOTICE OF  
SETTLEMENT**

*This is a court-authorized notice. This is not a solicitation or advertising from a lawyer.*

**If you were employed as a BUILDING SUPERINTENDENT and/or PORTER in a building managed by PARK AVENUE SOUTH MANAGEMENT LLC:**

**PLEASE READ THIS NOTICE CAREFULLY**  
**A Proposed Class and Collective Action Settlement May Affect Your Rights.**  
**You May Be Entitled to Money.**

You are receiving this notice because you worked as a building superintendent and/or a porter in a building managed by Park Avenue South Management LLC between March 3, 2009 and August 9, 2017. You are entitled to compensation under this lawsuit. **Although you may have previously received a notice pursuant to this lawsuit, please read this notice as it affects your rights.**

You are receiving this notice because you have been identified as eligible to possibly receive settlement funds based on Defendants’ alleged violations of the Fair Labor Standards Act (“FLSA”) and the New York Labor Law (“NYLL”).

This lawsuit was brought by current and former building superintendents, on behalf of themselves and those similarly situated (“Plaintiffs”), against their current or former employer Park Avenue South Management, LLC (“PAS”) and related companies and individuals (“Defendants”). Plaintiffs assert violations of the FLSA and NYLL, alleging that Defendants failed to pay them the minimum and/or overtime wages required by the FLSA and to provide them with the employment notices and wage statements required by the NYLL.

Defendants have denied and continue to deny the allegations in Plaintiffs’ Complaint and maintain that they did not violate the FLSA or NYLL.

The Court **has not** made a determination of the merits of Plaintiffs’ claims or Defendants’ defenses. Rather than continue to litigate these matters, Plaintiffs and Defendants have reached a settlement. The settlement provides that Defendant will pay a total of \$650,000.00 to settle this case.

Class members will receive a *pro rata* payment based on the number of weeks each individual worked for Defendants between March 3, 2009 and August 9, 2017.

The Court has certified the following Class for settlement purposes: All persons who were employed as Building Superintendents and/or Porters in a building or buildings managed by PAS, at any point in time between March 3, 2009 and August 9, 2017.

Your legal rights are affected by this Settlement, and you have a choice to make now. There are both federal and state claims in the lawsuit. The federal claims are under the FLSA and the state claims are under New York Law. Please read the following pages carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS LAWSUIT</b>	
<b>DO NOTHING</b>	<ul style="list-style-type: none"> <li>You will receive compensation for your FLSA and NYLL claims based on the number of weeks you worked for Defendants during the relevant period.</li> <li>You will release your federal FLSA wage and hour claims and New York state wage and hour claims and your New York State notice and wage statement claims against Defendants from the beginning of your employment to August 9, 2017, and will be bound by the terms of settlement as to those claims.</li> <li>You will give up your right to sue Defendant for any of these claims that arose from the beginning of your employment to August 9, 2017.</li> </ul>
<b>EXCLUDE YOURSELF</b>	<ul style="list-style-type: none"> <li>You will not receive payment pursuant to this settlement.</li> <li>You will retain your right to sue Defendants for any and all NYLL claims.</li> <li>To exclude yourself from participating in this settlement, you <u>must</u> send in a signed exclusion request.</li> </ul>
<b>OBJECT</b>	<ul style="list-style-type: none"> <li>If you do not exclude yourself from the settlement, you can remain a member of the Class and still write to the Court explaining why you disagree with the Settlement.</li> </ul>
<b>APPEAR AT THE HEARING</b>	<ul style="list-style-type: none"> <li>If you do not exclude yourself from the Settlement, you can also ask to speak to the Court about the fairness of the Settlement.</li> <li>You must send written notice of your desire to appear in advance.</li> </ul>

## **BASIC INFORMATION**

### **1. What is a class action?**

In a class action lawsuit, one or more people called “Class Representatives,” (in this case Vicente Bahena, Jonas Bahena, Jose Cruz Ayala, and Rafael Rodriguez) sue on behalf of other people who have similar claims. The people together are a “Class” or “Class Members.” One Court resolves issues for all Class Members, except for those who exclude themselves from the Class. Judge Vernon Broderick of the Federal District Court for the Southern District of New York is in charge of this class action.

### **2. Why is there a settlement?**

The Court did not decide in favor of Plaintiffs or Defendants. The Plaintiffs think they could have won if they went to trial. The Defendants assert that they did not violate the law and in fact complied with all applicable laws. Therefore, Defendants believe that they would have prevailed at trial. But there was no trial. Instead, both sides agreed to a settlement. That way, they avoid the cost of a trial, and the people affected will get compensation. The Class Representatives and the attorneys think the Settlement is best for all Class Members.

## **WHO IS A PARTICIPANT IN THE SETTLEMENT**

### **3. How do I know if I am part of the settlement?**

Judge Broderick decided that everyone who fits this description is a Class Member: All persons who were employed as Building Superintendents in a building or buildings managed by PAS, at any point in time between March 3, 2009 and August 9, 2017. Defendants’ records state that you are a Class Member. If you fit this description and do not opt-out of the settlement, you will receive a distribution from this settlement for your potential state and federal claims.

### **4. Are there exceptions to being included?**

You are not a Class Member if you did not work for Defendants as a Building Superintendent and/or Porter during the relevant time period.

### **5. I’m still not sure if I am included?**

If you are still not sure whether you are included, you can ask for free help. You can call Class Counsel (212) 509-1616 for more information. Please ask for Edwin Gonzalez.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 6. What does the settlement provide?

Defendants have agreed to provide a gross settlement payment of \$650,000.00, inclusive of attorneys' fees and costs, service awards, and administration fees and costs, plus the employer's share of certain payroll taxes, to resolve this matter. This payment covers both FLSA and NYLL claims. Each Class Member is entitled to a portion of Defendants' settlement payment, determined by multiplying the net settlement fund by a fraction obtained based on the number of weeks worked by that Class Member during the relevant period. The Parties determined how many points each Class Member was entitled to per week based on the relative strength or weakness of Plaintiffs' claims for each time period. All Class Members will receive a minimum of \$100 in compensation.

The parties have agreed to assign each class member a pro rata share of the settlement. For those Class Members who previously opted into this lawsuit, their points are calculated as follows:

TIME PERIOD WORKED	Points Per Week
March 3, 2009 – March 31, 2011	0.25
April 1, 2011 – November 30, 2012	0.75
December 1, 2012 – March 1, 2016	<b>32.00(*only applies to those who already opted-in)</b>
March 1, 2016 – August 9, 2017	0.25

For those Class Members who did not previously opt into this lawsuit, or were otherwise ineligible to do so, their points are calculated as follows:

TIME PERIOD WORKED	Points Per Week
March 3, 2009 – March 31, 2011	0.25
April 1, 2011 – May 9, 2013	0.75
May 10, 2013 – March 1, 2016	8.00
March 1, 2016 – August 9, 2017	0.25

**Your total estimated recovery is approximately \$ \_\_\_\_\_.**

## HOW YOU GET A PAYMENT

### 7. How can I get my payment?

If you have received this Notice and you do not opt-out of the NYLL claims, you will automatically receive a settlement payment that includes, in addition to compensation for your FLSA claims, compensation for your NYLL claims from the claims administrator so long as the Court approves the settlement and any appeals are resolved in favor of the settlement.

### 8. When would I get my payment?

The Court will hold a hearing at **11:00 am on December 1, 2017**, in Courtroom 518 at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007, to decide whether to approve the settlement. If Judge Broderick approves the settlement after that, there may be appeals. It's always uncertain whether these appeals can be resolved, and resolving them can take time. Please be patient.

Once the Judge has approved the settlement and any appeals are exhausted, Defendants must remit the full settlement amount to the settlement administrator within ten (10) days. Once the settlement administrator has received the full settlement amount, checks must be distributed to all Class Members within seven (7) days.

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

Unless you exclude yourself from the settlement, you will be unable to sue, continue to sue, or be part of any other lawsuit against Defendants about the state law issues in this case. It also means that all of the Court's orders will apply to you and legally bind you.

Specifically, unless you exclude yourself from the settlement, you will fully release Defendants PAS Gilanco Holdings, LLC, 2500 ACP Partners, LLC, EMO Realty Partners, LLC, and Amsterdam Realty Partners, LLC, their owners, stockholders, predecessors, successors, assigns, agents, directors, officers, employees, representatives, attorneys, parents, subsidiaries, affiliates, benefits plans, plan fiduciaries, and/or administrators, and all persons acting by, through, under or in concert with any of them, and individual Defendants Maurice McKenzie and Edward Ostad, their heirs, family members, representatives, assigns and all persons acting by, through, under or in concert with them, from any and all claims asserted (or that could have been asserted) under the NYLL that arose any time between March 3, 2009 and August 9, 2017, that relate to or otherwise concern compensation, wages, overtime, or retaliation, including, but not limited to, all such claims under the Fair Labor Standards Act, New York Labor Law, and any other federal, state or local law or common law or equitable principles directly or indirectly relating to failure to compensate or pay wages, overtime wages, minimum wages, or spread-of-

hours pay, failure to reimburse expenses or other items, liquidated damages, interest, penalties, and attorneys' fees and costs or expenses of any nature related to such claims for periods of time in which you worked as a building superintendent and/or porter for Defendants.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you don't want a payment from this settlement, but you want to keep the right to sue or continue to sue Defendants on your own about the state law issues (NYLL claims) in this case, then you must take steps to get out. This is called excluding yourself – or is sometimes referred to as opting out of the state law Settlement Class.

### 10. 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, and telephone number(s) to the settlement administrator, **Arden Claims Service, LLC, PO Box 1015, Port Washington, NY 11050**, stating "I opt out of the Park Avenue South unpaid wages settlement." The written opt-out statement must be postmarked no later than **September 29, 2017**. If you ask to be excluded, you will not receive any settlement payment.

### 11. If I don't exclude myself can I sue Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Defendants for the claims this settlement resolves. If you have a pending lawsuit, speak to your lawyer in that case immediately. You must exclude yourself from this Class to continue your lawsuit. Remember, the exclusion deadline is **September 29, 2017**.

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

No. If you exclude yourself from the Settlement, you will not receive payment pursuant to it. However, you may sue, continue to sue, or be part of a different lawsuit against Defendants under the NYLL, FLSA, or any other law.

## THE LAWYERS REPRESENTING YOU

### 13. Do I have a lawyer in this case?

The Court has decided that the law firm of Beranbaum Menken LLP, 80 Pine St., 33rd Floor, New York, New York 10005, (212) 509-1616, is qualified to represent you and all Class Members. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 14. How will the lawyers be paid?

Class counsel will ask the Court to approve payment of up to one-third (33.33%) of the settlement amount to them for attorneys' fees, plus their costs. Class counsel will also ask the Court to approve a service award to each of the named Plaintiffs for their service as Class Representatives. The fees would pay Class Counsel for investigating the facts, litigating the case, and negotiating the settlement. The Court may award less than these amounts. Class Counsel will take their percentage of fees from the gross settlement amount prior to your payment being sent to you.

## OBJECTING TO THE SETTLEMENT

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

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

If you remain a Class Member, you may object to the terms of any part of the Settlement. 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 Beranbaum Menken LLP, including all reasons for the objection. The written objection statement must be postmarked no later than **September 29, 2017**. Any reasons not included in the statement will not be considered by the Court.

### 16. What's the difference between objecting to the settlement and excluding myself?

Objecting is simply telling the Court that you don't like something about the Settlement. You can object if you stay in the Class. Excluding yourself is telling the Court that you don't want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because it no longer affects you.

## THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but you don't have to.

### 17. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at **11:00 am on December 1, 2017**, in Courtroom 518 at the Thurgood Marshall United States Courthouse, 40 Foley Square, New York, New York 10007. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. Judge Broderick will listen to people who have asked to speak at the hearing. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long these decisions will take.

**18. Do I have to come to the court hearing?**

No. Class Counsel will answer questions that Judge Broderick may have. However, you are welcome to come at your own expense. If you send an objection, you don't have to come to Court to talk about it. 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's not necessary.

**19. May I speak at the hearing?**

You may ask the Court for permission to speak at the Fairness Hearing, although you cannot speak at the hearing if you excluded yourself.

**IF YOU DO NOTHING**

**20. What happens if I do nothing at all?**

If you do nothing, you will automatically receive a settlement payment for both the FLSA and NYLL claims.

**GETTING MORE INFORMATION**

**21. Are more details available?**

This notice summarizes the proposed settlement to Class Members. More details are available in the Settlement Agreement. You can get a copy of the Settlement Agreement by writing to Beranbaum Menken LLP, 80 Pine St., 33rd Floor, New York, New York 10005. You can also call Class Counsel at (212) 509-1616 for more information regarding the settlement and whether you are eligible for a payment.

**PLEASE DO NOT CONTACT THE JUDGE'S CHAMBERS OR THE CLERK OF THE COURT WITH ANY QUESTIONS ABOUT THIS LAWSUIT.**