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CHRISTINA WILLIAMS

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

CHRISTINA WILLIAMS, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

AVALONBAY COMMUNITIES, INC., a
Maryland corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No. 22STCV14614

*[Assigned for all purposes to the Hon. Carolyn B.
Kuhl, SSC-12]*

**DECLARATION OF ELIZABETH
NGUYEN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Date: November 6, 2023
Time: 11:00 a.m.
Dept.: SSC-12

Action filed: May 2, 2022
Trial Date: None set

1 I, ELIZABETH NGUYEN, declare as follows:

2 1. I am a shareholder of the law firm Lidman Law, APC, and counsel for the named Plaintiff
3 Christina Williams (“Plaintiff”) and the proposed Settlement Class in the above-captioned matter. I am
4 a member in good standing of the bar of the State of California and am admitted to practice in this Court.
5 I have personal knowledge of the facts stated in this declaration and could testify competently to them
6 if called upon to do so.

7 2. I am a 2005 graduate of Loyola Law School. During law school, I worked as an extern
8 for the Honorable Erithe A. Smith, U.S. Bankruptcy Court for the Central District of California. During
9 law school, I also worked as a law clerk in the Enforcement Unit of the Office of the Chief Trial Counsel
10 for the State Bar of California.

11 3. Since graduating from law school, my practice has focused almost exclusively on
12 employment litigation. In October 2007, I began working as an associate attorney at the international
13 law firm of Littler Mendelson P.C., at its Los Angeles office, which according to its website is the
14 “largest law firm in the world exclusively devoted to representing management in employment,
15 employee benefits and labor law matters.”

16 4. In June 2012, I left Littler Mendelson to work at the Los Angeles office of Reed Smith
17 LLP. During my employment at Reed Smith, I worked exclusively in the labor and employment
18 practice group. In June 2013, I returned to Littler Mendelson as an associate attorney, was promoted to
19 Shareholder in 2015, and was elevated to participating Shareholder in 2017. Since October 2007, my
20 practice has been and continues to be exclusively labor and employment law, with a strong emphasis
21 on wage and hour class actions venued in both state and federal courts. During this time period and my
22 legal career in general, I also worked on a number of single and multi-plaintiff wage and hour matters
23 as well. During my employment at Littler Mendelson, I was a member of its Class Action Practice
24 Group.

25 5. During my employment at Littler Mendelson, I played a significant role in the class
26 actions that I was staffed on, and was primarily responsible for managing the litigation both in my role
27 as a Senior Associate and as a Shareholder. In particular, I received a wide-array of wage and hour
28

1 class action experience performing the following types of tasks: drafting demurrers, motions to strike
2 and/or dismiss; removing actions from state court to federal court; drafting and responding to written
3 discovery; drafting and opposing discovery related motions; arguing discovery related motions; drafting
4 motions to consolidate related matters; interviewing putative class members and obtaining declarations
5 in connection with class certification; drafting oppositions to motions for class certification; conducting
6 exposure analyses to assess the strengths and weaknesses of asserted claims, the likelihood of prevailing
7 at class certification and potential damages resulting from such claims; drafting mediation briefs;
8 serving as the primary contact to in-house counsel; deposing named plaintiffs and putative class
9 members; deposing retained expert witnesses; and defending the depositions of corporate witnesses. I
10 also was involved in the negotiations and settlements of many large wage and hour class actions. In
11 short, I played an integral role in all aspects of litigation from the inception of a matter through and
12 beyond class certification. I also supervised the work of several associate attorneys who were staffed
13 on the same wage and hour class actions.

14 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
15 actions that I performed substantial work on while I was an Associate and/or Shareholder at Littler
16 Mendelson:

- 17 ► *Branch v. PM Realty Group, Inc.* Case No. BC575759, Los Angeles Superior
18 Court, County of Los Angeles, Honorable Ann Jones, presiding.
- 19 ► *Herrera v. Pharmavite, LLC*, Case No. BC599201, Los Angeles Superior Court,
20 County of Los Angeles, Honorable Judge Carolyn Kuhl, presiding.
- 21 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
22 States District Court, Central District of California, Honorable Judge Percy
23 Anderson, presiding.
- 24 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
25 States District Court, Central District of California, Honorable Judge Percy
26 Anderson, presiding.

- 1 ▶ *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
2 Superior Court, County of Los Angeles, Honorable Judge Jane Johnson,
3 presiding.¹
- 4 ▶ *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
5 Superior Court, County of Orange, Honorable Judge Thierry Patrick Colaw,
6 presiding.
- 7 ▶ *Page v. Luxottica Retail North America, Inc.*, Case No. FCS041512, California
8 Superior Court, County of Solano, Honorable Judge Paul Berman, presiding.
- 9 ▶ *Parker v. FedEx National LTL, Inc.*, Case No. 11-CV-006380-DSF-FFM, United
10 States District Court, Central District of California, Honorable Judge Dale
11 Fischer, presiding.
- 12 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
13 States District Court, Central District of California, Honorable Judge Margaret
14 Morrow, presiding.
- 15 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
16 District Court, Central District of California, Honorable Judge Margaret Morrow,
17 presiding.
- 18 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
19 California Superior Court, County of San Diego, Honorable Judge Jeffrey B.
20 Barton, presiding.
- 21 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
22 Court, County of Santa Clara.
- 23 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior
24 Court, County of Los Angeles, Honorable Judge Terry Green, presiding.
- 25 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
26 Court, County of San Francisco.

¹ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

1 ▶ *Robertson v. FedEx National LTL, Inc.*, Case No. 09-CV-05016-DSF-FFM,
2 United States District Court, Central District of California, Honorable Judge Dale
3 Fischer, presiding.

4 ▶ *Wittman v. FedEx National LTL, Inc.*, Case No. 09-CV-03663-DSF-FFM, United
5 States District Court, Central District of California, Honorable Judge Dale
6 Fischer, presiding.

7 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to start a law
8 firm with another former Littler Mendelson Shareholder, Scott M. Lidman, to represent employees
9 with work-related claims, including primarily wage and hour claims and almost exclusively on a class-
10 action basis. I am currently a Shareholder of Lidman Law, APC. Currently, over ninety percent (90%)
11 of my practice is dedicated exclusively to the prosecution of wage and hour class actions, and I am
12 currently responsible for prosecuting over sixty-five (65) wage and hour class actions filed in State
13 courts throughout California, with several of them having been removed to Federal courts. I believe
14 that my professional experience renders me more than qualified to serve as class counsel in this lawsuit
15 involving claims of underpaid overtime and minimum wages, meal and rest period violations, and
16 derivative penalty claims. Not only have I litigated dozens of wage and hour cases throughout my
17 career involving similar claims, including the wage and hour class actions identified above, I have
18 litigated similar claims from both plaintiff and defense perspectives. As a result, I am able to
19 realistically assess and evaluate the facts and legal arguments that can be made in pursuit and defense
20 of similar wage and hour claims, as well as those facts and arguments in support and in opposition to
21 class certification. Consequently, I am able to appreciate the significant risks, uncertainties, and delay
22 involved in wage and hour class action litigation.

23 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
24 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
25 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
26 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-
27 2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
28

1 William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412,
2 California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina*
3 *v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles,
4 Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case
5 No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F.
6 Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court,
7 County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane,*
8 *Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael
9 A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior
10 Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El*
11 *Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles,
12 Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No.
13 BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko
14 presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of
15 Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case
16 No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S.
17 Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No. 34-2017-00222084,
18 California Superior Court, County of Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero*
19 *v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles,
20 Honorable Judge Maren E. Nelson presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*,
21 Case No. CIVDS1617291, California Superior Court, County of San Bernardino, Honorable Judge
22 David S. Cohn presiding; *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-
23 CTL, California Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding;
24 *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara,
25 Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No. BC685001,
26 California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding;

1 and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-SS, United States
2 District Court for the Central District of California, the Honorable Judge Philip S. Gutierrez presiding.

3 9. As co-counsel for Plaintiff and the proposed Settlement Class, I have been intimately
4 involved in every aspect of this case from its inception through the present, and I believe that the
5 proposed Settlement is a favorable result for the Settlement Class under the circumstances presented.

6 10. On May 2, 2022, Plaintiff filed a putative class action against AvalonBay in this Court
7 captioned *Christina Williams v. AvalonBay Communities, Inc.*, Case No. 22STCV14614. On May 2,
8 2022, Plaintiff gave written notice to Defendant AvalonBay Communities, Inc. (hereinafter
9 “AvalonBay” or “Defendant”) and the LWDA by sending the PAGA Notice. A true and correct copy
10 of Plaintiff’s letter to the LWDA and AvalonBay is attached hereto as **Exhibit 1**. On June 8, 2022,
11 AvalonBay filed a Notice of Removal under the Class Action Fairness Act of 2005 to the Central District
12 of California of United States District Court, Case No. 22-CV-03933 (“Federal Action”). On October
13 5, 2022, Plaintiff filed a First Amended Complaint in the Federal Action alleging the following putative
14 class action and representative claim against AvalonBay: (1) failure to pay all minimum wages owed;
15 (2) failure to pay all overtime wages owed; (3) failure to provide meal periods; (4) failure to authorize
16 and permit rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide
17 accurate, itemized wage statements; (7) failure to timely pay all wages due upon separation; (8) unfair
18 competition under California Business & Professions Code §§ 17200 *et seq.*; and (9) civil penalties
19 under California Private Attorneys General Act of 2004. On April 10, 2023, pursuant to the Parties’
20 joint stipulation the District Court remanded the action back to State Court.

21 The Parties participated in a mediation session on January 12, 2023, with Philip Cook, Esq., and
22 reached a tentative settlement, subject to court approval, of Plaintiff’s class-wide and PAGA
23 representative claims. The inclusion of Plaintiff’s supplemental PAGA claims was discussed and
24 mediated in the case, but are not yet pled. In connection with effectuating the terms of the settlement,
25 on April 4, 2023, Plaintiff notified Defendant via certified mail, and the Labor Workforce Development
26 Agency (“LWDA”) via e-mail, of Defendant’s violations of the California Labor Code and Plaintiff’s
27 intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to
28

1 additional violations of the California Labor Code (supplementing her May 2, 2022 LWDA letter) on
2 the basis that, in addition to the violations enumerated in Plaintiff's May 2, 2022 correspondence,
3 Defendant; (1) violated Labor Code § 2802 failing to reimburse Plaintiff and Aggrieved Employees for
4 expenses related to using their personal vehicles and/or purchasing tools and equipment to discharge
5 their duties; (2) violated Labor Code §§ 204, 510, 558 1194, 1194.2, and 1197, 1198 in that Defendant
6 had a policy of rounding non-exempt employees' hours to the detriment of Plaintiff and the Aggrieved
7 Employees; and (3) violated Labor Code Industrial Welfare Commission Wage Order (Wage Order 5-
8 2001, Section 14(b)) by failing to provide suitable seating/break areas for Plaintiff and other Aggrieved
9 Employees. A true and correct copy of Plaintiff's April 4, 2023 letter to the LWDA and AvalonBay is
10 attached hereto as **Exhibit 2**.

11 Therefore, in connection with the effectuating the terms of the settlement, the Parties submitted
12 a stipulation seeking leave from the Court to file a Second Amended Complaint concurrently
13 herewith. Thus, Plaintiff's primary allegations are that AvalonBay: (1) failed to pay all minimum
14 (2) failed to pay all overtime wages owed; (3) failed to provide all legally required meal periods; (4)
15 failed to authorize and permit all legally required rest periods; (5) failed to reimburse necessary
16 business expenses; (6) failed to provide accurate, itemized wage statements; (7) failed to timely pay all
17 wages upon separation of employment; (8) engaged in unlawful business practices; (9) liable for civil
18 penalties under PAGA; and (10) failed to pay sick pay wages at the correct rate of pay.

19 11. The Parties exchanged Initial Disclosures and Defendant served discovery responses the
20 Plaintiff's Interrogatories and Requests for Production of Documents as well a document production in
21 the Federal Action. Shortley thereafter, the Parties agreed to participate in early mediation, AvalonBay
22 produced additional documents relating to its policies, practices, and procedures regarding its wage and
23 hour practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal
24 premiums paid, and other operational policies. As part of AvalonBay' production, Class Counsel
25 represent they also reviewed time records, pay records, and information relating to the size and scope
26 of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay
27 periods in the Class Period and the PAGA Period. Specifically, in connection with private mediation,
28 AvalonBay produced a 13% sampling of timekeeping and payroll data for the putative class. Plaintiff

1 received a list of 1,945 unique Employee ID numbers. The Parties agreed that Plaintiff's sample shall
2 represent 13% of the total Employee ID numbers – 253 employees. Using Excel's "RAND" function
3 which randomly generates a value between 0 and 1, each of the 1,945 Employee ID numbers was
4 randomly assigned such a value. After the random assignment, the list of Employee ID numbers was
5 sorted in ascending order according to the values randomly assigned. After the list was sorted, Plaintiff
6 selected the first 253 Employee ID numbers to represent the agreed upon 13% sampling.

7 In addition to the representative sampling, AvalonBay produced key data points and all relevant
8 written wage and hour policies in effect during the relevant time periods. Specifically, Plaintiff was
9 provided with the following:

- 10 • Plaintiff's personnel files and timekeeping and payroll documents;
- 11 • Key data points, including total number of employees, workweeks, and pay periods
12 during the relevant time period;
- 13 • Exemplars of the wage statements provided during the relevant time period; and
- 14 • Job descriptions of the positions held by the putative class members.

15 This information coupled with the representative data sampling, enabled Plaintiff to extrapolate
16 to the entire class and aided in Plaintiff's creation of a class-wide exposure model for all the claims at
17 issue, including unpaid wages and penalties potentially owed. Therefore, after the detailed review of
18 the payroll and time records and other documents and policies produced by AvalonBay, Class Counsel
19 drew on their extensive experience in similar cases to assess the strengths and weaknesses of Plaintiff's
20 case. This discovery allowed the parties to assess the merits and value of Plaintiff's claims and
21 AvalonBay's defenses thereto, if a settlement could not be reached.

22 12. On January 12, 2023, after research and analysis, a mediation was held with Philip E.
23 Cook, Esq., a well-respected wage and hour class action mediator. During mediation, the parties
24 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims,
25 and the legal basis for the claims and defenses. Ultimately, the parties agreed in principle on a class-
26 wide resolution. In the weeks that followed, the parties finalized the terms of settlement and executed
27 the Class Action and PAGA Settlement Agreement and Class Notice ("Settlement"). A true and correct
28 copy of the Settlement is attached hereto as **Exhibit 3**. The proposed Notice Packet is attached as

Exhibit A to the Settlement. A true and correct copy of redline comparing the LASC's model agreement with the Settlement in this matter is attached hereto as **Exhibit 4**.

13. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount ("GSA"):	\$1,085,000.00
Minus Court-approved attorneys' fees (update to 1/3 of GSA):	\$361,666.66
Minus Court-approved, verified costs (up to 30,000):	\$30,000.00
Minus Court-approved Class Representative Service Award:	\$5,000.00
Minus Settlement Administration Costs:	\$20,000.00
Minus PAGA civil penalties to LWDA and PAGA Employees:	\$108,500.00
Net Settlement Amount ("NSA"):	\$559,833.34

Settlement Class Members	1,945
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Average Individual Payment: NSA/Settlement Class	\$287.83
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AvalonBay shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay AvalonBay's share of payroll taxes, by transmitting such funds to the Administrator within 30 days after the Effective Date.²

"Net Settlement Amount" ("NSA") means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payment, (d) the Class Counsel Fee Award, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments. Settlement, ¶ 1.29. Assuming the Court approves the requested attorneys' fees, maximum attorneys' costs,

² **"Effective Date"** means the earliest date by which both of the following have occurred: (a) the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes "Final." "Final," as used in the definition of Effective Date shall mean the latest of: (i) if there is an appeal of the Court's judgment, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for certiorari in the United States Supreme Court petition or a petition for review in the California Supreme Court, as applicable; or (ii) if such a petition is filed, the date of denial of the petition, or the date the judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal from the judgment. Settlement 1.19.

enhancement award, settlement administration costs, and payment to the LWDA, the NSA is currently estimated to be \$559,833.34, with an average Individual Class Payment of \$287.83.

14. According to AvalonBay, there were approximately 1,945 total Settlement Class Members as of the date of mediation defined as: All current and former non-exempt, hourly employees of AvalonBay who worked in California at any time during the Class Period. Class Period means the period between May 2, 2018 and either (i) April 10, 2023 (*i.e.*, 90 days after the January 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later.”

There are approximately 1,099 Aggrieved Employees defined as “all current and former non-exempt, hourly employees of AvalonBay who worked in California at any time during the PAGA Period.” For purposes of this Settlement Agreement, the “PAGA Period” means the period between October 25, 2020 and either (i) April 10, 2023 (*i.e.*, 90 days after the January 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later.” Thus, the average Individual PAGA Payment is projected to be approximately **\$24.68** (= \$27,125/1,099)).

15. Settlement Class members’ claims arise from AvalonBay’s common, uniform policies and practices that applied to Settlement Class members during the class period. Specifically, Plaintiff alleged that AvalonBay’s common and uniform policies and practices resulted in the following violations, involving common questions of law and fact: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to timely pay all wages upon separation of employment; (8) engagement in unlawful business practices; (9) liable for civil penalties under PAGA; and (10) failure to pay sick pay wages at the correct rate of pay.

16. As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges that she and Settlement Class members were not provided with all legally-compliant first meal periods beginning before the end of the sixth hour of work. Specifically, due to the work demands imposed by

1 AvalonBay, Plaintiff alleges that the meal periods were either late, short, or missed. Based on
2 Plaintiff's review of the time data produced in connection with mediation, AvalonBay's violation rate
3 for first meal periods was approximately 17.6% and 81% for second meal periods. Therefore, Plaintiff
4 calculated AvalonBay's maximum exposure on the alleged meal period violations at approximately
5 **\$3,608,793**, which is offset by the amount paid in meal period premiums and based on the following
6 violations: (1) late first lunch; (2) missed first meal period; (3) short first meal break; and (4) missed
7 second meal break on shifts over 10 hours.

8 17. AvalonBay counters that it has always provided non-exempt employees with an
9 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
10 employee timekeeping records were solely the result of employee choice, rather than any policy or
11 practice of AvalonBay. AvalonBay also points out that it is only required to "provide" the opportunity
12 to take meal periods, not "ensure" meal periods are taken, and that they have always done so.
13 AvalonBay also contends it paid meal period premiums—a total of 3,199—when employees were
14 unable to take a compliant meal period. Finally, AvalonBay contends Plaintiff's meal period claim is
15 not suited for class certification, a 17.6% violation rate for first meal periods supports its defenses and
16 individual inquiries would be required to assess which employees took non-compliant meal periods,
17 how many meal periods were non-compliant or missed, and the reasons why a particular employee
18 took a non-compliant meal period or missed a meal period during a particular shift. Accordingly,
19 Plaintiff discounted the maximum exposure by 85% for the risk of non-certification, and an additional
20 80% to account for AvalonBay defenses on the merits to arrive at an estimated exposure of
21 \$108,263.79.

22 18. Plaintiff alleges that she and Settlement Class members were also not authorized and
23 permitted to take all required rest periods due to AvalonBay's rest period policies and practices that
24 fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*.
25 Specifically, Plaintiff alleges that due to work demands imposed by AvalonBay, it failed to authorize
26 and permit Plaintiff and other non-exempt employees to take compliant rest periods when they worked
27 shifts in excess of 3.5 hours. Based on the data, all of the 773,190 shifts worked were in excess of 3.5
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1 hours. Accordingly, Plaintiff calculated AvalonBay's maximum exposure for rest period violations at
2 \$19,859,811.

3 19. AvalonBay contends it has always maintained and enforced lawful rest period policies
4 and practices, and that Settlement Class Members were authorized and permitted to take all off-duty
5 rest periods in compliance with California law. Further, AvalonBay argues that Plaintiff's rest period
6 claim is inherently unsuited for class treatment as it requires an individualized inquiry into whether
7 each Settlement Class Member was in fact authorized and permitted to take a compliant rest period,
8 which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff discounted
9 the maximum exposure by 85% for the risk of non-certification, and an additional 70% to account for
10 AvalonBay defenses on the merits to arrive at an estimated exposure of \$893,692.

11 20. Plaintiff alleges that AvalonBay failed to reimburse her and Settlement Class members
12 for necessary business expenditures, including the use of their personal cellular phones for work
13 activities, as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.*
14 (2014) 228 Cal.App.4th 1137. Plaintiff contends that AvalonBay required its non-exempt employees
15 to use their personal cellular phones and/or computers with internet access for work-related purposes
16 to complete the daily COVID-19 screening survey but AvalonBay did not reimburse the putative class
17 members for the cell phones and/or the data usage. Based on the sample, approximately 97% of the
18 putative class members did not receive a cell phone stipend. Plaintiff estimates employees should have
19 been reimbursed approximately \$25.00/month or about \$6.25/week for reasonable cellular phone
20 related expenses since March 2020. Accordingly, Plaintiff calculates AvalonBay's maximum exposure
21 for this claim at approximately **\$1,051,565** (173,454 workweeks x \$6.25/workweek = \$1,084,088 *
22 .97).

23 21. AvalonBay contends that it provided employees with alternatives to complete the daily
24 COVID-19 screening that did not require the use of a cellular phone or internet access. AvalonBay
25 further contends that if the employees completed their COVID-19 screening by using their personal
26 cell phone or a home computer, they did so on a voluntary basis. . Further, AvalonBay argues that
27 any expenses incurred were minimal given the affordability of cellular usage plans. AvalonBay also
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1 argues that this claim is not suitable for class treatment because it would require individualized
2 determinations as to whether each employee used a personal cellular phone and how often.
3 Accordingly, Plaintiff discounted the maximum exposure by 75% for the risk of non-certification, and
4 an additional 70% to account for AvalonBay's defenses on the merits, to arrive at an estimated
5 exposure of \$78,867.38.

6 22. Plaintiff further alleges that AvalonBay issued inaccurate wage statements in violation
7 of Labor Code § 226 as a result of the alleged unpaid minimum wages, overtime wages, and meal and
8 rest period premium wages described above. Specifically, Plaintiff contends that this conduct violated
9 Labor Code § 226(a) because the wage statements issued to Settlement Class Members did not include
10 all hours worked and the rate at which they were being paid. Plaintiff's data analysis reflected that
11 there were approximately 28,500 wage statements issued during the relevant time period. Therefore,
12 Plaintiff calculated AvalonBay's maximum exposure for wage statement violations based on and
13 applying \$50 for the first violation and \$100 for each subsequent violation, AvalonBay's exposure is
14 **\$2,795,050.**

15 23. AvalonBay argues that meal and rest period claims cannot support a claim for wage
16 statement penalties. AvalonBay further argues that its alleged wage statement violations could not be
17 shown to be "knowing and intentional," and that Plaintiff cannot show that he or any other employee
18 "suffer[ed] injury" as a result of the alleged wage statement violations, as required by Lab. Code §
19 226(e) for imposition of penalties. As such, Plaintiff discounted the calculated exposure by 60% for a
20 risk of non-certification and an additional 65% for a risk of being unsuccessful on the merits, to arrive
21 at an estimated total of \$391,307.00.

22 24. Plaintiff alleges that AvalonBay is also liable for waiting time penalties under Labor
23 Code section 203 as a result of its failure to pay all wages. Based on the data provided by AvalonBay,
24 there were approximately 1,157 Settlement Class members who have separated their employment with
25 AvalonBay during the relevant time period who could be entitled to waiting time penalties. Therefore,
26 Plaintiff calculated AvalonBay's maximum exposure for waiting time penalties at approximately
27 **\$6,225,566.**

1 25. AvalonBay asserts it has strong defenses to the waiting time claim because there exist
2 good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties.
3 Accordingly, Plaintiff discounted the maximum exposure by 60% for the risk of non-certification, and
4 an additional 70% to account for AvalonBay's defenses on the merits, to arrive at an estimated
5 exposure of \$747,067.92.

6 26. Plaintiff alleges that AvalonBay is also liable for failing to pay sick pay and meal period
7 premiums at the regular rate. From the data produced, it appears AvalonBay paid 3,199 meal period
8 premiums during the relevant time. However, the meal period premiums were paid at the base rate of
9 pay and not at the regular rate of pay. Therefore, AvalonBay's liability is not extinguished because it
10 failed to meal period premiums at the correct regular rate of pay, which should have included non-
11 discretionary bonuses in the calculation. Further, Labor Code section 246(l) states that "... paid sick
12 time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the
13 workweek in which the employee uses paid sick time, whether or not the employee actually works
14 overtime in that workweek." Here, Plaintiff alleges that AvalonBay failed to pay Plaintiff and other
15 former non-exempt employees their sick pay in a manner that fully complies with Labor Code section
16 246(l) as the bonuses were not included in the rate of pay. Therefore, Plaintiff calculated AvalonBay's
17 maximum exposure at approximately **\$748,615**, which is inclusive of interest.

18 27. AvalonBay asserts it paid meal period premiums and sick pay at the appropriate rate of
19 pay. AvalonBay also argues that this claim is not suitable for class treatment because it would require
20 individualized determinations. Accordingly, Plaintiff discounted the maximum exposure by 60% for
21 the risk of non-certification, and an additional 60% to account for AvalonBay's defenses on the merits,
22 to arrive at an estimated exposure of \$119,778.40.

23 28. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
24 Labor Code violations. Plaintiff calculated AvalonBay's maximum exposure at **\$2,850,000** (28,500
25 pay periods x \$100 initial violation rate).

26 29. AvalonBay argues that Plaintiff's PAGA claim will fail for the same reasons that her
27 underlying claims will fail. AvalonBay also maintains that, given its good faith defenses, this Court
28

1 would exercise its discretion to substantially reduce any PAGA penalties if it were to find AvalonBay
2 liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the maximum exposure figure by
3 70% for a risk of being unsuccessful on the merits, and an additional 60% to account for the possibility
4 of this Court reducing penalties, to arrive at an estimated exposure of \$342,000.00.

5 30. Using these estimated figures for each of the claims described above, Plaintiff predicted
6 the realistic total recovery for the Settlement Class would be approximately \$2,680,975.98. The
7 proposed settlement of \$1,085,000.00 therefore represents approximately 40% of the reasonably
8 forecasted recovery for the Settlement Class. Preliminary approval is appropriate as the settlement will
9 provide tangible monetary relief to Settlement Class members, and will provide an average recovery to
10 Settlement Class members of approximately \$287.83.

11 31. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the
12 GSA, which is currently estimated to be \$361,666.66, and up to \$30,000.00 in verified costs
13 reimbursement. Class Counsel has incurred substantial attorney fees conducting pre-filing
14 investigation, analyzing Plaintiff's claims, conducting legal research, analyzing timekeeping data and
15 payroll records, preparing for and attending mediation, negotiating and revising the long-form
16 Settlement, preparing this Motion, and otherwise litigating the case. Class Counsel expect to expend
17 additional attorney time in attending the hearing on this Motion, overseeing the Notice process and
18 fielding questions from Settlement Class Members, preparing the final approval papers and attending
19 the Final Approval hearing.

20 32. Plaintiff has provided written approval of the split of attorneys' fees in this action.

21 33. Plaintiff will seek a service award of \$5,000.00 at the time of seeking final approval,
22 and I believe this is reasonable given Plaintiff's efforts in this case and the risks she undertook on
23 behalf of the Settlement Class members, including the risk that he could be liable for AvalonBay's
24 costs if this case was unsuccessful. Plaintiff was integral in the prosecution of this action, by, among
25 other things, providing substantial factual information and documents to Class Counsel, attending
26 multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, and
27 otherwise actively participating in the prosecution of their claims.

34. Although the parties engaged in informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

35. I do not have any conflicts of interest with the class. I have also made reasonable inquiry of other members of my firm and my co-counsel's firm, Haines Law Group, APC, and no one have any conflicts of interest with the class.

36. Plaintiff will serve the Motion for Preliminary Approval and proposed Settlement Agreement on the LWDA on the same date she files her Motion for Preliminary Approval.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on September 1, 2023, at El Segundo, California.


Elizabeth Nguyen

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

May 2, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

Avalonbay Communities, Inc., a Maryland
corporation
c/o CT Corporation System, Agent for Service of
Process
818 West 7th Street
Los Angeles, CA 90017

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

Avalonbay Communities, Inc., a Maryland
corporation
4040 Wilson Boulevard, Suite 1000
Arlington, VA 22203

Re: *Christina Williams v. Avalonbay Communities, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Christina Williams in claims arising from her employment with Avalonbay Communities, Inc., a Maryland corporation (“Defendant”). Ms. Williams is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Williams intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former non-exempt employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Williams started working for Defendant on or about September 2018, as an hourly, non-exempt employee until on or about December 1, 2021, at which time her employment was terminated. During her employment with Defendant, Ms. Williams’ job title was Sales and Service Supervisor. Her job duties included but were not limited to leasing and addressing resident concerns.

During her employment with Defendant, Ms. Williams was generally scheduled to work from 9:30 a.m. to 6:30 p.m., Tuesday through Thursday, and from 8:30 a.m. to 5:30 p.m. on Friday and Saturday. However, Ms. Williams would often work more than eight (8) hours per day and/or forty (40) hours per week.

During Ms. Williams' employment with Defendant, Defendant required Ms. Williams and other non-exempt employees to perform work before they clocked in for their shift. In connection with the COVID-19 pandemic, starting March 2020, Defendant required Ms. Williams and other non-exempt employees to answer a daily screening questionnaire related to COVID-19 using their personal cellular phones before commencing their shift, while Ms. Williams and the other non-exempt employees were not on-the-clock. Despite being under Defendant's direction and control and being required to answer the COVID-19 questionnaire for the benefit of Defendant, Defendant failed to compensate Ms. Williams or the other non-exempt employees for this compensable time due to Defendant's policies and/or procedures. As a result, Defendant failed to pay Ms. Williams and other non-exempt employees all required minimum wages.

While working for Defendant, Ms. Williams routinely worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Ms. Williams received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Ms. Williams and other non-exempt employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Ms. Williams and other non-exempt employees to be underpaid all of their required overtime wages. As a result, Defendant failed to pay Ms. Williams and other non-exempt employees all required overtime wages.

Throughout Ms. Williams' employment with Defendant, Ms. Williams was not provided all legally required meal periods due to Defendant's meal period policies and practices, which fail to provide 30-minute duty free first meal periods before the end of the fifth hour of work in violation of California law. Specifically, due to Defendant's practices of understaffing and work demands imposed by Defendant, Defendant often provided meal periods that were either late or short or failed to provide a required meal period altogether.

Although Ms. Williams and other non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Williams and other non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Ms. Williams was also not authorized and permitted to take all legally required and compliant rest periods due to Defendant's rest period policies and practices. Specifically, due to Defendant's practices of understaffing and the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or major fraction thereof.

On those occasions when Ms. Williams and other non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Ms. Williams and other non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

During Ms. Williams' employment with Defendant, Ms. Williams and other non-exempt employees were required to use their personal cellular phone to discharge their duties. Specifically, Ms. Williams was required to use her personal cellular phone to answer a daily screening questionnaire related to COVID-19 before clocking in for their shift. Defendant knew or should have known that Ms.

Williams and other non-exempt employees were incurring necessary expenses due to the use of their personal cellular phone in the direct discharge of their duties. Yet, despite the necessity of Ms. Williams and other non-exempt employees using their personal cellular phone for work activities and Defendant knew or should have known about same, Ms. Williams and other non-exempt employees were never reimbursed for a reasonable portion of their cellular phone expenses by Defendant, as mandated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

As a result of Defendant's failure to pay all minimum wages, overtime wages, as well as meal period premium wages and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Williams and Defendant's current and former non-exempt employees and failed to timely pay them all final wages due upon separation.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 5 ("Wage Order 5"):

Minimum Wage Violations

Defendant was required to pay Ms. Williams and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 5, § 4. As described above, during Ms. Williams' employment with Defendant, Defendant frequently required Ms. Williams and other Aggrieved Employees to perform work before they clocked in for their shift. In connection with the COVID-19 pandemic, starting March 2020, Defendant required Ms. Williams and other non-exempt employees to answer a daily screening questionnaire related to COVID-19 using their personal cellular phones before commencing their shift, while Ms. Williams and the other Aggrieved Employees were not on-the-clock. Despite being under Defendant's direction and control and being required to answer the COVID-19 questionnaire for the benefit of Defendant, Defendant failed to compensate Ms. Williams and the other Aggrieved Employees for this compensable time due to Defendant's policies and/or procedures. As a result, Defendant failed to pay Ms. Williams and other Aggrieved Employees all required minimum wages.

Overtime Violations

Defendant was required to pay Ms. Williams and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 5, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee."

As explained above, during Ms. Williams' employment with Defendant, Ms. Williams received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Ms. Williams and other Aggrieved Employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Ms. Williams and other Aggrieved Employees to be

underpaid all of their required overtime wages. As a result, Defendant failed to pay Ms. Williams and other Aggrieved Employees all required overtime wages.

Meal Period Violations

Defendant failed to provide Ms. Williams and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 5, § 11. As described above, throughout Ms. Williams' employment with Defendant, Ms. Williams was not provided all legally required meal periods due to Defendant's meal period policies and practices, which fail to provide 30-minute duty free first meal periods before the end of the fifth hour of work in violation of California law. Specifically, as a result of the work demands imposed by Defendant, Defendant often provided meal periods that were either late or short or failed to provide a required meal period altogether. As a result, Ms. Williams and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Ms. Williams and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Williams and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Ms. Williams and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 5, § 12. Specifically, due to Defendant's practices of understaffing and the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or major fraction thereof. As a result, Ms. Williams and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.") On those occasions when Ms. Williams and other Aggrieved Employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Ms. Williams and other Aggrieved Employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

Failure to Reimburse Business Expenses

During Ms. Williams' employment with Defendant, Ms. Williams and other Aggrieved Employees were required to use their personal cellular phone to discharge their duties. Specifically, Ms. Williams was required to use her personal cellular phone to answer a daily screening questionnaire related to COVID-19 before clocking in for their shift. Defendant failed to reimburse Ms. Williams and the Aggrieved Employees for necessary work expenses, including, but not limited to, expenses related to use of their personal cell phones. Defendant's policy of not providing reimbursement for necessary

work-related expenses is in violation of Wage Order 5 § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Ms. Williams the Aggrieved Employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Labor Code § 226 - Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Williams and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total and meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Ms. Williams and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Failure to Pay Sick Pay at the Legal Pay Rate

Defendant's pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §§ 246, 248.5 and/or Labor Code §§ 2699, *et seq.*, to recovery by Ms. Williams and other Aggrieved Employees, in a civil action, to the extent allowed by law.

Labor Code §246(a) states: "(a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Labor Code § 246(b)(1) states: "An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Labor Code §246(l) states: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time."

Defendant, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/ or operated by Defendant, during the relevant time period: (a) administered a uniform company policy and practice as to the pay policies regarding Ms. Williams and other Aggrieved Employees; and (b) failed to pay Ms. Williams and other Aggrieved Employees for paid sick days in a manner that fully complies with Labor Code § 246(l), failed to pay sick days at the regular rate of pay, and/or unlawfully paid sick days at the straight time or base rate of pay.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Ms. Williams and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Ms. Williams and other Aggrieved Employees was willful and, consequently, entitles Ms. Williams and other Aggrieved Employees to wages from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As an "aggrieved employee," Ms. Williams will initiate a civil action on behalf of herself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Williams' own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Williams and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Williams and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Williams and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Williams and other Aggrieved Employees;
- e) Defendant violated Labor Code § 2802 by failing to reimburse Ms. Williams and the Aggrieved Employees for all necessary expenditures incurred;
- f) Defendant violated Labor Code § 226 by failing to furnish Ms. Williams and other Aggrieved Employees with accurate and compliant itemized wage statements;
- g) Defendant violated Labor Code § 204 by failing to pay Ms. Williams and other Aggrieved Employees all earned wages at least twice during each calendar month;
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Williams and other Aggrieved Employees;
- i) Defendant violated Labor Code § 246 by failing to pay Ms. Williams and other Aggrieved Employees sick pay at the legal pay rate; and
- j) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Williams and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC

A handwritten signature in blue ink, appearing to read "Scott M. Lidman", is written over the printed name.

Scott M. Lidman

EXHIBIT 2

EXHIBIT 2

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

April 4, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Michael S. Kun
Kevin D. Sullivan
Chelsea E. Hadaway
EPSTEIN BECKER & GREEN, P.C.
1925 Century Park East, Suite 500
Los Angeles, CA 90067

Attorneys for AvalonBay Communities, Inc.

Re: *Christina Williams v. Avalonbay Communities, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Christina Williams in claims arising from her employment with AvalonBay Communities, Inc., a Maryland corporation (“Defendant”). Ms. Williams is an “aggrieved employee” as defined by Labor Code sections 2699(c) due to Defendant’s numerous violations of the Labor Code as set forth below and in her prior correspondence to the Labor and Workforce Development Agency (“LWDA”) dated May 2, 2022 (the “LWDA Letter”). Attached hereto as **Exhibit A** is a true and correct copy of the LWDA letter and is incorporated herein by reference. By this letter, Ms. Williams hereby supplements her prior LWDA Letter. The purpose of the LWDA Letter and the instant supplement letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the LWDA of the specific provisions of the Labor Code allegedly violated.

In *Huff v. Securitas Security Services USA, Inc.*, 23 Cal. App. 5th 745, 757 (2018), the court held that the Private Attorneys General Act (“PAGA”) “allows an ‘aggrieved employee’ – a person affected by at least one Labor Code violation committed by an employer – to pursue penalties for all the Labor Code violations committed by that employer” that the aggrieved employee alleges, which Ms. Williams does here and in her prior LWDA Letter.

In addition to the Labor Code violations identified in the LWDA Letter, Ms. Williams alleges Defendant is also liable for the following:

Minimum and Overtime Wage Violations

Ms. Williams is informed and believes, and thereon alleges, that during the relevant time period, or at least a portion, Defendant had a policy of rounding non-exempt employees' hours to the detriment of the non-exempt employees, in addition to permitting employees to be contacted on their personal cell phones when not clocked in. As a result, Defendant failed to pay Ms. Williams and other non-exempt employees all required minimum and/or overtime wages.

Failure to Reimburse Business Expenses

Ms. Williams is informed and believes, and therefore alleges, that during the relevant time period, or at least a portion of, Defendant failed to reimburse non-exempt employees for expenses related to using their personal vehicles and/or purchasing tools and equipment to discharge their duties.

Failure to Provide Suitable Seating

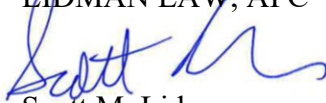
Ms. Williams is informed and believes, and therefore alleges, that during the relevant time period, or at least a portion of, Defendant violated the applicable Industrial Welfare Commission Wage Order (Wage Order 5-2001, Section 14(b)) in that there was no proper suitable seating/break area for Ms. Williams and other Aggrieved Employees.

Relevant Time Period for Alleged Labor Code Violations

As described in the prior LWDA Letter, Ms. Williams was employed by Defendant as an hourly, nonexempt employee from on or about September 2018 until on or about December 1, 2021. After the end of her employment, Ms. Williams has filed a civil action against Defendant on a proposed class and representative PAGA basis, which is presently pending in the United States District Court for the Central District of California, case no. 2:22-cv-03933-FLA-PLA. In that civil action, Ms. Williams has conducted formal and informal discovery. With that foundation, Ms. Williams is informed and believes, and therefore alleges, that Defendant committed the Labor Code violations alleged in the prior LWDA Letter and the instant supplemental letter from as far back as October 25, 2020 through the present, or at least a portion of that time period.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT A

EXHIBIT A

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

May 2, 2022

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN

RECEIPT REQUESTED

Avalonbay Communities, Inc., a Maryland
corporation
c/o CT Corporation System, Agent for Service of
Process
818 West 7th Street
Los Angeles, CA 90017

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RECEIPT REQUESTED

Avalonbay Communities, Inc., a Maryland
corporation
4040 Wilson Boulevard, Suite 1000
Arlington, VA 22203

Re: *Christina Williams v. Avalonbay Communities, Inc.*

To Whom It May Concern:

Please be advised that this law firm represents Christina Williams in claims arising from her employment with Avalonbay Communities, Inc., a Maryland corporation (“Defendant”). Ms. Williams is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Ms. Williams intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all current and former non-exempt employees in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Ms. Williams started working for Defendant on or about September 2018, as an hourly, non-exempt employee until on or about December 1, 2021, at which time her employment was terminated. During her employment with Defendant, Ms. Williams’ job title was Sales and Service Supervisor. Her job duties included but were not limited to leasing and addressing resident concerns.

During her employment with Defendant, Ms. Williams was generally scheduled to work from 9:30 a.m. to 6:30 p.m., Tuesday through Thursday, and from 8:30 a.m. to 5:30 p.m. on Friday and Saturday. However, Ms. Williams would often work more than eight (8) hours per day and/or forty (40) hours per week.

During Ms. Williams' employment with Defendant, Defendant required Ms. Williams and other non-exempt employees to perform work before they clocked in for their shift. In connection with the COVID-19 pandemic, starting March 2020, Defendant required Ms. Williams and other non-exempt employees to answer a daily screening questionnaire related to COVID-19 using their personal cellular phones before commencing their shift, while Ms. Williams and the other non-exempt employees were not on-the-clock. Despite being under Defendant's direction and control and being required to answer the COVID-19 questionnaire for the benefit of Defendant, Defendant failed to compensate Ms. Williams or the other non-exempt employees for this compensable time due to Defendant's policies and/or procedures. As a result, Defendant failed to pay Ms. Williams and other non-exempt employees all required minimum wages.

While working for Defendant, Ms. Williams routinely worked in excess of eight hours per workday and/or more than forty hours per workweek, but did not receive overtime compensation equal to one and one-half times their regular rate of pay for working overtime hours. Specifically, Ms. Williams received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Ms. Williams and other non-exempt employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Ms. Williams and other non-exempt employees to be underpaid all of their required overtime wages. As a result, Defendant failed to pay Ms. Williams and other non-exempt employees all required overtime wages.

Throughout Ms. Williams' employment with Defendant, Ms. Williams was not provided all legally required meal periods due to Defendant's meal period policies and practices, which fail to provide 30-minute duty free first meal periods before the end of the fifth hour of work in violation of California law. Specifically, due to Defendant's practices of understaffing and work demands imposed by Defendant, Defendant often provided meal periods that were either late or short or failed to provide a required meal period altogether.

Although Ms. Williams and other non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Williams and other non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Ms. Williams was also not authorized and permitted to take all legally required and compliant rest periods due to Defendant's rest period policies and practices. Specifically, due to Defendant's practices of understaffing and the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or major fraction thereof.

On those occasions when Ms. Williams and other non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Ms. Williams and other non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

During Ms. Williams' employment with Defendant, Ms. Williams and other non-exempt employees were required to use their personal cellular phone to discharge their duties. Specifically, Ms. Williams was required to use her personal cellular phone to answer a daily screening questionnaire related to COVID-19 before clocking in for their shift. Defendant knew or should have known that Ms.

Williams and other non-exempt employees were incurring necessary expenses due to the use of their personal cellular phone in the direct discharge of their duties. Yet, despite the necessity of Ms. Williams and other non-exempt employees using their personal cellular phone for work activities and Defendant knew or should have known about same, Ms. Williams and other non-exempt employees were never reimbursed for a reasonable portion of their cellular phone expenses by Defendant, as mandated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137.

As a result of Defendant's failure to pay all minimum wages, overtime wages, as well as meal period premium wages and rest period premium wages, Defendant maintained inaccurate payroll records and issued inaccurate wage statements to Ms. Williams and Defendant's current and former non-exempt employees and failed to timely pay them all final wages due upon separation.

As described above, Defendant committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 5 ("Wage Order 5"):

Minimum Wage Violations

Defendant was required to pay Ms. Williams and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 5, § 4. As described above, during Ms. Williams' employment with Defendant, Defendant frequently required Ms. Williams and other Aggrieved Employees to perform work before they clocked in for their shift. In connection with the COVID-19 pandemic, starting March 2020, Defendant required Ms. Williams and other non-exempt employees to answer a daily screening questionnaire related to COVID-19 using their personal cellular phones before commencing their shift, while Ms. Williams and the other Aggrieved Employees were not on-the-clock. Despite being under Defendant's direction and control and being required to answer the COVID-19 questionnaire for the benefit of Defendant, Defendant failed to compensate Ms. Williams and the other Aggrieved Employees for this compensable time due to Defendant's policies and/or procedures. As a result, Defendant failed to pay Ms. Williams and other Aggrieved Employees all required minimum wages.

Overtime Violations

Defendant was required to pay Ms. Williams and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 5, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee."

As explained above, during Ms. Williams' employment with Defendant, Ms. Williams received non-discretionary bonuses and/or other forms of pay not excludable as a matter of law when calculating an employee's regular rate (hereinafter the aforementioned forms of pay are collectively referred to as "Incentive Pay"). Despite Defendant's payment of Incentive Pay to Ms. Williams and other Aggrieved Employees, Defendant's policies and/or procedures failed to include all forms of Incentive Pay when calculating the regular rate of pay, thereby causing Ms. Williams and other Aggrieved Employees to be

underpaid all of their required overtime wages. As a result, Defendant failed to pay Ms. Williams and other Aggrieved Employees all required overtime wages.

Meal Period Violations

Defendant failed to provide Ms. Williams and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 5, § 11. As described above, throughout Ms. Williams' employment with Defendant, Ms. Williams was not provided all legally required meal periods due to Defendant's meal period policies and practices, which fail to provide 30-minute duty free first meal periods before the end of the fifth hour of work in violation of California law. Specifically, as a result of the work demands imposed by Defendant, Defendant often provided meal periods that were either late or short or failed to provide a required meal period altogether. As a result, Ms. Williams and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."). Although Ms. Williams and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendant failed to compensate Ms. Williams and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendant also failed to authorize and permit Ms. Williams and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 5, § 12. Specifically, due to Defendant's practices of understaffing and the work demands imposed by Defendant, Defendant did not authorize and permit one rest period for every four hours worked, or major fraction thereof. As a result, Ms. Williams and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 ("If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest period is not provided.") On those occasions when Ms. Williams and other Aggrieved Employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendant failed to compensate Ms. Williams and other Aggrieved Employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

Failure to Reimburse Business Expenses

During Ms. Williams' employment with Defendant, Ms. Williams and other Aggrieved Employees were required to use their personal cellular phone to discharge their duties. Specifically, Ms. Williams was required to use her personal cellular phone to answer a daily screening questionnaire related to COVID-19 before clocking in for their shift. Defendant failed to reimburse Ms. Williams and the Aggrieved Employees for necessary work expenses, including, but not limited to, expenses related to use of their personal cell phones. Defendant's policy of not providing reimbursement for necessary

work-related expenses is in violation of Wage Order 5 § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Ms. Williams the Aggrieved Employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Labor Code § 226 - Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Ms. Williams and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, total and meal and rest period premium wages, in violation of Labor Code § 226 *et seq.* Defendant's failure to furnish Ms. Williams and other Aggrieved Employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendant's reported data.

Failure to Pay Sick Pay at the Legal Pay Rate

Defendant's pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement, pursuant to Labor Code §§ 246, 248.5 and/or Labor Code §§ 2699, *et seq.*, to recovery by Ms. Williams and other Aggrieved Employees, in a civil action, to the extent allowed by law.

Labor Code §246(a) states: "(a) An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Labor Code § 246(b)(1) states: "An employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment or the operative date of this article, whichever is later, subject to the use and accrual limitations set forth in this section." Labor Code §246(l) states: "For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time."

Defendant, as a matter of established company policy and procedure, at each and every one of the individual facilities owned and/ or operated by Defendant, during the relevant time period: (a) administered a uniform company policy and practice as to the pay policies regarding Ms. Williams and other Aggrieved Employees; and (b) failed to pay Ms. Williams and other Aggrieved Employees for paid sick days in a manner that fully complies with Labor Code § 246(l), failed to pay sick days at the regular rate of pay, and/or unlawfully paid sick days at the straight time or base rate of pay.

Waiting Time Penalties

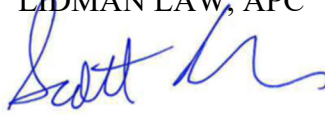
Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendant failed to timely pay Ms. Williams and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendant's failure to pay all final wages due to Ms. Williams and other Aggrieved Employees was willful and, consequently, entitles Ms. Williams and other Aggrieved Employees to wages from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As an "aggrieved employee," Ms. Williams will initiate a civil action on behalf of herself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Ms. Williams' own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Ms. Williams and other Aggrieved Employees all overtime compensation earned;
- b) Defendant violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Ms. Williams and other Aggrieved Employees the statutory minimum wage for all hours worked;
- c) Defendant violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Ms. Williams and other Aggrieved Employees;
- d) Defendant violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Ms. Williams and other Aggrieved Employees;
- e) Defendant violated Labor Code § 2802 by failing to reimburse Ms. Williams and the Aggrieved Employees for all necessary expenditures incurred;
- f) Defendant violated Labor Code § 226 by failing to furnish Ms. Williams and other Aggrieved Employees with accurate and compliant itemized wage statements;
- g) Defendant violated Labor Code § 204 by failing to pay Ms. Williams and other Aggrieved Employees all earned wages at least twice during each calendar month;
- h) Defendant violated Labor Code § 1174 by failing to maintain accurate records on behalf of Ms. Williams and other Aggrieved Employees;
- i) Defendant violated Labor Code § 246 by failing to pay Ms. Williams and other Aggrieved Employees sick pay at the legal pay rate; and
- j) Defendant violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Ms. Williams and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC

A handwritten signature in blue ink, appearing to read "Scott M. Lidman", is written over the printed name.

Scott M. Lidman

EXHIBIT 3

EXHIBIT 3

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Christina Williams (“Plaintiff”), and AvalonBay Communities, Inc. (“Defendant” or “AvalonBay”). The Agreement refers to Plaintiff and AvalonBay collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS.

- 1.1. **“Action”** means Plaintiff’s lawsuit alleging wage and hour violations against AvalonBay, captioned in *Christina Williams v. AvalonBay Communities, Inc.*, Case No. 22STCV14614, initiated on May 2, 2022, and pending in the Superior Court of California, County of Los Angeles and remanded from the United States District Court, Case No. 2:22-cv-03933-FLA-PLA.
- 1.2. **“Administrator”** means Phoenix Class Action Administration Solutions, the neutral third-party administrator which the Parties have agreed to appoint to administer the Settlement, pursuant to Court approval.
- 1.3. **“Administration Expenses Payment”** means the amount the Administrator will be paid from the Gross Settlement Amount (subject to Court approval) to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. **“Aggrieved Employees”** means all current and former non-exempt, hourly employees of AvalonBay who worked in California at any time during the PAGA Period.
- 1.5. **“Class”** means all current and former non-exempt, hourly employees of AvalonBay who worked in California at any time during the Class Period.
- 1.6. **“Class Counsel”** means Lidman Law, APC; and Haines Law Group, APC.
- 1.7. **“Class Counsel Fee Award”** means the Court-approved award of attorneys’ fees to be paid to Class Counsel for the services they rendered on behalf of Plaintiff, the Class, and the Aggrieved Employees. Class Counsel will not seek, and Defendant will not oppose, attorneys’ fees of more than one-third (1/3) of the Gross Settlement Amount (include one-third (1/3) of an increase pursuant to the Escalator Clause at Paragraph 8 below) as their Fee Award.
- 1.8. **“Class Counsel Litigation Expenses Payment”** is the amount allocated to Class Counsel for reimbursement of reasonable attorneys’ expenses incurred to prosecute the Action.
- 1.9. **“Class Data”** means Class Member identifying information in AvalonBay’s possession, including each Class Member’s name, last-known mailing address, Social Security number, and number of Class Period Workweeks and PAGA Pay Periods.

- 1.10. **“Class Member”** means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.11. **“Class Member Address Search”** means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.12. **“Class Notice”** means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as **Exhibit A** to this Agreement, and incorporated by reference into this Agreement.
- 1.13. **“Class Period”** means the period between May 2, 2018 and either (i) April 10, 2023 (*i.e.*, 90 days after the January 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later.
- 1.14. **“Class Representative”** means the named Plaintiff in the Second Amended Complaint to be filed in the Action seeking Court approval to serve as a Class Representative.
- 1.15. **“Class Representative Service Payment”** means the payment to the Class Representative for initiating the Action and providing services in support of the Action, which will not exceed Five Thousand Dollars (\$5,000.00).
- 1.16. **“Court”** means the Superior Court of California, County of Los Angeles.
- 1.17. **“AvalonBay”** means defendant AvalonBay Communities, Inc.
- 1.18. **“Defense Counsel”** means Michael S. Kun, Kevin D. Sullivan, and Chelsea Hadaway of Epstein Becker & Green, P.C.
- 1.19. **“Effective Date”** means the earliest court date by which both of the following have occurred: (a) the Court enters a Judgment based on its Final Approval of the Settlement; and (b) the Judgment becomes “Final.” “Final,” as used in the definition of Effective Date shall mean the latest of: (i) if there is an appeal of the Court’s judgment, the date the judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for certiorari in the United States Supreme Court petition or a petition for review in the California Supreme Court, as applicable; or (ii) if such a petition is filed, the date of denial of the petition, or the date the judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal from the judgment.

- 1.20. **“Final Approval”** means the Court’s order granting final approval of the Settlement and entering judgment.
- 1.21. **“Final Approval Hearing”** means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.22. **“Final Judgment”** means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.23. **“Gross Settlement Amount”** means One Million Eighty-Five Thousand Dollars and Zero Cents (\$1,085,000) and is non-reversionary. The Gross Settlement Amount and AvalonBay’s share of payroll taxes comprises the total amount AvalonBay agrees to pay, can ever be required to pay, or can ever cause to be paid, under the Settlement except as provided in Paragraph 8 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fee Award, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.
- 1.24. **“Individual Class Payment”** means each Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the participating Class Member during the Class Period.
- 1.25. **“Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period by each Aggrieved Employee.
- 1.26. **“Judgment”** means the judgment entered by the Court upon granting Final Approval.
- 1.27. **“LWDA”** means the California Labor and Workforce Development Agency.
- 1.28. **“LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the LWDA pursuant to California Labor Code § 2699(i).
- 1.29. **“Net Settlement Amount”** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payment, (d) the Class Counsel Fee Award, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.30. **“Non-Participating Class Member”** means any Class Member who opts out of the Settlement’s release of class action claims by sending the Administrator a valid and timely Request for Exclusion.
- 1.31. **“PAGA Pay Period”** means any pay period during which an Aggrieved Employee worked for AvalonBay for at least one day during the PAGA Period.

- 1.32. **“PAGA Period”** means the period between October 25, 2020 and either (i) April 10, 2023 (*i.e.*, 90 days after the January 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later.
- 1.33. **“PAGA”** means the Private Attorneys General Act of 2004 (Labor Code §§ 2698 et seq.).
- 1.34. **“PAGA Notices”** means Plaintiff’s letters dated May 2, 2022 and April 4, 2023 to AvalonBay and the LWDA providing notice pursuant to California Labor Code § 2699.3(a).
- 1.35. **“PAGA Penalties”** means the total amount of \$108,500 in PAGA penalties to be paid from the Gross Settlement Amount, 25% of which (\$27,125) shall be paid to the Aggrieved Employees, and 75% of which (\$81,375) shall be paid to the LWDA in settlement of the Released PAGA Claims.
- 1.36. **“Participating Class Member”** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.37. **“Plaintiff”** means Christina Williams, the named Plaintiff in the Action.
- 1.38. **“Preliminary Approval Order”** means the Order Granting Preliminary Approval of the Settlement.
- 1.39. **“Released Class Claims”** means the claims being released as described in Paragraphs 5.2.
- 1.40. **“Released PAGA Claims”** means the claims being released as described in Paragraph 5.3.
- 1.41. **“Released Parties”** means AvalonBay Communities, Inc. and any of its past and present officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys.
- 1.42. **“Request for Exclusion”** means a Class Member’s timely and valid submission of a written request to be excluded from the Settlement’s release of class action claims signed by the Class Member.
- 1.43. **“Response Deadline”** means 60 days after the Administrator mails Class Notices to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Released Class Claims of the Settlement, or (b) fax, email, or mail written objections to class components of the Settlement. For Class Members to whom Class Notices are re-mailed after having been returned undeliverable to the Administrator, the Response Deadline shall be extended by an additional 14 days.

- 1.44. “**Settlement**” means the disposition of the Action effected by this Agreement and the Judgment.
- 1.45. “**Workweek**” means any week during which a Class Member worked for AvalonBay for at least one day during the Class Period.

2. RECITALS.

- 2.1. On May 2, 2022, Plaintiff filed a putative class action against AvalonBay in this Court captioned *Christina Williams v. AvalonBay Communities, Inc.*, Case No. 22STCV14614.
- 2.2. On June 8, 2022, AvalonBay filed a Notice of Removal under the Class Action Fairness Act of 2005 to the Central District of California of United States District Court, Case No. 22-CV-03933 (“Federal Action”).
- 2.3. On October 5, 2022, Plaintiff filed a First Amended Complaint in the Federal Action alleging the following putative class action and representative claim against AvalonBay: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to timely pay all wages due upon separation; (8) unfair competition under California Business & Professions Code §§ 17200 *et seq.*; and (9) civil penalties under California Private Attorneys General Act of 2004, §§ 2698, *et seq.*
- 2.4. Pursuant to California Labor Code § 2699.3(a), Plaintiff gave written notice to AvalonBay and the LWDA by sending the initial PAGA Notice on May 2, 2022. Plaintiff supplemented her initial PAGA Notice by sending a letter to AvalonBay and the LWDA on April 4, 2023 (collectively, the PAGA Notices).
- 2.5. On January 12, 2023, the Parties participated in an all-day mediation presided over by mediator Philip E. Cook, Esq. which led to this Agreement to settle the Action. The Parties represent that, prior to mediation, they conducted significant investigation of the facts and law through informal discovery. AvalonBay produced documents relating to its policies, practices, and procedures regarding its wage and hour practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal premiums paid, and other operational policies. As part of AvalonBay’s production, Class Counsel represent they also reviewed time records, pay records, and information relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period and the PAGA Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged within the course and scope of the Parties’ mediation, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

- 2.6. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 8 below, AvalonBay agrees to pay One Million Eighty-Five Thousand Dollars and Zero Cents (\$1,085,000.00) as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. AvalonBay has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to AvalonBay.
- 3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:
- 3.2.1. To Plaintiff: Class Representative Service Payment, subject to Court approval, of no more than Five Thousand Dollars (\$5,000.00) to the Class Representative in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and/or Aggrieved Employee. AvalonBay will not oppose Plaintiff's request for Class Representative Service Payment that does not exceed this amount. Plaintiff will seek Court approval for any Class Representative Service Payment. Plaintiff and Class Counsel shall file this motion no later than 16 court days prior to the Final Approval Hearing. If the Court approves an amount of Class Representative Service Payment that is less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for all employee taxes owed on her Class Representative Service Payment.
- 3.2.2. To Class Counsel: The Class Counsel Fee Award, subject to Court approval, in an amount up to one-third (1/3) of the Gross Settlement Amount (including one-third of an increase pursuant to Paragraph 8, which will compensate Class Counsel for all work performed and to be performed in the Action. The Class Counsel Fee Award is currently estimated to be \$361,666.66. In addition, Class Counsel shall, subject to Court approval, request reimbursement of the Class Counsel Litigation Expenses Payment. AvalonBay will not oppose requests for these payments that do not exceed these amounts. The Administrator will pay the Class Counsel Fee Award and Class Counsel Litigation Expenses Payment using IRS Forms 1099. Class Counsel assumes

full responsibility and liability for taxes owed on the Class Counsel Fee Award and the Class Counsel Litigation Expenses Payment and holds Released Parties harmless, and indemnifies Released Parties, from any dispute or controversy regarding any division or sharing of these Payments.

- 3.2.3. To the Administrator: Settlement Administration costs shall not exceed \$21,000.00, except for a showing of good cause and as approved by the Court. To the extent the Settlement Administration costs are less, or the Court approves payment of less than \$21,000.00, the Administrator will allocate the remainder to the Net Settlement Amount.
- 3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the total Workweeks worked by each Participating Class Member during the Class Period.
 - 3.2.4.1. Tax Allocation of Individual Class Payments. 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on IRS Form W-2. The remaining 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Forms 1099. Each Participating Class Member assumes full responsibility and liability for any employee taxes owed on his or her Individual Class Payment.
 - 3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. However, Non-Participating Class Members who are Aggrieved Employees will still receive an Individual PAGA Payment regardless of whether they submit a valid and timely Request for Exclusion.
- 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the total amount of \$108,500 to be paid from the Gross Settlement Amount. 75% of PAGA Penalties (\$81,375) shall be allocated to the LWDA PAGA Payment, and 25% of PAGA Penalties (\$27,125) shall be allocated to the Individual PAGA Payments.
 - 3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$27,125) by the total number of PAGA Pay Periods worked by all Aggrieved Employees, and (b) multiplying the result by the total PAGA Pay Periods worked by each Aggrieved

Employee. Each Aggrieved Employee assumes full responsibility and liability for any taxes owed on his or her Individual PAGA Payment.

- 3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS Forms 1099.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1. Estimated Class Workweeks and PAGA Pay Periods. Based on a review of its records to date, AvalonBay estimates that the Class Members collectively worked a total of 175,956 Workweeks from May 2, 2018 through January 7, 2023.
- 4.2. Delivery of Class Data. Within 20 days after the Order granting Preliminary Approval is entered and served, AvalonBay will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. AvalonBay has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data to the Administrator as soon as reasonably feasible. Without any extension of the deadline by which AvalonBay must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3. Funding of Gross Settlement Amount. AvalonBay shall fully fund the Gross Settlement Amount, including all amounts necessary to fully pay AvalonBay's share of payroll taxes, by transmitting such funds to the Administrator within 30 days after the Effective Date.
- 4.4. Payments from the Gross Settlement Amount. Within 10 business days after AvalonBay funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fee Award, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fee Award, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
- 4.4.1. The Administrator will issue checks for the Individual Class Payments and Individual PAGA Payments and send them to all Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the

date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members, including those whose Class Notices were returned undeliverable. The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved Employees, and including those Aggrieved Employees whose Class Notices were returned undeliverable. The Administrator may send Participating Class Members who are also Aggrieved Employees a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database.

- 4.4.2. The Administrator must conduct a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are returned undeliverable without USPS forwarding addresses. Within 3 business days of receiving a returned check, the Administrator must re-mail checks to the forwarding address provided by USPS, or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as undeliverable. The Administrator shall promptly send a replacement check requested by any Participating Class Member or Aggrieved Employee whose original check was lost or misplaced prior to the check void date.
- 4.4.3. For any Participating Class Member whose Individual Class Payment check is uncashed and cancelled after the void date, and for any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Controller's Unclaimed Property Fund, in the name of the Participating Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). Participating Class Members whose Individual Class Payment checks are cancelled shall, nevertheless, be bound by the Class Settlement. Aggrieved Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by the Released PAGA Claims.
- 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate AvalonBay to confer any additional benefits or make any additional payments to Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

- 5. **RELEASES OF CLAIMS.** Effective on the date when AvalonBay fully funds the entire Gross Settlement Amount, which includes all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from any and all claims, transactions, or occurrences, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged based on the facts alleged in the Action and facts alleged in Plaintiff's PAGA Notices; (b) all claims that were, or reasonably could have been, ascertained during the Action, and (c) all claims released pursuant to Paragraphs **Error! Reference source not found.** and 5.3 below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or to claims or actions based on occurrences after this Agreement is executed by Plaintiff. Plaintiff acknowledges that she may discover facts or law different from, or in addition to, the facts or law that she now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts, her discovery of those facts.

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or released party.

Notwithstanding the foregoing, the 1542 waiver and general release of Plaintiff's claims in this Agreement do not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims, if any; (ii) any rights or claims arising out of this Agreement after it is executed by Plaintiff; and (iii) rights or claims arising of this Agreement. The Agreement in no way affects Plaintiff's entitlement and/or benefits, if any, to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation. Plaintiff also agrees to not request an exclusion from this Settlement.

5.2. Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release and discharge Released Parties from all claims, demands, rights, liabilities and causes of action that have been and will be pled in the Complaints in the Action as well as all claims, demands, rights, liabilities and causes of action that could have been alleged based on the facts that have been and will be alleged in the Complaints in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all minimum wages owed, including but not limited to the alleged failure to pay for purported off-the-clock work; (b) failure to pay all overtime wages owed,

including but not limited to the alleged failures to (i) properly calculate the regular rate of pay and (ii) pay for purported off-the-clock work; (c) failure to provide meal periods, or premium pay for non-compliant meal periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying meal period premiums; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying rest period premiums; (e) failure to reimburse necessary business expenses; (f) failure to issue accurate, itemized wage statements; and (g) failure to timely pay all wages due upon separation of employment, including but not limited to the alleged failure to pay all wages purportedly due as a result of the claims alleged in (a)–(e) above and based on the failure to properly calculate the correct rate of pay when paying sick leave under the Healthy Workplace Healthy Family Act (“HWHFA”); (i) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above or the failure to properly calculate the correct rate of pay when paying sick leave under the HWHFA; and (j) all claims under the Fair Labor Standards Act (“FLSA”) that could have been premised on the facts, claims, causes of action or legal theories described above. Except as set forth in Paragraph **Error! Reference source not found.**3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

The following language will be printed on the reverse of each Individual Class Payment check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

- 5.3. Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under PAGA as asserted in the Complaints in the Action, the letter sent to the LWDA dated May 2, 2022 (case no. LWDA-CM-881669-22), and the supplemental letter sent to the LWDA dated April 4, 2023, that arose during the PAGA Period premised on the facts, claims, causes of action or legal theories as well as all claims, demands, rights, liabilities and causes of action under PAGA that could have been alleged based on the facts that have been and will be alleged in the Complaints in the Action and the PAGA Notices referenced herein (“Released PAGA Claims”).

6. **MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the

Court's current checklist for Preliminary Approvals.

- 6.1. AvalonBay's Declaration in Support of Preliminary Approval. Within 10 business days of the full execution of this Agreement, AvalonBay will prepare and deliver to Class Counsel a signed Declaration from AvalonBay and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and AvalonBay shall aver that, other than the Deck Action, they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code § 2699 (1)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with any Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve as Class Representative and disclosing all facts relevant to any actual or potential conflicts of interest with any Class Members and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class; its timely transmission to the LWDA of all necessary PAGA documents, including Plaintiff's PAGA Notices, the Operative Complaint, this Agreement; (vii) a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and (viii) all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator. In their respective Declarations, Plaintiff and Class Counsel shall state whether they are aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.
- 6.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval, which they expect will occur no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the

disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1. Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.
- 7.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.
- 7.4. Notice to Class Members.
 - 7.4.1. No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.
 - 7.4.2. Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice, with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate (1) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and (2) the number of Workweeks and/or PAGA Pay Periods used to calculate these amounts. Before mailing Class Notices, the Administrator shall update the Class Members' addresses using the National Change of Address database.
 - 7.4.3. No later than three (3) business days after the Administrator's receipt of any Class Notice returned by the USPS as undeliverable, the Administrator shall re-mail the Class Notice, via first-class USPS mail, using any forwarding address provided by the USPS. If the USPS does not provide a forwarding

address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notices are returned by the USPS a second time.

7.4.4. The deadlines for Class Members' written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

7.4.5. If the Administrator, AvalonBay, or Class Counsel are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement no later than 14 days after their respective receipt of the Class Notices, or the Response Deadline provided in the Class Notices, whichever is later.

7.5. Class Members' Requests for Exclusion (Opt-Outs).

7.5.1. Class Members who wish to exclude themselves from (or opt-out of) the Settlement's release of class action claims must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion no later than the Response Deadline – *i.e.*, 60 days after the Administrator mails the Class Notice (plus an additional 14 days for any Class Member whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's choice to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

7.5.2. The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all of the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the

Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

- 7.5.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are also Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and will still receive an Individual PAGA Payment based on the terms of this Agreement.
- 7.5.5. Challenges to Calculation of Workweeks. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed after having been returned undeliverable to the Administrator) to challenge the number of Workweeks allocated to the Class Member in the Class Notice. The Class Member may communicate such challenge with the Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. Unless otherwise determined by the Court, the Administrator's determination of each Class Member's allocation of Workweeks shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.6. Objections to Class Action Components of the Settlement.

- 7.6.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fee Award, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment.
- 7.6.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to

present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline – *i.e.*, 60 days after the Administrator’s mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed after having been returned as undeliverable).

7.6.3. Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

7.7. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.7.1. Website, Email Address, and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing, and copies of the Settlement Agreement, the Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval of Class Action and PAGA Settlement, Class Representative Service Payment, Class Counsel Fee Award, and Class Counsel Litigation Expenses Payment, and the Final Approval and Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

7.7.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. No later than five (5) days after the expiration of the Response Deadline, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (the “Exclusion List”); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion submitted (whether valid or invalid).

7.7.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned as undeliverable, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

- 7.7.4. Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges to the calculation of Workweeks and/or all Aggrieved Employee challenges to the calculation of Pay Periods. The Administrator's decision shall be final and not appealable or otherwise susceptible to challenge.
- 7.7.5. Administrator's Declaration. No later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undeliverable, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.
- 7.7.6. Final Report by Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

8. **CLASS ESTIMATES AND ESCALATOR CLAUSE.** Based on a review of its records to date, AvalonBay represents that there were an estimated 175,956 workweeks from May 2, 2018 through January 7, 2023. If it is determined that the number of Workweeks worked by the Class Members from May 2, 2018 through January 7, 2023 is more than 10% greater than this figure (*i.e.*, if there were actually more than 193,552 Workweeks worked by the Class Members from May 2, 2018 through January 7, 2023), then Defendant agrees to increase the Gross Settlement Amount on a proportional basis to the extent the threshold is exceeded (*e.g.*, if the number of Workweeks from May 2, 2018 through January 7, 2023 was actually 11% more than 175,956, *i.e.*, increases by 11% to 195,312 Workweeks, the Gross Settlement Amount will increase by one percent (1%)).
9. **AVALONBAY'S RIGHT TO WITHDRAW.** If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the Class, AvalonBay may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if AvalonBay withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement, except that AvalonBay will remain responsible for paying all Settlement Administration Expenses actually incurred up to that time.

AvalonBay must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. No later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code § 2699(I), a Proposed Final Approval Order, and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel no later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

- 10.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than five (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.
- 10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fee Award, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.
- 10.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or the Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.
- 10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fee Award and Class Counsel Litigation Expenses Payment set forth in this Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

- 10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the reviewing Court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after any such remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.
11. **AMENDED JUDGMENT.** If any amended judgment is required under California Code of Civil Procedure § 384, the Parties will work together in good faith to jointly submit a proposed amended judgment.
12. **ADDITIONAL PROVISIONS.**
- 12.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by AvalonBay that any of the allegations in the Operative Complaint have merit or that AvalonBay has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that AvalonBay's defenses in the Action have merit. The Parties agree that class certification and representative treatment are for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, AvalonBay reserves the right to contest certification of any class, and the manageability of any representative claim, for any reasons, and AvalonBay reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest AvalonBay's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation, except for proceedings to enforce or effectuate the Settlement and this Agreement.
- 12.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, AvalonBay and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or subpoena issued by a state or federal government agency; or (6) to the extent disclosure is required, as determined by a

Party's counsel, by applicable law or regulation. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, AvalonBay and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

- 12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of the Settlement, to object to the Settlement, or appeal from the Judgment. Nothing in this Paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.
- 12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibit(s) shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party concerning the Settlement or the Action.
- 12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and AvalonBay, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.7. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.8. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.9. No Tax Advice. Neither Plaintiff, Class Counsel, AvalonBay, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this

Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

- 12.10. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court. A waiver or amendment of any provisions of this Agreement will not constitute a waiver of any other provision.
- 12.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.12. Applicable Law. All terms and conditions of this Agreement and its exhibit(s) will be governed by and interpreted according to the internal laws of the State of California, without regard to conflict of law principles.
- 12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was its drafter or participated in its drafting.
- 12.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.15. Use and Return of Documents and Information Provided for Mediation Purposes and in Anticipation of Litigation. Information and documents provided to Class Counsel in connection with the mediation, other settlement negotiations, or in connection with the Settlement or in anticipation of litigation, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a declaration confirming the final disbursement of the Gross Settlement Amount, Plaintiff and Class Counsel shall destroy all paper and electronic versions of the information and documents that Plaintiff and Class Counsel were provided by AvalonBay in connection with the mediation, other settlement negotiations, or in connection with the Settlement, except that Class Counsel is permitted to keep one copy for their records. None of this information or documents shall be used for any purpose outside of the Action, nor will Plaintiff or Class Counsel disseminate this information or documents to any third party under any circumstances. Neither Plaintiff nor Class Counsel shall use Defendants' employees' contact information or employment records for the purposes of initiating any other civil or administrative action or arbitration against Defendants, including without limitation for solicitation or for the distribution of any attorney advertising.
- 12.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

- 12.17. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed delivered by United States mail, by overnight mail, by email, or by messenger, to the addresses set forth below:

To Plaintiff Christina
Williams:

LIDMAN LAW, APC

Scott M. Lidman (slidman@lidmanlaw.com)
Elizabeth Nguyen (enguyen@lidmanlaw.com)
Milan Moore (mmoore@lidmanlaw.com)
2155 Campus Drive, Suite 150
El Segundo, CA 90245

HAINES LAW GROUP, APC

Paul K. Haines (phaines@haineslawgroup.com)
2155 Campus Drive, Suite 180
El Segundo, CA 90245

To AvalonBay:

EPSTEIN BECKER & GREEN, P.C.

Michael S. Kun (MKun@ebglaw.com)
Kevin D. Sullivan (KSullivan@ebglaw.com)
Chelsea Hadaway (CHadaway@ebglaw.com)
1925 Century Park East, Suite 500
Los Angeles, CA 90067

- 12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (e.g., DocuSign), or scanned copies of the signature page which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be on and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.20. Stay of Litigation. The Parties agree to hold in abeyance all proceedings in the Action (including with respect to California Code of Civil Procedure § 583.310), except such proceedings necessary to implement and complete the Settlement. The Parties further agree that upon the signing of this Agreement that pursuant to California Code of Civil Procedure § 583.310 to extend the date to bring this case to trial under California Code of Civil Procedure § 583.310 for the entire period of this settlement process.

- 12.21. No Signature Required by Class Members. Only the Plaintiff will be required to execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.
- 12.22. Submissions to the LWDA. At the same time as they submit this Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(l)(2). Within ten (10) days of entry of the Final Approval Order and Judgment, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(l)(3).
- 12.23. Invalidity of Any Provision; Severability. Before declaring any provision of this Settlement invalid, the Parties request that the Court first attempt to construe the provisions valid, to the fullest extent possible, consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected.

IT IS SO AGREED.

For Plaintiff Christina Williams:

Dated: Aug 31, 2023, 2023

Christina Williams
Christina Williams (Aug 31, 2023 13:35 PDT)
CHRISTINA WILLIAMS

For Defendant:

Dated: _____, 2023

AVALONBAY COMMUNITIES, INC.

By: _____
Its: _____

APPROVED AS TO FORM

Dated: August 31, 2023

LIDMAN LAW, APC

By: Scott M. Lidman
Scott M. Lidman
Attorneys for Plaintiff

- 12.21. No Signature Required by Class Members. Only the Plaintiff will be required to execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.
- 12.22. Submissions to the LWDA. At the same time as they submit this Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(l)(2). Within ten (10) days of entry of the Final Approval Order and Judgment, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(l)(3).
- 12.23. Invalidity of Any Provision; Severability. Before declaring any provision of this Settlement invalid, the Parties request that the Court first attempt to construe the provisions valid, to the fullest extent possible, consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected.

IT IS SO AGREED.

For Plaintiff Christina Williams:

Dated: _____, 2023

CHRISTINA WILLIAMS

For Defendant:

Dated: August 22, 2023

AVALONBAY COMMUNITIES, INC.



By: Veronica ROBERTAZZI

Its: Vice President, Human Resources

///

APPROVED AS TO FORM:

Dated: _____, 2023

LIDMAN LAW, APC

EPSTEIN BECKER & GREEN, P.C.

Dated: August 24, 2023

By: 
Michael S. Kun
Kevin D. Sullivan
Attorneys for Defendant

EXHIBIT A

EXHIBIT A

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Christina Williams v. AvalonBay Communities, Inc., Case No. 22STCV14614

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against AvalonBay Communities, Inc. (“AvalonBay”) for alleged wage and hour violations. The Action was filed by a former employee, Christina Williams (“Plaintiff”), and seeks payment of unpaid wages and penalties for AvalonBay’s alleged failure to: pay all minimum and/or overtime wages owed, provide meal periods or premium pay for non-complaint meal periods, authorize and permit rest periods, or premium pay for non-compliant rest periods, reimburse necessary business expenses, issue accurate, itemized wage statements, timely pay all wages due upon separation of employment, and to properly calculate the correct rate of pay when paying sick leave under the Healthy Workplace Healthy Family Act (“HWHFA”) for a class of all current and former hourly-paid or non-exempt employees (“Class Members”) who worked for AvalonBay during the Class Period (from May 2, 2018 to [either (i) April 10, 2023 or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later]) and (2) penalties under the California Private Attorney General Act (“PAGA”) for all current and former hourly-paid or non-exempt employees who worked for AvalonBay during the PAGA Period (from October 25, 2020 to [either (i) April 10, 2023, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later]) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring AvalonBay to fund Individual Class Payments, and (2) a PAGA Settlement requiring AvalonBay to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on AvalonBay’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to AvalonBay’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on AvalonBay’s records showing that **you worked _____ workweeks** during the Class Period and **you worked _____ pay periods** during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read

and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires AvalonBay to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against AvalonBay.

If you worked for AvalonBay during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against AvalonBay.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against AvalonBay, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

AvalonBay will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against AvalonBay that are covered by this Settlement (Released Class Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.
The Opt-out Deadline is _____	You cannot opt-out of the PAGA portion of the proposed Settlement. AvalonBay must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to AvalonBay’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former AvalonBay employee. The Action alleges AvalonBay violated California labor laws by failing to: pay all minimum and/or overtime wages owed, provide meal periods or premium pay for non-complaint meal periods, authorize and permit rest periods, or premium pay for non-compliant rest periods, reimburse necessary business expenses, issue accurate, itemized wage statements, timely pay all wages due upon separation of employment, and properly calculate the correct rate of pay when paying sick leave under the HWHFA. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Scott M. Lidman, Elizabeth Nguyen and Milan Moore of Lidman Law, APC and Paul Haines of Haines Law Group, APC (“Class Counsel.”)

AvalonBay strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether AvalonBay or Plaintiff is correct on the merits. In the meantime, Plaintiff and AvalonBay hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and AvalonBay have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, AvalonBay does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) AvalonBay has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. AvalonBay Will Pay \$1,085,000 as the Gross Settlement Amount (Gross Settlement). AvalonBay has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, AvalonBay will fund the Gross Settlement not more than 14 days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$361,666.66 (1/3 of the Gross Settlement] to Class Counsel for attorneys’ fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$5,000 as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$21,000 to the Administrator for services administering the Settlement.

- D. Up to \$108,500 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.
4. Taxes Owed on Payments to Class Members. Plaintiff and AvalonBay are asking the Court to approve an allocation of 30% of each Individual Class Payment to taxable wages (“Wage Portion”) and 70% to the Non-Wage Portion. The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. AvalonBay will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and AvalonBay have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against AvalonBay.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against AvalonBay based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and AvalonBay have agreed that, in either case, the Settlement will be void: AvalonBay will not pay any money and Class Members will not release any claims against AvalonBay.
8. Administrator. The Court has appointed a neutral company, Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.
9. Participating Class Members’ Release. After the Judgment is final and AvalonBay has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against AvalonBay or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from any and all from all claims, demands, rights, liabilities and causes of action that have been pled in the Complaints in the Action as well as all claims, demands, rights, liabilities and causes of action that could have been alleged based on the facts that have been alleged in the Complaints in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all minimum wages owed, including but not limited to the alleged failure to pay for purported off-the-clock work; (b) failure to pay all overtime wages owed, including but not limited to the alleged failures to (i) properly calculate the regular rate of pay and (ii) pay for purported off-the-clock work; (c) failure to provide meal periods, or premium pay for non-compliant meal periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying meal period premiums; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest

periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying rest period premiums; (e) failure to reimburse necessary business expenses; (f) failure to issue accurate, itemized wage statements; and (g) failure to timely pay all wages due upon separation of employment, including but not limited to the alleged failure to pay all wages purportedly due as a result of the claims alleged in (a)–(e) above and based on the failure to properly calculate the correct rate of pay when paying sick leave under the Healthy Workplace Healthy Family Act (“HWHFA”); (i) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above or the failure to properly calculate the correct rate of pay when paying sick leave under the HWHFA; and (j) all claims under the Fair Labor Standards Act (“FLSA”) that could have been premised on the facts, claims, causes of action or legal theories described above (“Released Class Claims”). Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

The following language will be printed on the reverse of each Individual Class Payment check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and AvalonBay has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against AvalonBay, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against AvalonBay or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees’ Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims, demands, rights, liabilities and causes of action under PAGA as asserted in the Complaints in the Action, the letter sent to the LWDA dated May 2, 2022 (case no. LWDA-CM-881669-22), and the supplemental letter sent to the LWDA dated April 4, 2023, that arose during the PAGA Period premised on the facts, claims, causes of action or legal theories as well as all claims, demands, rights, liabilities and causes of

action under PAGA that could have been alleged based on the facts that have been and will be alleged in the Complaints in the Action and the PAGA Notices referenced herein (“Released PAGA Claims”).

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$27,125 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in AvalonBay’s records, are stated in the first page of this Notice. You have until _____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator’s contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept AvalonBay’s calculation of Workweeks and/or Pay Periods based on AvalonBay’s records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and AvalonBay’s Counsel. The Administrator’s decision is final. You can’t appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn’t opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator’s contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Christina Williams v. AvalonBay Communities, Inc.* Case No. 22STCV14614 and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Any request for exclusion must be faxed, emailed, or postmarked by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and AvalonBay are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

_____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action – *Christina Williams v. AvalonBay Communities, Inc.*, Case No. 22STCV14614 – and include your name, current address, telephone number, and approximate dates of employment for AvalonBay and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 12 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything AvalonBay and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. 22STCV14614. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Scott M. Lidman
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Milan Moore
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2155 Campus Drive, Suite 150
El Segundo, California 90245
Telephone: (424) 322-4772
Facsimile: (424) 322-4775
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2155 Campus Drive, Suite 180
El Segundo, California 90245
Telephone: (424) 292-2350
Facsimile: (424) 292-2355
Email: phaines@haineslawgroup.com

Settlement Administrator: Name
of Company:
Email Address:
Mailing Address:
Telephone:

Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 4

EXHIBIT 4

~~[MODEL]~~ CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between ~~plaintiff~~ Christina Williams (“Plaintiff”), and ~~defendant XYZ~~ (“XYZ”):AvalonBay Communities, Inc. (“Defendant” or “AvalonBay”). The Agreement refers to Plaintiff and ~~XYZ~~AvalonBay collectively as “Parties,” or individually as a “Party.”

1. DEFINITIONS.

- 1.1. “**Action**” means ~~the~~ Plaintiff’s lawsuit alleging wage and hour violations against ~~XYZ~~AvalonBay, captioned in Christina Williams v. AvalonBay Communities, Inc., Case No. 22STCV14614, initiated on May 2, 2022, and pending in the Superior Court of ~~the State of~~ California, County of Los Angeles and remanded from the United States District Court, Case No. 2:22-cv-03933-FLA-PLA.
- 1.2. “**Administrator**” means Phoenix Class Action Administration Solutions, the neutral ~~entity~~third-party administrator which the Parties have agreed to appoint to administer the Settlement, pursuant to Court approval.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount (subject to Court approval) to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4. “Aggrieved EmployeeEmployees” means ~~[e.g., a person employed by XYZ in California]~~all current and classified as a former non-exempt, hourly employees of AvalonBay who worked ~~for XYZ~~in California at any time during the PAGA Period~~].~~
- 1.5. “**Class**” means ~~[define class e.g., all persons employed by XYZ in California]~~all current and classified as former non-exempt, hourly employees of AvalonBay who worked ~~for XYZ~~in California at any time during the Class Period~~].~~

1.6. “Class Counsel” means ~~_____~~ Lidman Law, APC; and Haines Law Group, APC.

~~1.7.~~ 1.7. “Class Counsel ~~Fees Payment~~” and ~~Fee Award~~” means the Court-approved award of attorneys’ fees to be paid to Class Counsel for the services they rendered on behalf of Plaintiff, the Class, and the Aggrieved Employees. Class Counsel will not seek, and Defendant will not oppose, attorneys’ fees of more than one-third (1/3) of the Gross Settlement Amount (include one-third (1/3) of an increase pursuant to the Escalator Clause at Paragraph 8 below) as their Fee Award.

~~1.7.1.8.~~ 1.8. “Class Counsel Litigation Expenses Payment” ~~meanis~~ means the ~~amounts~~ amount allocated to Class Counsel for reimbursement of reasonable attorneys’ ~~fees and expenses, respectively,~~ incurred to prosecute the Action.

~~1.8.1.9.~~ 1.9. “Class Data” means Class Member identifying information in ~~XYZ’s~~ AvalonBay’s possession, including ~~the~~ each Class Member’s name, last-known mailing address, Social Security number, ~~;~~ and number of Class Period Workweeks and PAGA Pay Periods.

~~1.9.1.10.~~ 1.10. ~~“Class Member” or “Settlement~~ “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-~~Participating~~ Class Member who qualifies as an Aggrieved Employee).

~~1.1.~~ 1.1. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available

~~1.10.~~1.11. _____ sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.

~~1.11.~~1.12. _____ “**Class Notice**” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English, with a Spanish translation, in the form, without material variation, attached as Exhibit A to this Agreement, and incorporated by reference into this Agreement.

~~mailed to Class Members in English [with a Spanish translation, if applicable] in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.~~

~~1.2.~~ _____ “**Class Period**” means the period from _____ to _____.

1.13. “Class Period” means the period between May 2, 2018 and either (i) April 10, 2023 (i.e., 90 days after the January 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later.

~~1.12.~~1.14. _____ “**Class Representative**” means the named Plaintiff in the ~~operative complaint~~Second Amended Complaint to be filed in the Action seeking Court approval to serve as a Class Representative.

~~1.13.~~1.15. _____ “**Class Representative Service Payment**” means the payment to the Class Representative for initiating the Action and providing services in support of the Action, which will not exceed Five Thousand Dollars (\$5,000.00).

~~1.14.~~1.16. _____ “**Court**” means the Superior Court of California, County of Los Angeles.

~~1.15.~~1.17. _____ “~~XYZ~~**AvalonBay**” means ~~named Defendant~~ _____ defendant AvalonBay Communities, Inc.

~~1.16.~~1.18. _____ “**Defense Counsel**” means Michael S. Kun, Kevin D. Sullivan, and Chelsea Hadaway of Epstein Becker & Green, P.C.

~~1.3.~~ _____ “**Effective Date**” means the earliest court date by ~~when~~which both of the following have occurred:

~~1.17.~~ 1.19. (a) the Court enters a Judgment based on its ~~Order Granting~~ Final Approval of the Settlement; and (b) the Judgment ~~is final. The Judgment is final~~ becomes "Final." "Final," as ~~defined in the definition of Effective Date shall mean~~ the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement; (i) if there is an appeal of the Court's judgment, the daydate the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or if a timely judgment is affirmed on appeal from, the date of dismissal of such appeal, or the expiration of the time to file a petition for certiorari in the United States Supreme Court petition or a petition for review in the JudgmentCalifornia Supreme Court, as applicable; or (ii) if such a petition is filed, the day afterdate of denial of the appellate court affirmspetition, or the Judgment and issues a remittitur.date the judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal from the judgment.

~~1.18.~~ 1.20. "Final Approval" means the Court's order granting final approval of the Settlement; and entering judgment.

~~1.19.~~ 1.21. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement.

~~1.20.~~ 1.22. "Final Judgment" means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.

~~1.4.~~ "Gross Settlement Amount" means \$ _____ ~~which~~ One Million Eighty-Five Thousand Dollars and Zero Cents (\$1,085,000) and is non-reversionary. The Gross Settlement Amount and AvalonBay's share of payroll taxes comprises the total amount XYZAvalonBay agrees to pay, can ever be required to pay, or can ever cause to be paid, under the Settlement except as provided in Paragraph 98 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual

~~1.21.~~1.23. **PAGA Payments**, the LWDA PAGA Payment, Class Counsel ~~Fees~~Fee Award, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the ~~Administrator's~~Administration Expenses ~~Payment~~.

~~1.22.~~1.24. **“Individual Class Payment”** means ~~the~~each Participating Class Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked by the participating Class Member during the Class Period.

~~1.23.~~1.25. **“Individual PAGA Payment”** means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of ~~Workweeks~~PAGA Pay Periods worked during the PAGA Period ~~by each Aggrieved Employee~~.

~~1.24.~~1.26. **“Judgment”** means the judgment entered by the Court ~~based upon~~ the granting Final Approval.

~~1.25.~~1.27. **“LWDA”** means the California Labor and Workforce Development Agency ~~the agency entitled, under Labor Code section 2699, subd. (i).~~

~~1.26.~~1.28. **“LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the LWDA ~~under~~pursuant to California Labor Code ~~section~~§ 2699 ~~subd. (i).~~

~~1.27.~~1.29. **“Net Settlement Amount”** means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: (a) the Individual PAGA Payments, (b) the LWDA PAGA Payment, (c) the Class Representative Service Payment, (d) the Class Counsel ~~Fees Payment~~Fee Award, (e) the Class Counsel Litigation Expenses Payment, and (f) the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.

~~1.28.~~1.30. **“Non-Participating Class Member”** means any Class Member who opts out of the ~~Settlement~~Settlement's release of class action claims by sending the Administrator a valid and timely Request for Exclusion.

~~1.29.~~1.31. **“PAGA Pay Period”** means any ~~Pay Period~~pay period during which an Aggrieved Employee worked for ~~XYZ~~AvalonBay for at least one day during the PAGA Period.

1.5. "PAGA Period" means the period from _____ to _____.

1.32. “PAGA Period” means the period between October 25, 2020 and either (i) April 10, 2023 (i.e., 90 days after the January 12, 2023) mediation, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later.

~~1.30.~~1.33. **“PAGA”** means the Private Attorneys General Act of 2004 (Labor Code §§ 2698 et seq.).

~~1.31.~~ 1.34. ~~“PAGA Notice~~Notices” means Plaintiff’s ~~—letter to XYZ~~letters dated May 2, 2022 and April 4, 2023 to AvalonBay and the LWDA ~~[and Plaintiff’s —letter to XYZ and the LWDA]~~ providing notice pursuant to California Labor Code ~~section~~§ 2699.3, ~~subd. (a).~~

~~1.6.~~ **“PAGA Penalties”** means the total amount of \$108,500 in PAGA-civil penalties to be paid from the Gross Settlement Amount, ~~allocated 25%~~ 25% of which (\$27,125) shall be paid to the Aggrieved Employees

1.32.1.35. (), and the 75% of which (\$81,375) shall be paid to the LWDA ()
in settlement of the Released PAGA claims Claims.

~~1.33.~~1.36. **“Participating Class Member”** means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.

~~1.34.~~1.37. **“Plaintiff”** means Christina Williams, the named ~~plaintiff~~Plaintiff in the Action.

~~1.35.~~1.38. **“Preliminary Approval Order”** means the ~~Court’s~~ Order Granting Preliminary Approval of the Settlement.

~~1.7. “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.~~

~~1.36.~~1.39. **“Released Class Claims”** means the claims being released as described in Paragraphs 5.2~~Paragraph 6.2 below.~~

~~1.37.~~1.40. **“Released PAGA Claims”** means the claims being released as described in Paragraph 5.3~~6.2 below.~~

~~1.38.~~1.41. **“Released Parties”** means:~~XYZ AvalonBay Communities, Inc.~~ and ~~each~~any of its ~~former~~past and present officers, directors, ~~officers~~, shareholders, ~~owners~~, ~~[members]~~, ~~attorneys~~, ~~insurers~~, ~~managers~~, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and their respective successors and predecessors, ~~successors~~, ~~assigns~~ [in interest, subsidiaries], ~~[affiliates]~~, parents and attorneys.

~~1.39.~~1.42. **“Request for Exclusion”** means a Class Member’s timely and valid submission of a written request to be excluded from the ~~Class Settlement~~Settlement’s release of class action claims signed by the Class Member.

~~1.40.~~1.43. **“Response Deadline”** means ~~[e.g., 60]~~ days after the Administrator mails NoticeClass Notices to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Released Class Claims of the Settlement, or (b) fax, email, or mail ~~his or her~~ Objectionwritten objections to class components of the Settlement. For Class Members to whom ~~Notice Packets~~Class Notices are ~~resent~~re-mailed after having been returned undeliverable to the Administrator, the Response Deadline shall have~~be~~ extended by an additional 14 ~~calendar~~ days~~beyond the Response Deadline has expired.~~

~~1.41.~~1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

~~1.42.~~1.45. “Workweek” means any week during which a Class Member worked for ~~XYZ~~AvalonBay for at least one day; during the Class Period.

2. RECITALS.

2.1. On May 2, 2022, Plaintiff ~~commenced this Action by filing~~filed a ~~Complaint alleging causes of~~putative class action against ~~XYZ for~~ _____. ~~[The Complaint is the operative complaint in~~ AvalonBay in this Court captioned *Christina Williams v. AvalonBay Communities, Inc.*, Case No. 22STCV14614.

2.2. On June 8, 2022, AvalonBay filed a Notice of Removal under the Class Action Fairness Act of 2005 to the Central District of California of United States District Court, Case No. 22-CV-03933 (“Federal Action ~~(the “Operative Complaint.”)~~”).

~~2.1.~~2.3. On October 5, 2022, Plaintiff filed a ~~[e.g., First Amended Complaint]~~ in the Federal Action alleging ~~causes of~~ the following putative class action and representative claim against ~~XYZ for~~ _____. ~~The [e.g., First Amended] Complaint is the operative complaint in the Action (the “Operative~~ AvalonBay: (1) failure to pay all minimum wages owed; (2) failure to pay all overtime wages owed; (3) failure to provide meal periods; (4) failure to authorize and permit rest periods; (5) failure to reimburse necessary business expenses; (6) failure to provide accurate, itemized wage statements; (7) failure to timely pay all wages due upon separation; (8) unfair competition under California Business & Professions Code §§ 17200 et seq.; and (9) civil penalties under California Private Attorneys General Act of 2004, §§ 2698, et seq.

Complaint.”)] XYZ denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in in the Operative Complaint and denies any and all liability for the causes of action alleged.

~~2.2.2.4.~~ Pursuant to California Labor Code ~~section~~§ 2699.3, ~~subd.~~(a), Plaintiff gave ~~timely~~ written notice to XYZAvalonBay and the LWDA by sending the PAGA Notice; ~~initial PAGA Notice on May 2, 2022.~~ Plaintiff supplemented her initial PAGA Notice by sending a letter to AvalonBay and the LWDA on April 4, 2023 (collectively, the PAGA Notices).

1.8. On _____ (type in additional dates) _____, ~~January 12,~~ 2023, the Parties participated in an all-day mediation presided over by _____ mediator Philip E. Cook, Esq. which led to this Agreement to settle the Action ~~(describe alternative means of negotiation).~~

(describe alternative means of negotiation)

1.9. ~~Prior.~~ The Parties represent that, prior to ☐ mediation ~~☐ negotiating~~, they conducted significant investigation of the ~~Settlement, Plaintiff obtained,~~ facts and law through

~~2.3.2.5.~~ ☐ formal ~~☐~~ informal discovery, ~~(.~~ AvalonBay produced documents, testimony relating to its policies, practices, and procedures regarding its wage and hour practices, paying non-exempt employees for all hours worked, meal and rest period policies, meal premiums paid, and other operational policies. As part of AvalonBay’s production, Class Counsel represent they also reviewed time records, pay records, and information ~~obtained~~ relating to the size and scope of the Class, as well as data permitting Class Counsel to understand the number of workweeks and pay periods in the Class Period and the PAGA Period. The Parties agree that the above-described investigation and evaluation, as well as the information exchanged within the course and scope of the Parties’ mediation, are more than sufficient to assess the merits of the respective Parties’ positions and to compromise the issues on a fair and equitable basis. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

1.10. The Court ☐ has ~~☐~~ has not granted class certification.

(insert details as needed)

~~2.4.2.6.~~ ——— The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. **MONETARY TERMS.**

3.1. ——— Gross Settlement Amount. Except as otherwise provided by Paragraph ~~98~~ below, ~~XYZ promises~~ AvalonBay agrees to pay \$ ~~—One Million Eighty-Five Thousand Dollars~~ and ~~no more~~ Zero Cents (\$1,085,000.00) as the Gross Settlement Amount ~~{and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments.}~~ ~~XYZ.~~ AvalonBay has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph ~~4.36.1~~ of this Agreement. ~~The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to XYZ~~ AvalonBay.

3.2. ——— Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

~~4.10.1.~~ ——— To Plaintiff: Class Representative Service Payment, subject to Court approval, of no more than Five Thousand Dollars (\$5,000.00) to the Class Representative ~~of not more than \$~~ _____ (in addition to any Individual Class Payment ~~{and any Individual PAGA Payment}~~ the Class Representative is

3.2.1. ~~entitled to receive as a Participating Class Member).~~ ~~XYZ and/or Aggrieved Employee.~~ AvalonBay will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. ~~As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment,~~ Plaintiff will seek Court approval for any Class Representative Service ~~Payments~~Payment. Plaintiff and Class Counsel shall file this motion no later than ~~[16 court]~~ days prior to the Final Approval Hearing. If the Court approves ~~a~~an amount of Class Representative Service Payment ~~that is~~ less than the amount requested, the Administrator will ~~retain~~allocate the remainder ~~into~~ the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for all employee taxes owed on ~~the~~her Class Representative Service Payment.

3.2.2. To Class Counsel: ~~A Class Counsel Fees Payment of not more than __%, which The Class Counsel Fee Award, subject to Court approval, in an amount up to one-third (1/3) of the Gross Settlement Amount (including one-third of an increase pursuant to Paragraph 8, which will compensate Class Counsel for all work performed and to be performed in the Action. The Class Counsel Fee Award is currently estimated to be \$__and a361,666.66. In addition, Class Counsel shall, subject to Court approval, request reimbursement of the Class Counsel Litigation Expenses Payment of not more than \$_____. XYZ.~~ AvalonBay will not oppose requests for these payments ~~provided~~ that do not exceed these amounts. ~~Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than [16 court] days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment.~~ The Administrator will pay the Class Counsel ~~Fees Payment~~Fee Award and Class Counsel Litigation Expenses Payment using ~~one or more IRS 1099 Forms.~~ 1099. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel ~~Fees Payment~~Fee Award and the Class Counsel Litigation Expenses Payment and holds ~~XYZ Released Parties~~ harmless, and indemnifies ~~XYZ Released Parties,~~ from any dispute or controversy regarding any division or sharing of ~~any of~~ these Payments.

~~1.10.2.~~ To the Administrator: ~~An Administrator Expenses Payment~~Settlement Administration costs shall not ~~to~~ exceed

3.2.3. \$_____ \$21,000.00, except for a showing of good cause and as approved by the Court. To the extent the Settlement Administration ~~Expenses costs~~ are less, or the Court approves payment of less than \$21,000.00, the Administrator will ~~retain~~allocate the remainder ~~into~~ the Net Settlement Amount.

3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members during the Class Period~~and, and~~ (b) multiplying the result by the total Workweeks worked by each Participating Class Member during the Class Period.

~~(b) multiplying the result by each Participating Class Member's Workweeks.~~

~~1.10.2.1.~~ Tax Allocation of Individual Class Payments. % ~~_____~~ 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on ~~an~~ IRS ~~W-2~~ Form W-2. The

3.2.4.1. % ~~_____~~ remaining 70% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for ~~[e.g., interest and penalties]~~ (the interest and penalties (the "Non-Wage Portion")). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS Forms 1099. Each Participating Class Member assumes full responsibility and liability for any employee taxes owed on his or her Individual Class Payment.

~~“Non-Wage Portion”). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.~~

3.2.4.2. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. ~~The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to~~ However, Non-Participating Class Members ~~on~~ who are Aggrieved Employees will still receive an Individual PAGA Payment regardless of whether they submit a ~~pro-rata basis~~ valid and timely Request for Exclusion.

~~1.10.3.~~ To the LWDA and Aggrieved Employees: PAGA Penalties in the total amount of \$ 108,500 to be paid from the Gross Settlement Amount, ~~with~~ 75%

3.2.5. ~~(\$)~~ of PAGA Penalties (\$81,375) shall be allocated to the LWDA PAGA Payment, and 25% ~~(\$)~~ of PAGA Penalties (\$27,125) shall be allocated to the Individual PAGA Payments.

3.2.5.1. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees’ 25% share of PAGA Penalties \$ (\$27,125) by the total number of PAGA ~~Period~~ Pay Periods worked by all Aggrieved Employees ~~during the PAGA Period,~~ and (b) multiplying the result by the total PAGA Pay Periods worked by each Aggrieved ~~Employee’s PAGA Period Pay Periods.~~ Employee. Each Aggrieved ~~Employees assume~~ Employee assumes full responsibility and liability for any taxes owed on ~~their~~ his or her Individual PAGA Payment.

3.2.5.2. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS ~~1099~~ Forms 1099.

4. SETTLEMENT FUNDING AND PAYMENTS.

4.1. ~~Estimated~~ Class Workweeks and Aggrieved Employee PAGA Pay Periods. Based on a review of its records to date, XYZ AvalonBay estimates ~~there are~~ that the Class Members ~~who~~ collectively worked a total of 175,956 Workweeks, ~~and~~ from May 2, 2018 through January 7, 2023.

1.11. ~~Delivery of Aggrieved Employees who worked a total _____ of~~
~~PAGA Pay Periods.~~

1.12. ~~Class Data. Not later than [e.g., 15]~~ Within 20 days after the ~~Court grants~~ Order
granting Preliminary Approval ~~of the Settlement, XYZ is entered and served, AvalonBay~~
will ~~simultaneously~~ deliver the Class Data to the Administrator, in the form of a
Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
Administrator must maintain the Class Data in confidence, use the Class Data only for
purposes of this Settlement and for no other purpose, and restrict access to the Class
Data to Administrator employees who need access to the Class Data to effect and
perform under this Agreement. ~~XYZ~~ AvalonBay has a continuing duty to immediately
notify Class Counsel if it discovers that the Class Data omitted class member identifying
information and to provide corrected or updated Class Data to the Administrator as soon
as reasonably feasible. Without any extension of the deadline by which ~~XYZ~~ AvalonBay
must send the Class Data

~~4.1.4.2.~~ to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

~~4.2.4.3.~~ Funding of Gross Settlement Amount. ~~XYZ~~AvalonBay shall fully fund the Gross Settlement Amount, ~~and also fund the~~including all amounts necessary to fully pay ~~XYZ's~~AvalonBay's share of payroll taxes, by transmitting ~~the~~such funds to the Administrator ~~no later than [14]~~within 30 days after the Effective Date.

~~4.3.4.4.~~ Payments from the Gross Settlement Amount. Within ~~[14]~~10 business days after ~~XYZ~~AvalonBay funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel ~~Fees Payment~~Fee Award, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel ~~Fees Payment~~Fee Award, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.

~~4.3.1.4.4.1.~~ The Administrator will issue checks for the Individual Class Payments and~~or~~ Individual PAGA Payments and send them to ~~the~~all Participating Class Members and Aggrieved Employees via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual ~~Settlement~~Class Payments to all Participating Class Members ~~(, including those for whom whose Class Notice was~~Notices were returned ~~undelivered), undeliverable.~~ The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees, including Non-Participating Class Members who qualify as Aggrieved Employees ~~(, and including those for whom Aggrieved Employees whose Class Notice was~~Notices were returned ~~undelivered), undeliverable.~~ The Administrator may send Participating Class Members who are also Aggrieved Employees a single check combining the Individual Class Payment and the Individual PAGA Payment. Before mailing any checks, the ~~Settlement~~ Administrator must update the recipients' mailing addresses using the National Change of Address Database.

~~4.3.2.4.4.2.~~ The Administrator must conduct a Class Member Address Search for all other Participating Class Members and Aggrieved Employees whose checks are ~~retuned—undelivered~~returned undeliverable without USPS forwarding ~~address~~addresses. Within ~~[7]~~3 business days of receiving a returned check, the Administrator must re-mail checks to the ~~USPS~~

forwarding address provided by USPS, or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Participating Class Members and Aggrieved Employees whose re-mailed checks are returned as ~~undelivered~~undeliverable. The Administrator shall promptly send a replacement check ~~to~~requested by any Participating Class Member or Aggrieved Employee whose original check was lost or misplaced, ~~requested by the Class Member~~ prior to the check void date.

~~4.3.3.~~4.4.3. For any Participating Class Member whose Individual Class Payment check ~~is~~is uncashed and cancelled after the void date, and for any Aggrieved Employee whose Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks ~~to the California~~to the Controller's Unclaimed Property Fund, in the name of the Participating Class Member and/or Aggrieved Employee, thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure § 384(b). Participating Class Members whose Individual Class Payment checks are cancelled shall, nevertheless, be bound by the Class Settlement. Aggrieved Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by the Released PAGA Claims.

~~Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).] [or to a Court-approved nonprofit organization or foundation consistent with Code of Civil Procedure Section 384, subd. (b) ("Cy Pres Recipient") _____]. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient.~~

~~4.3.4.4.4.~~ 4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate XYZ AvalonBay to confer any additional benefits or make any additional payments to Class Members or Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when XYZ AvalonBay fully funds the entire Gross Settlement Amount ~~and funds~~, which includes all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees, and Class Counsel will release claims against all Released Parties as follows:

~~4.4.5.1.~~ 4.4.5.1. Plaintiff's Release. Plaintiff and ~~his or~~ her respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from any and all claims, transactions, or occurrences ~~[that occurred during the Class Period],~~ including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts ~~contained,~~ alleged in the ~~Operative Complaint and~~ Action and facts alleged in Plaintiff's PAGA Notices; (b) all ~~PAGA~~ claims that were, or reasonably could have been, ~~alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice,~~ for ascertained during the Action, and (c) all claims released pursuant to Paragraphs Error! Reference source not found.5.2 under 6.2, and 5.3 below, ("Plaintiff's Release.²"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or to claims or actions based on occurrences ~~outside the Class Period after this Agreement is executed by Plaintiff.~~ Plaintiff acknowledges that ~~Plaintiff~~ she may discover facts or law different from, or in addition to, the facts or law that ~~Plaintiff~~ she now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts ~~or Plaintiff's,~~ her discovery of ~~them~~ those facts.

~~4.4.1.5.1.1.~~ 5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release only, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or ~~Released Party~~released party.

Notwithstanding the foregoing, the 1542 waiver and general release of Plaintiff's claims in this Agreement do not apply to: (i) those rights as a matter of law that cannot be waived, including, but not limited to, workers' compensation claims, if any; (ii) any rights or claims arising out of this Agreement after it is executed by Plaintiff; and (iii) rights or claims arising of this Agreement. The Agreement in no way affects Plaintiff's entitlement and/or benefits, if any, to be received by Plaintiff in workers' compensation pursuant to the jurisdiction of workers' compensation. Plaintiff also agrees to not request an exclusion from this Settlement.

4.5.5.2. Release by Participating Class Members ~~Who Are Not Aggrieved Employees~~: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release ~~Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., "(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 6, and discharge Released Parties from all claims, demands, rights, liabilities and causes of action that have been and will be pled in the Complaints in the Action as well as all claims, demands, rights, liabilities and causes of action that could have been alleged based on the facts that have been and will be alleged in the Complaints in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all minimum wages owed, including but not limited to the alleged failure to pay for purported off-the-clock work; (b) failure to pay all overtime wages owed, including but not limited to the alleged failures to (i) properly calculate the regular rate of pay and (ii) pay for purported off-the-clock work; (c) failure to provide meal periods, or premium pay for non-compliant meal periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying meal period premiums; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying rest period premiums; (e) failure to reimburse necessary business expenses; (f) failure to issue accurate, itemized wage statements; and (g) failure to timely pay all wages due upon separation of employment, including but not limited to the alleged failure to pay all wages purportedly due as a result of the claims alleged in (a)–(e) above and based on the failure to properly calculate the correct rate of pay when paying sick leave under the Healthy Workplace Healthy Family Act ("HWHFA"); (i) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above or the failure to properly calculate the correct rate of pay when paying sick leave under the HWHFA; and (j) all claims under the Fair Labor Standards Act ("FLSA") that could have been premised on the facts, claims, causes of action or legal theories described above. Except as set forth in Paragraph Error! Reference source not found.5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.~~

_____The following language will be printed on the reverse of each Individual Class Payment check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

~~4.6.5.3.~~Release by Non-Participating Class Members Who Are Aggrieved Employees: All ~~Non-Participating Class Members who are~~ Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims ~~for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint[,], [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.].~~demands, rights, liabilities and causes of action under PAGA as asserted in the Complaints in the Action, the letter sent to the LWDA dated May 2, 2022 (case no. LWDA-CM-881669-22), and the supplemental letter sent to the LWDA dated April 4, 2023, that arose during the PAGA Period premised on the facts, claims, causes of action or legal theories as well as all claims, demands, rights, liabilities and causes of action under PAGA that could have been alleged based on the facts that have been and will be alleged in the Complaints in the Action and the PAGA Notices referenced herein (“Released PAGA Claims”).

5.6.MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

~~5.1.6.1.~~_____~~XYZ’s~~AvalonBay’s Declaration in Support of Preliminary Approval. Within _____10 business days of the full execution of this Agreement, ~~XYZ~~AvalonBay will prepare and deliver to Class Counsel a signed Declaration from ~~XYZ~~AvalonBay and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator ~~and Cy Pres Recipient.~~ In their Declarations, Defense Counsel and ~~XYZ~~AvalonBay shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

~~6.1~~_____Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code ~~Section § 2699, subd. (f)(1)(2))~~; (ii) a draft

proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with [any](#) Class Members ~~{and/or the proposed Cy Pres}~~; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration

~~5.2.6.2.~~ from Plaintiff confirming willingness and competency to serve as Class Representative and disclosing all facts relevant to any actual or potential conflicts of interest with any Class Members, ~~[and/or]~~ the Administrator ~~[and/or the proposed Cy Pres];~~ ~~(v; (vi))~~ a signed declaration from each Class Counsel firm attesting to its competency to represent the Class ~~Members~~; its timely transmission to the LWDA of all necessary PAGA documents ~~(initial notice of violations (Labor Code section 2699.3, subd. (a)));~~ including Plaintiff's PAGA Notices, the Operative Complaint ~~(Labor Code section 2699, subd. (1)(1))~~; this Agreement (Labor Code section 2699, subd. (1)(2)); ~~(vi; (vii))~~ a redlined version of the parties' Agreement showing all modifications made to the Model Agreement ready for filing with the Court; and ~~(vii(viii))~~ all facts relevant to any actual or potential conflict of interest with Class Members, the Administrator ~~and/or the Cy Pres Recipient~~. In their respective Declarations, Plaintiff and Class Counsel ~~Declaration~~ shall aver that state whether they are ~~not~~ aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

~~5.3.6.3.~~ Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval, which they expect will occur no later than ~~[30]~~ days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

~~5.4.6.4.~~ Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

6.7. SETTLEMENT ADMINISTRATION.

~~6.2~~ Selection of Administrator. The Parties have jointly selected

~~6.1.7.1.~~ Phoenix Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no

interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

~~6.2.7.2.~~ Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

~~6.3.7.3.~~ 7.3. ~~Qualified Settlement Fund.~~ The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

~~6.4.7.4.~~ 7.4. Notice to Class Members.

~~6.4.1.7.4.1.~~ 7.4.1. ~~_____~~ No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, ~~PAGA Members~~ Aggrieved Employees, Workweeks, and PAGA Pay Periods in the Class Data.

~~6.4.2.7.4.2.~~ 7.4.2. ~~_____~~ Using best efforts to perform as soon as possible, and in no event later than ~~{14}~~ days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice ~~—, with Spanish translation, if applicable—~~ substantially in the form attached to this Agreement as **Exhibit** ~~—A.~~ The first page of the Class Notice shall prominently estimate (1) the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and (2) the number of Workweeks and/or PAGA Pay Periods ~~(if applicable)~~ used to calculate these amounts. Before mailing Class Notices, the Administrator shall update the Class ~~Member~~ Members’ addresses using the National Change of Address database.

~~6.4.3.7.4.3.~~ 7.4.3. ~~_____~~ ~~Not~~ No later than ~~{three (3)}~~ business days after the Administrator’s receipt of any Class Notice returned by the USPS as ~~undelivered~~ undeliverable, the Administrator shall re-mail the Class Notice, via first-class USPS mail, using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class ~~Notice is~~ Notices are returned by the USPS a second time.

~~6.4.4.7.4.4.~~ 7.4.4. ~~_____~~ The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional ~~{14}~~ days beyond the ~~{60}~~ days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.

~~6.4.5.~~7.4.5. _____ If the Administrator, ~~XYZ~~AvalonBay, or Class Counsel ~~is~~are contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement ~~not~~no later than ~~{14}~~ days after their respective receipt of the Class Notices, or the Response Deadline provided in the Class Notices, whichever is later.

~~receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.~~

~~6.5.~~7.5.Members' Requests for Exclusion (Opt-Outs).

~~6.5.1.~~7.5.1. ~~_____~~ Class Members who wish to exclude themselves ~~(from (or opt-out of) the Class Settlement~~Settlement's release of class action claims must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion ~~not~~no later than ~~[the Response Deadline – i.e., 60]~~ days after the Administrator mails the Class Notice (plus an additional ~~[14]~~ days for any Class ~~Members~~Member whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's ~~election~~choice to be excluded from the Settlement and includes the Class Member's name, address, and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.

~~6.5.2.~~7.5.2. ~~_____~~ The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all of the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.

~~6.2.1~~ ~~_____~~ Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2~~6.2~~ ~~and~~

~~6.5.3.~~7.5.3. ~~6.3~~ of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

~~6.5.4.~~7.5.4. ~~_____~~ Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are also Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and will still receive an Individual PAGA Payment based on the terms of this Agreement.

~~6.4 of this Agreement and are eligible for an Individual PAGA Payment.~~

~~6.3~~ Challenges to Calculation of Workweeks. Each Class Member shall have ~~[60]~~ days after the Administrator mails the Class Notice (plus an additional ~~[14]~~ days for Class Members whose Class Notice is re-mailed after having been returned undeliverable to the Administrator) to challenge the number of ~~Class Workweeks and PAGA Pay Periods (if any)~~ allocated to the Class Member in the Class Notice. The Class Member may communicate such challenge ~~the allocation by communicating~~ with the

~~6.5.5.~~7.5.5. Administrator via fax, email, or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. ~~The~~Unless otherwise determined by the Court, the Administrator's determination of each Class Member's allocation of Workweeks~~and/or Pay Periods~~ shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks ~~and/or Pay Periods~~ to Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

~~6.6.~~7.6.Objections to Class Action Components of the Settlement.

~~6.6.1.~~7.6.1. ——— Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel ~~Fees Payment~~Fee Award, Class Counsel Litigation Expenses Payment, ~~and/or~~ Class Representative Service Payment.

~~6.6.2.~~7.6.2. ——— Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than ~~{the Response Deadline – i.e., 60}~~ days after the Administrator's mailing of the Class Notice (plus an additional ~~{14}~~ days for Class Members whose Class Notice was re-mailed after having been returned as undeliverable).

~~6.6.3.~~7.6.3. ——— Non-Participating Class Members have no right to object to any of the class action components of the Settlement.

~~6.7.~~7.7. ——— Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

~~6.7.1.~~7.7.1. ——— Website, Email Address, and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time, and location for the Final Approval Hearing, and copies of the Settlement Agreement, the Motion for Preliminary Approval, the Preliminary Approval, the Class Notice,

the Motion for Final Approval, ~~the Motion for~~ of Class ~~Counsel Fees Payment~~ Action and PAGA Settlement, Class Representative Service Payment, Class Counsel Fee Award, and Class Counsel Litigation Expenses Payment ~~and Class Representative Service Payment~~, and the Final Approval and ~~the~~ Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

~~6.3.1~~ Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their

~~6.7.2.~~7.7.2. validity. ~~Not~~ No later than ~~{five (5)}~~ days after the expiration of the ~~deadline for submitting Requests for Exclusion~~Response Deadline, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion (~~“(the “Exclusion List”);~~ (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and (c) copies of all Requests for Exclusion ~~from Settlement~~ submitted (whether valid or invalid).

~~6.7.3.~~7.7.3. ~~Weekly Reports.~~ The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned ~~undelivered~~as undeliverable, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include ~~provide~~ the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

~~6.7.4.~~7.7.4. ~~Workweek and/or Pay Period Challenges.~~ The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges ~~over to~~ the calculation of Workweeks and/or all Aggrieved Employee challenges to the calculation of Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

~~6.7.5.~~7.7.5. ~~Administrator’s Declaration.~~ ~~Not~~ No later than ~~{14}~~ days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as ~~undelivered~~undeliverable, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

~~6.7.6.~~7.7.6. ~~Final Report by Settlement Administrator.~~ Within ~~{10}~~ days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number

| only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court.

~~7. CLASS SIZE ESTIMATES [and ESCALATOR CLAUSE]~~ Based on its records, XYZ estimates that, as of the date of this Settlement Agreement, (1) there are _____ Class Members and _____ Total Workweeks during the Class period and (2) there were _____ Aggrieved Employees who worked _____ Pay Periods during the PAGA Period.

8. XYZ'S CLASS ESTIMATES AND ESCALATOR CLAUSE. Based on a review of its records to date, AvalonBay represents that there were an estimated 175,956 workweeks from May 2, 2018 through January 7, 2023. If it is determined that the number of Workweeks worked by the Class Members from May 2, 2018 through January 7, 2023 is more than 10% greater than this figure (i.e., if there were actually more than 193,552 Workweeks worked by the Class Members from May 2, 2018 through January 7, 2023), then Defendant agrees to increase the Gross Settlement Amount on a proportional basis to the extent the threshold is exceeded (e.g., if the number of Workweeks from May 2, 2018 through January 7, 2023 was actually 11% more than 175,956, i.e., increases by 11% to 195,312 Workweeks, the Gross Settlement Amount will increase by one percent (1%)).

~~7.9.~~ AVALONBAY'S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds ~~%~~ 5% of the ~~total of all~~ Class ~~Members, XYZ,~~ AvalonBay may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if XYZ AvalonBay withdraws, the Settlement shall be void *ab initio*, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; ~~provided, however, XYZ,~~ except that AvalonBay will remain responsible for paying all Settlement Administration Expenses actually incurred up to that ~~point. XYZ time.~~ AvalonBay must notify Class Counsel and the Court of its election to withdraw not later than ~~seven~~ days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

~~8.10.~~ MOTION FOR FINAL APPROVAL. ~~Not~~ No later than ~~16~~ court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code ~~section § 2699, subd. (l),~~ a Proposed Final Approval Order, and a proposed Judgment (collectively "Motion for Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel ~~not~~ later than ~~seven~~ days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

~~8.1.10.1.~~ Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than ~~that [than five]~~ (5) court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

8.2.10.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material ~~change~~modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), the Parties will expeditiously work together in good faith to address the Court's concerns by revising the Agreement as necessary to obtain Final Approval. The Court's decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel ~~Fees Payment~~Fee Award, Class Counsel Litigation Expenses Payment and/or Administrator Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

~~7.1~~ Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement and/or the Judgment, (ii) addressing

~~8.3.~~10.3. settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

~~8.4.~~10.4. Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel ~~Fees~~ Payment Fee Award and Class Counsel Litigation Expenses Payment ~~reflected~~ set forth in this Settlement Agreement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties' obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

~~8.5.~~10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the ~~appellate court's~~ reviewing Court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after any such remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

~~9.~~11. **AMENDED JUDGMENT.** If any amended judgment is required under California Code of Civil Procedure ~~section-§~~ 384, the Parties will work together in good faith to jointly submit ~~and~~ a proposed amended judgment.

~~10.~~12. **ADDITIONAL PROVISIONS.**

~~7.2~~ No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by ~~XYZ~~ AvalonBay that any of the allegations in the Operative Complaint have merit or that ~~XYZ~~ AvalonBay has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that ~~XYZ's~~ AvalonBay's defenses

in the Action have merit. The Parties agree that class certification and representative treatment ~~is~~are for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, ~~XYZ~~AvalonBay reserves the right to contest certification of any class, and the manageability of any representative claim, for any reasons, and ~~XYZ~~AvalonBay reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest ~~XYZ's~~AvalonBay's defenses. The Settlement, this Agreement and ~~Parties'~~Parties' willingness to

~~10.1.~~12.1. settle the Action will have no bearing on, and will not be admissible in connection with, any litigation ~~(, except for proceedings to enforce or effectuate the Settlement and this Agreement).~~

~~7.3~~ Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, ~~XYZ~~AvalonBay and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; ~~or~~ (5) in response to an inquiry or subpoena issued by a state or federal government agency;

~~10.2.~~12.2. ; or (6) to the extent disclosure is required, as determined by a Party's counsel, by applicable law or regulation. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, ~~XYZ~~AvalonBay and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, ~~any~~ with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's communications with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

~~10.3.~~12.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of ~~or the Settlement, to~~ object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical obligations owed to Class Members.

~~10.5.~~12.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached ~~exhibits~~exhibit(s) shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party concerning the Settlement or the Action.

~~10.6.~~12.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and ~~XYZ~~AvalonBay, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other

documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

7.4 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement

~~10.7.~~12.7. the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

~~10.8.~~12.8. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

~~10.9.~~12.9. No Tax Advice. Neither Plaintiff, Class Counsel, ~~XYZ~~AvalonBay, nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this ~~Settlement~~Agreement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 ~~CFR~~C.F.R. Part 10, as amended) or otherwise.

~~10.10.~~12.10. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court. A waiver or amendment of any provisions of this Agreement will not constitute a waiver of any other provision.

~~10.11.~~12.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

~~10.12.~~12.12. Applicable Law. All terms and conditions of this Agreement and its ~~exhibits~~exhibit(s) will be governed by and interpreted according to the internal laws of the ~~state~~State of California, without regard to conflict of law principles.

~~10.13.~~12.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was ~~the~~its drafter or participated in ~~the~~its drafting.

~~10.14.~~12.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during the Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.

~~10.15.~~ 12.15. Use and Return of ~~Class Data.~~ Documents and Information Provided for Mediation Purposes and in Anticipation of Litigation. Information and documents provided to Class Counsel pursuant to Cal. Evid. Code §1152, ~~and all copies and summaries of the Class Data provided to Class Counsel by XYZ~~ in connection with the mediation, other settlement negotiations, or in connection with the Settlement or in anticipation of litigation, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from XYZ unless, prior to the Court's discharge of the Administrator's obligation, XYZ makes a written request to Class Counsel for the return, rather than the destructions, of Class Data declaration confirming the final disbursement of the Gross Settlement Amount, Plaintiff and Class Counsel shall destroy all paper and electronic versions of the information and documents that Plaintiff and Class Counsel were provided by AvalonBay in connection with the mediation, other settlement negotiations, or in connection with the Settlement, except that Class Counsel is permitted to keep one copy for their records. None of this information or documents shall be used for any purpose outside of the Action, nor will Plaintiff or Class Counsel disseminate this information or documents to any third party under any circumstances. Neither Plaintiff nor Class Counsel shall use Defendants' employees' contact information or employment records for the purposes of initiating any other civil or administrative action or arbitration against Defendants, including without limitation for solicitation or for the distribution of any attorney advertising.

~~10.16.~~12.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.

~~10.17.~~12.17. Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

~~10.18.~~12.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed ~~to have been duly given as of the third business day after mailing~~delivered by United States mail, ~~or the day sent by overnight mail,~~ by email, or by messenger, ~~addressed as follows to the addresses set forth below:~~

To Plaintiff Christina
Williams:

LIDMAN LAW, APC

Scott M. Lidman (slidman@lidmanlaw.com)
Elizabeth Nguyen (enguyen@lidmanlaw.com)
Milan Moore (mmoore@lidmanlaw.com)
2155 Campus Drive, Suite 150
El Segundo, CA 90245

HAINES LAW GROUP, APC

Paul K. Haines (phaines@haineslawgroup.com)
2155 Campus Drive, Suite 180
El Segundo, CA 90245

To AvalonBay:

EPSTEIN BECKER & GREEN, P.C.

Michael S. Kun (MKun@ebglaw.com)
Kevin D. Sullivan (KSullivan@ebglaw.com)
Chelsea Hadaway (CHadaway@ebglaw.com)
1925 Century Park East, Suite 500
Los Angeles, CA 90067

~~To Plaintiff:~~

~~To XYZ:~~

~~10.19.~~12.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (~~i.e.g.,~~ DocuSign), or ~~email~~scanned copies of the signature page which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be ~~one~~on and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

~~10.20.~~12.20. Stay of Litigation. The Parties agree ~~that upon~~to hold in abeyance all proceedings in the ~~execution~~Action (including with respect to California Code of this Agreement the litigation shall be stayed,Civil Procedure § 583.310), except ~~to effectuate the terms of this Agreement. such proceedings necessary to implement and complete the Settlement.~~ The Parties further agree that upon the signing of this Agreement that pursuant to ~~CCP-section~~California Code of Civil Procedure § 583.330310 to extend the date to bring ~~at this~~ case to trial under ~~CCP-section~~California Code of Civil Procedure § 583.310 for the entire period of this settlement process.

12.21. No Signature Required by Class Members. Only the Plaintiff will be required to execute this Settlement Agreement. The Settlement Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

12.22. Submissions to the LWDA. At the same time as they submit this Settlement Agreement to the Court for Preliminary Approval, Class Counsel shall submit a copy of this Agreement to the LWDA, as required by California Labor Code § 2699(l)(2). Within ten (10) days of entry of the Final Approval Order and Judgment, Class Counsel shall submit a copy of the Final Approval Order and Judgment entered by the Court to the LWDA, as required by California Labor Code § 2699(l)(3).

12.23. Invalidity of Any Provision; Severability. Before declaring any provision of this Settlement invalid, the Parties request that the Court first attempt to construe the provisions valid, to the fullest extent possible, consistent with applicable precedents, so as to define all provisions of this Agreement valid and enforceable. In the event any provision of this Agreement shall be found unenforceable, the unenforceable provision shall be deemed deleted, and the validity and enforceability of the remaining provisions shall not be affected.

IT IS SO AGREED.

For Plaintiff Christina Williams:

CHRISTINA WILLIAMS

AVALONBAY COMMUNITIES, INC.

By: _____
Its: _____

_____ For Plaintiff _____ For XYZ

Counsel For Plaintiff

Counsel For XYZ

LIDMAN LAW, APC

By: Scott M. Lidman
Attorneys for Plaintiff

Dated: _____, 2023

By: Michael S. Kun
Attorneys for Defendant

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

(case name and number)

Christina Williams v. AvalonBay Communities, Inc., Case No. 22STCV14614

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against _____ (abbreviate name; “XYZ” is used herein as a placeholder) AvalonBay Communities, Inc. (“AvalonBay”) for alleged wage and hour violations. The Action was filed by a ~~former~~ XYZ employee _____, Christina Williams (“Plaintiff”), and seeks payment of ~~(1) backunpaid~~ wages ~~[and other relief]~~ penalties for AvalonBay’s alleged failure to: pay all minimum and/or overtime wages owed, provide meal periods or premium pay for non-complaint meal periods, authorize and permit rest periods, or premium pay for non-compliant rest periods, reimburse necessary business expenses, issue accurate, itemized wage statements, timely pay all wages due upon separation of employment, and to properly calculate the correct rate of pay when paying sick leave under the Healthy Workplace Healthy Family Act (“HWHFA”) for a class of [e.g., all current and former hourly]-paid or non-exempt employees (“Class Members”) who worked for XYZAvalonBay during the Class Period (_____ to _____); from May 2, 2018 to [either (i) April 10, 2023 or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later] and (2) penalties under the California Private Attorney General Act (“PAGA”) for all ~~[e.g., current and former hourly]-paid or non-exempt~~ employees who worked for ~~XYZAvalonBay~~ during the PAGA Period (_____ to _____) from October 25, 2020 to [either (i) April 10, 2023, or (ii) the latest date when there are no more than 193,551 total Workweeks collectively worked by the Class Members, whichever of these two dates occurs later] (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring ~~XYZAvalonBay~~ to fund Individual Class Payments, and (2) a PAGA Settlement requiring ~~XYZAvalonBay~~ to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on ~~XYZ’sAvalonBay’s~~ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$__ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to ~~XYZ’sAvalonBay’s~~ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on ~~XYZ’sAvalonBay’s~~ records showing that **you worked** ____

| **workweeks** during the Class Period and **you worked** _____ **workweeks**pay periods during the PAGA Period. If you believe that you worked more workweeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires XYZAvalonBay to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against XYZAvalonBay.

| If you worked for XYZAvalonBay during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against XYZAvalonBay.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against XYZAvalonBay, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

XYZAvalonBay will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against AvalonBay that are covered by this Settlement (Released Class Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is _____	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. AvalonBay must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released PAGA Claims (defined below).

Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by _____	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the _____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Workweeks/Pay Periods Written Challenges Must be Submitted by _____ _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many workweeks you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Period Workweeks and number of PAGA Period Pay Periods you worked according to AvalonBay’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a ~~[n]~~ ~~[former]~~ ~~XYZ~~ AvalonBay employee. The Action ~~accuses XYZ of violating~~ alleges AvalonBay violated California labor laws by failing to: pay ~~[e.g., all minimum and/or overtime wages, minimum wages, wages due upon termination and reimbursable expenses]~~ and failing to owed, provide ~~[e.g., meal periods, or premium pay for non-complaint meal periods, authorize and permit rest breaks and periods, or premium pay for non-compliant rest periods, reimburse necessary business expenses, issue accurate, itemized wage statements]~~, timely pay all wages due upon separation of employment, and properly calculate the correct rate of pay when paying sick leave under the HWHFA. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Scott M. Lidman, Elizabeth Nguyen and Milan Moore of Lidman Law, APC and Paul Haines of Haines Law Group, APC (“Class Counsel.”) _____ (“Class Counsel.”)

~~XYZ~~

AvalonBay strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether ~~XYZ~~AvalonBay or Plaintiff is correct on the merits. In the meantime, Plaintiff and ~~XYZ~~AvalonBay hired ~~an~~ an experienced, neutral mediator ~~a retired judge~~

~~an~~ (describe alternative means of negotiation) in an effort to resolve the Action by negotiating an ~~to~~ end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and ~~XYZ~~AvalonBay have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, ~~XYZ~~AvalonBay does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) ~~XYZ~~AvalonBay has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. ~~XYZ~~AvalonBay Will Pay \$~~1,085,000~~ as the Gross Settlement Amount (Gross Settlement). ~~XYZ~~AvalonBay has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, ~~XYZ~~AvalonBay will fund the Gross Settlement not more than ~~14~~ days after the Judgment entered by the Court become final. The Judgment will be final on the date the Court enters Judgment, or a later date if Participating Class Members object to the proposed Settlement or the Judgment is appealed.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$ _____ (~~_____~~%~~361,666.66~~ (1/3 of the Gross Settlement] to Class Counsel for attorneys' fees and up to \$ _____~~30,000~~ for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$ _____~~5,000~~ as a Class Representative Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$ _____~~21,000~~ to the Administrator for services administering the Settlement.
 - D. Up to \$ _____~~108,500~~ for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA ~~Period~~ Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

1. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross

3. Settlement (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Class Period Workweeks.

~~2. Taxes Owed on Payments to Class Members. Plaintiff and XYZAvalonBay are asking the Court to approve an allocation of % 30% of each Individual Class Payment to taxable wages (“Wage Portion”) and % 70% to [e.g., interest, etc.] (“the Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Option 1: (XYZAvalonBay will separately pay employer payroll taxes it owes on the Wage~~

4. Portion). The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.
~~Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.~~

Although Plaintiff and XYZAvalonBay have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don’t cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

~~will be deposited with the California Controller's Unclaimed Property Fund in your name.~~

~~will irrevocably lost to you because they will be paid to a non-profit organization or foundation (“Cy Pres”).~~

If the monies represented by your check is sent to the Controller’s Unclaimed Property Fund, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member’s name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against XYZAvalonBay.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude

themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against ~~XYZ~~[AvalonBay](#) based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs Plaintiff and XYZAvalonBay have agreed that, in either case, the Settlement will be void: XYZAvalonBay will not pay any money and Class Members will not release any claims against XYZAvalonBay.

~~3.—~~ Administrator. The Court has appointed a neutral company,

8. Phoenix Class Action Administration Solutions (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion. The Administrator will also decide Class Member Challenges over Workweeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members’ Release. After the Judgment is final and XYZAvalonBay has fully funded the Gross Settlement ~~[Option 1: (and separately paid all employer payroll taxes)]~~, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against XYZAvalonBay or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from ~~(i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint [and ascertained in the course of the Action] [including, e.g., “(a) any and all claims involving any alleged failure to pay minimum wage; etc.]. Except as set forth in Section 6~~ any and all from all claims, demands, rights, liabilities and causes of action that have been pled in the Complaints in the Action as well as all claims, demands, rights, liabilities and causes of action that could have been alleged based on the facts that have been alleged in the Complaints in the Action, that arose during the Class Period defined above with respect to the following claims: (a) failure to pay all minimum wages owed, including but not limited to the alleged failure to pay for purported off-the-clock work; (b) failure to pay all overtime wages owed, including but not limited to the alleged failures to (i) properly calculate the regular rate of pay and (ii) pay for purported off-the-clock work; (c) failure to provide meal periods, or premium pay for non-compliant meal periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying meal period premiums; (d)

failure to authorize and permit rest periods, or premium pay for non-compliant rest periods, including but not limited to the alleged failure to properly calculate the correct rate of pay when paying rest period premiums; (e) failure to reimburse necessary business expenses; (f) failure to issue accurate, itemized wage statements; and (g) failure to timely pay all wages due upon separation of employment, including but not limited to the alleged failure to pay all wages purportedly due as a result of the claims alleged in (a)–(e) above and based on the failure to properly calculate the correct rate of pay when paying sick leave under the Healthy Workplace Healthy Family Act (“HWHFA”); (i) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above or the failure to properly calculate the correct rate of pay when paying sick leave under the HWHFA; and (j) all claims under the Fair Labor Standards Act (“FLSA”) that could have been premised on the facts, claims, causes of action or legal theories described above (“Released Class Claims”). Except as set forth in Section 5.3 of the Settlement Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, or claims based on facts occurring outside the Class Period.

The following language will be printed on the reverse of each Individual Class Payment check, or words to this effect: “By endorsing or otherwise negotiating this check, I acknowledge that I read, understood, and agree to the terms set forth in the Notice of Class Action Settlement and I consent to join in the Fair Labor Standards Act (“FLSA”) portion of the Action, elect to participate in the settlement of the FLSA claims, and agree to release all of my FLSA claims that are covered by the Settlement.”

10. Aggrieved Employees’ PAGA Release. After the Court’s judgment is final, and ~~XYZ~~AvalonBay has paid the Gross Settlement ~~(and separately paid the employer-side payroll taxes)~~, all Aggrieved Employees will be barred from asserting PAGA claims against ~~XYZ~~AvalonBay, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against ~~XYZ~~AvalonBay or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

~~All Participating and Non-Participating Class Members who are~~ All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, ~~from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint[,] [and] the PAGA Notice [and ascertained in the course of the Action][including, e.g., (a) any and all claims involving any alleged failure to pay minimum wage; etc.],~~ from all claims, demands, rights, liabilities and causes of action under PAGA as asserted in the Complaints in the Action, the letter sent to the LWDA dated May 2, 2022 (case no. LWDA-CM-881669-22), and the supplemental letter sent to the LWDA dated April 4, 2023, that arose during the PAGA Period premised on the facts, claims, causes of action or legal theories as well as all claims, demands, rights, liabilities and causes of action under PAGA that could have been alleged based on the facts that have been and will be alleged in the Complaints in the Action and the PAGA Notices referenced herein ("Released PAGA Claims").

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Workweeks worked by all Participating Class Members, and (b) multiplying the result by the number of Workweeks worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$ 27,125 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods worked by each individual Aggrieved Employee.
3. Workweek/Pay Period Challenges. The number of Class Workweeks you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in ~~XYZ's~~ AvalonBay's records, are stated in the first page of this Notice. You have until ____ to challenge the number of Workweeks and/or Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept ~~XYZ's~~ AvalonBay's calculation of Workweeks and/or Pay Periods based on ~~XYZ's~~ AvalonBay's records as accurate unless you send copies of records containing

contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and XYZ's [AvalonBay's](#) Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as _____

_____, Christina Williams v. AvalonBay Communities, Inc. Case No. 22STCV14614 and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator** Any request for exclusion must be sent your request to be excluded faxed, emailed, or postmarked by _____, or it will be invalid. Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and ~~XYZ~~AvalonBay are asking the Court to approve. At least _____ days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website

_____ (url) or the Court's website _____ (url).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending**

written objections to the Administrator is _____. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action _____ – [*Christina Williams v. AvalonBay Communities, Inc., Case No. 22STCV14614*](#) – and include your name, current address,

telephone number, and approximate dates of employment for ~~[XYZ]~~AvalonBay and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department ~~[7]~~12 of the Los Angeles Superior Court, located at 312 North Spring Street, Los Angeles, CA 90012. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via LACourtConnect (<https://www.lacourt.org/lacc/>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything ~~XYZ~~AvalonBay and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to _____ (specify entity) _____'s website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.lacourt.org/casesummary/ui/index.aspx>) and entering the Case Number for the Action, Case No. _____, 22STCV14614. You can also make an appointment to personally review court documents in the Clerk's Office at the Stanley Mosk Courthouse by calling (213) 830-0800.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

~~Class Counsel:~~
~~Name of Attorney:~~
~~Email Address:~~
~~Name of Firm:~~
~~Mailing Address:~~
~~Telephone:~~

|
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Settlement Administrator: Name
of Company:

Email Address:
Mailing Address:
Telephone:
Fax Number:

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void [you should consult the Unclaimed Property Fund for instructions on how to retrieve the funds.](#)

- ☐ ~~you should consult the Unclaimed Property Fund _____ for instructions on how to retrieve the funds~~
- ☐ ~~you will have no way to recover the money.~~

11. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

ⁱ ~~This Model Class Action and PAGA Settlement Agreement has been approved by the Court, the Complex litigation judges, and a 2022 Ad Hoc Wage and Hour Committee co-chaired by Judge David Cunningham and Judge Amy Hogue and comprised of 16 attorneys who regularly represent plaintiffs and defendants in wage and hour case. It is written for settlements of single plaintiff wage and hour actions asserting class claims and PAGA claims against a single employer (XYZ). The parties will need to revise this form if there are multiple plaintiffs or multiple defendants. For settlements of wage and hour class actions that do not include PAGA claims, please use the Model Class Action Settlement Agreement and Class Notice. THE COURT ASKS ALL COUNSEL USING THIS MODEL AGREEMENT TO ATTACH A REDLINED VERSION TO THEIR MOTIONS FOR APPROVAL SO THAT THE COURT CAN EASILY SEE EXACTLY HOW THE PARTIES HAVE MODIFIED THIS MODEL AGREEMENT.~~

ⁱⁱ ~~Whether the “date of preliminary approval” yields a fair and adequate payment to Class Members may depend on whether the Class Members, in exchange for their releases of claims, receive consideration for time worked between the date when parties reached a settlement and the date of preliminary approval. The Parties’ *Kullar* analysis must give the Court sufficient information to allow the Court to determine whether the Gross Settlement Amount “represents a reasonable compromise, given the magnitude and apparent merit of the claims being released, discounted by the risks and expenses of attempting to establish and collect on those claims by pursuing the litigation.” (*Luckey v. Superior Court* (2014) 228 Cal.App.4th 81, 94–95, internal quotation marks omitted.)~~

ⁱⁱⁱ ~~See endnote ii above.~~

^{iv} ~~The Parties may need to tailor this language to pay periods or shifts depending on the facts of the case.~~

^v ~~The Parties are free to negotiate a payment plan structure, if appropriate, and payment deadlines may fall earlier as necessary thereto.~~

^{vi} ~~Note that this is not the only possible appropriate breakdown depending on the claims at issue in the case (e.g. a settlement that is solely a Labor Code Section 226(a) claim.)~~

^{vii} ~~Insert negotiated terms, if any, addressing the possibility that XYZ’s estimates of class size, Workweeks or Pay Periods turn out to be understated such as an ADR clause imposing a duty to engage in good faith negotiations or~~

~~mediation or an “escalator” clause memorializing XYZ’s promise to increase the Gross Settlement Amount in an agreed upon proportion to the percentage by which the calculated class size, Workweeks, or Pay Periods exceeds XYZ’s estimates.~~

~~^{viii} Releases in Notice should track the releases in the Settlement Agreement.~~