

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN AMADOR ACEVEDO,
MITCHELL BRATTON, JEREMY BUSSE,
STEPHEN PULLUM, ERIC MIGDOL, and
JOSE GONZALEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

THE BRICKMAN GROUP LTD. LLC,

Defendant.

Civil Action No. 3:13-CV-02529

NOTICE OF BRICKMAN OVERTIME SETTLEMENT

1. Why Should You Read This Notice?

You may have previously received notice about the overtime lawsuit called *Amador v. The Brickman Group Ltd. LLC* (the “Lawsuit”), which claimed that The Brickman Group, LTD., LLC (“Defendant” or “Brickman”) paid its landscape/crew/irrigation Supervisors on the ‘fluctuating workweek’ method of payment for hours worked over 40 hours in a workweek, while also paying non-discretionary bonuses and other types of pay to them, which Plaintiff alleged was in violation of the Fair Labor Standards Act (“FLSA”) and state law. You have been identified to participate in the settlement because Brickman’s records show that you worked for Brickman between October 8, 2010 and June 8, 2014, and were paid in the manner explained above.

The parties have agreed to a settlement, which the Court preliminarily approved by Order entered March 21, 2017. The Court will hold a Final Approval Hearing on July 21, 2017 at 9:30 a.m., before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at William J. Nealon Federal Bldg. & U.S. Courthouse 235 N. Washington Avenue Scranton, PA 18503. **This Notice explains the terms of that settlement and your right to claim a potential payment under the settlement if the Court grants final approval to the settlement and you complete and return the enclosed Claim Form by June 9, 2017.**

2. What Are the Terms of the Settlement?

As set forth in the Court-approved Settlement Agreement (the “Agreement”), which is available for your review on the following website www.AmadorvBrickmanSettlement.com or at the Court at 235 N. Washington Avenue Scranton, PA 18503, Brickman agreed to pay up to \$6,950,000.00 (“Maximum Gross Settlement Fund Amount”) in this case. Under the Agreement, approximately 476 individuals who filed Consents to join before the settlement and individuals who performed work in Pennsylvania are referred to as “Group 1.” Because you did not file a Consent to join before settlement, but you worked for Brickman in the United States and, at any time between October 8, 2010 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half

their hourly rate), you are referred to as a member of “Group 2.” There are approximately 839 members of Group 2.

As a member of Group 2, in order to be eligible to receive a Settlement Award, you must submit a signed copy of the enclosed Claim Form to the Settlement Administrator postmarked by June 9, 2017. You may return the signed Claim Form by mail, email or fax and you may also complete and execute a copy of the Claim Form at the following website www.AmadorvBrickmanSettlement.com or by contacting the Claims Administrator using the contact information below:

Amador v. Brickman Overtime Settlement
c/o Dahl Administration
PO Box 3614
Minneapolis, MN 55403-0614
Toll-Free Telephone Number: (888) 755-9508
Facsimile Number: 952-955-4589
Email Address: info@AmadorvBrickmanSettlement.com

The following is a summary of the primary settlement terms as they affect you:

1. Brickman has agreed to pay a maximum of \$3,700,000 to Group 2 (the “Group 2 Maximum Possible Gross Settlement Fund”). Brickman will only pay the portion of the Maximum Possible Gross Settlement Fund attributable to the percentage of Group 2 Members who timely submit a Claim Form (“Group 2 Calculated Gross Settlement Fund”). The Group 2 Calculated Gross Settlement Fund shall be determined by multiplying the percentage of Group 2 members who timely submit a Claim Form (“Eligible Group 2 Members”) by the Group 2 Gross Settlement Fund. By way of example, if thirty percent (30%) of Group 2 Members become Eligible Group 2 Members, the Group 2 Calculated Gross Settlement Fund will be \$1,110,000.00.

2. Deductions from the Group 2 Calculated Gross Settlement Fund will be made for attorneys’ fees and costs awarded to Class Counsel (see below); settlement administration costs allocated to Group 2 not to exceed \$17,470; service awards in the amount of \$5,000 to Named Plaintiff Amador and \$1,000 to each of Named Plaintiffs Bratton, Busse, Pullum, Migdol, and Gonzalez for their service to the Class (“Net Settlement Fund for Group 2”), as well as applicable employer and employee payroll taxes as described below. Deductions for Class Counsel’s costs, settlement administration costs and service awards shall be made on a pro rata basis with the amounts made available to Group 1.

3. Members of Group 1 who are eligible to receive a Settlement Award will receive their Settlement Award from a separate non-reversionary fund allocated for Group 1 Members, and will not receive any portion of the Net Settlement Fund for Group 2.

4. Each Eligible Group 2 Member who completes, signs and returns a Claim Form by June 9, 2017, will receive a minimum payment. Each Eligible Group 2 Member who completes and returns a Claim Form by June 9, 2017 may also receive an additional pro rata settlement distribution calculated using the following formula:

a. Each Eligible Group 2 Member will be allocated settlement shares which equal the total overtime pay he/she received at any time between the longer of (a) his/her maximum applicable state law statute of limitations for applicable wage laws (exclusive of unjust enrichment); or (b) three years preceding June 8, 2014, and June 8, 2014, in which he/she was paid a salary, but worked under a pay plan in which he/she was

eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek.

b. The total number of settlement shares allocated to all Eligible Group 2 Members will be added together and the resulting sum will be divided into the Net Settlement Fund for Group 2 (less the minimum payment allocation) to reach a per share dollar figure. That figure will then be multiplied by each Group 2 Member's number of settlement shares, and, if applicable, added to the minimum payment to determine each Eligible Group 2 Member's potential Settlement Award.

c. Each Eligible Group 2 Member who completes, signs and returns a Claim Form by June 9, 2017 will receive their pro rata portion of the Net Settlement Fund for Group 2. Brickman will not pay any amounts to any Group 2 Member unless he/she completes, signs and returns a Claim Form by June 9, 2017.

5. Each Settlement Award will be separated into two equal amounts: fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for unpaid overtime wages, and fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for liquidated damages. The portion allocated to claims for unpaid overtime and other wage-related damages will be subject to all required employee and employer-paid payroll taxes and deductions. The portion allocated to liquidated damages shall be characterized as non-wage income to the recipient and you will be responsible for any applicable taxes on this portion.

6. Each Group 2 Member who completes, signs and returns a Claim Form by June 9, 2017 has agreed to the following release of claims:

any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, and specifically including but not limited to unjust enrichment claims, against The Brickman Group Ltd. LLC, and its past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, investors, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns, and insurers ("Releasees") that were or could have been asserted in the Complaint or Amended Complaint based on the facts alleged for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), interest, attorneys' fees, litigation costs, restitution or other compensation and relief arising under the Fair Labor Standards Act ("FLSA") for the time period between October 8, 2010 and June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek, and arising under state statutes, regulations, or common law beginning from the longest applicable statute of limitations (inclusive of any earlier tolling periods agreed upon in the Action) for all states in which a State Settlement Class Member worked dating back from October 8, 2013) through June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek.

7. Upon Final Approval by the Court, each Group 2 Member shall be deemed to release all claims in paragraph 6 above, but shall not release any FLSA claims unless they complete and return a Claim Form by June 9, 2017. The release in paragraph 6 shall not apply to Group 2 Members who either (a) timely submit a request for exclusion; or (b) who are identified by Settlement Administrator as Group 2 Members whose notice is issued during the notice period and returned as undeliverable after appropriate skip traces have been performed by the Settlement Administrator.

In the event that the combined total of the Group 1 Gross Settlement Fund and the Group 2 Calculated Gross Settlement Fund ("the Gross Fund Total") exceeds four million four hundred thousand dollars (\$4,400,000.00), Defendant shall have the unilateral right, but not the obligation, to void the Settlement Agreement with respect to Group 2, and if so voided each Group 2 member who timely submitted a Claim Form

and did not submit a notice of intent to opt-out will be provided a follow-up notice with information about resumption of the litigation for purposes of Group 2 as if no settlement occurred.

3. What Are My Rights?

In order to participate in the Settlement and potentially receive a Settlement Award, you must complete, sign and submit the enclosed Claim Form postmarked by June 9, 2017. You may also access the Claim Form at www.AmadorvBrickmanSettlement.com. You may submit the Claim Form by mail, email or fax to:

Brickman Overtime Settlement
c/o Dahl Administration
PO Box 3614
Minneapolis, MN 55403-0614
Toll-Free Telephone Number: (888) 755-9508
Facsimile Number: 952-955-4589
Email Address: info@AmadorvBrickmanSettlement.com

If you do not wish to participate or be bound by the Settlement, you must submit a written exclusion from the settlement (“opt-out”), postmarked by May 10, 2017. The written request for exclusion from the settlement must contain your full name, address, and telephone number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at: Brickman Overtime Settlement, c/o Dahl Administration, PO Box 3614, Minneapolis, MN 55403-0614. **Any person who requests exclusion (opts out) of the settlement will not be entitled to any potential Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**

If you wish to object to the Settlement, you must submit an objection, postmarked by May 10, 2017, stating why you object to the settlement. Your objection must state your full name, address, telephone number, and email address (if applicable) and must be signed by you. Any objection should be mailed to the Settlement Administrator at: Brickman Overtime Settlement, c/o Dahl Administration, PO Box 3614, Minneapolis, MN 55403-0614. If you submit a written objection, you may also, if you wish, appear at the Final Approval Hearing set for July 21, 2017 at 9:30 a.m. before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at William J. Nealon Federal Bldg. & U.S. Courthouse 235 N. Washington Avenue Scranton, PA 18503, to discuss your objection with the Court and the parties to the Lawsuit.

4. No Retaliation Permitted

Federal law prohibits Brickman from terminating you, retaliating against you, or in any other manner discriminating against you **because you participate in this lawsuit and settlement.**

5. How Will the Attorneys for the Class Be Paid?

You do not have to pay the attorneys who represent the Class separately. Plaintiffs’ Counsel will be paid from the settlement in the amount of up to (a) One Million Eighty-Three Thousand Three Hundred and Thirty Three Dollars (\$1,083,333.00) (which is one third of the Group 1 Gross Settlement Amount); and (b) the amount equal to up to one-third of the Group 2 Calculated Gross Settlement Fund, plus their out-of-pocket costs, not to exceed Sixty-Five Thousand Dollars (\$65,000.00). Class Counsel will file with the Court a Motion for Attorneys’ Fees and Costs. The actual amount awarded will be determined by the Court. The Court will

hold a hearing on that Motion on the same day as the Final Settlement Fairness Hearing, on July 21, 2017 at 9:30 a.m.

6. What If I Have Additional Questions?

If you have any questions regarding the terms of this settlement or your individual recovery, contact the Claims Administrator:

Attn: Brickman Overtime Settlement
c/o Dahl Administration
PO Box 3614
Minneapolis, MN 55403-0614
Toll-Free Telephone Number: (888) 755-9508
Facsimile Number: 952-955-4589
Email Address: info@AmadorvBrickmanSettlement.com

If you have any legal questions about the settlement relating to the lawsuit itself, contact Plaintiffs' Counsel listed below:

Shanon J. Carson
Sarah R. Schalman-Bergen
Alexandra K. Piazza
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Telephone: (215) 875-3033

C. Andrew Head
HEAD LAW FIRM, LLC
White Provision, Ste. 305
1170 Howell Mill Rd., NW
Atlanta, GA 30318
Telephone: (404) 924-4151 x108

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE U.S. DISTRICT COURT, THE HONORABLE MALACHY E. MANNION, DISTRICT JUDGE. THE COURT HAS EXPRESSED NO OPINION REGARDING THE MERITS OF THE PARTIES' CLAIMS OR DEFENSES.