

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 YOUR RECOVERY UNDER 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 Pennsylvania state law. You have been identified to participate in the settlement because Brickman’s records show that you worked for Brickman in Pennsylvania between October 8, 2009 and June 8, 2014, and were paid in the manner explained above.

The parties have agreed to a settlement, which 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 the manner of calculating your potential settlement payment amount if the Court grants final approval of the settlement.**

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 at the following website www.AmadorvBrickmanSettlement.com, or at the Court at Courthouse 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, all individuals who had filed a Consent to join this case before the settlement, as well as all current and former employees who worked for Brickman in Pennsylvania and who, at any time between October 8, 2009 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), including but not limited to salaried landscape/crew/irrigation

Supervisors and those in similarly titled positions, are referred to as “Group 1.” There are approximately 476 members of Group 1.

Individuals who did not previously submit a Consent to join this case before the settlement, and who did not work in Pennsylvania, but who worked for Brickman and who, 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), are referred to as “Group 2.” There are approximately 839 members of Group 2. Members of Group 2 will also be eligible to participate in the Settlement if they submit a Claim Form by June 9, 2017.

Because you worked for Brickman in Pennsylvania between October 8, 2009 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 a member of “Group 1.” **You do not need to submit a Claim Form to participate in the Settlement, and you will receive a payment based on the formula below if the Court grants final approval to the Settlement, unless you exclude yourself from the Settlement.** The check that you will receive will contain pre-printed endorsement language by which you will agree to join the lawsuit and be bound by the release described below.

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

1. Brickman has agreed to pay \$3,250,000 to Group 1. Deductions from this amount will be made for attorneys’ fees and costs awarded to Class Counsel (see below); settlement administration costs allocated to Group 1 not to exceed \$17,470; and 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 1”), 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 2.

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

3. Each Eligible Group 1 Member will receive a \$150 minimum payment. The \$150 per person minimum payment will be deducted first from the total Net Settlement Fund for Group 1. Any additional pro rata settlement distribution you may receive will be calculated using the following formula:

a. Each Eligible Group 1 Member will receive settlement shares which equal the total overtime pay he/she received between the longer of (a) his/her individual maximum state law statute of limitations; or (b) three years plus any applicable period during which his/her FLSA claims were tolled prior to the date that he/she filed his/her Opt-In Consent Form, and June 8, 2014 in weeks when 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 for all Eligible Group 1 Members will be added together and the resulting sum will be divided into the Net Settlement Fund for Group 1 (less the allocation of \$150 per person) to reach a per share dollar figure. That figure will then be multiplied by each Eligible Group 1 Member’s number of settlement shares, and, if applicable, added to the \$150 set aside to determine the Eligible Group 1 Member’s Settlement Award.

4. 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.

5. In exchange for your Settlement Award, each Group 1 Member 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.

3. What Are My Rights?

- Because you already filed a Consent to join the Lawsuit at an earlier date (*i.e.*, you are a member of Group 1), assuming Court approval and the Settlement Agreement is not voided, you will **automatically** receive money from the Settlement. **You do not have to do anything to receive your share of the settlement proceeds, and there is no Claim Form enclosed because you are already recognized as having made a claim.**
- 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 (30 days from the date this Notice was mailed). 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 (30 days from the date this Notice was mailed), 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:

Brickman Overtime Settlement
c/o Dahl Administration
P.O 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 L. Koropey
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.