

IMPORTANT LEGAL NOTICE

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE COUNTY OF SAN BERNARDINO

RANCHO CUCAMONGA DISTRICT

**DAVID MASUCCI, INDIVIDUALLY AND ON BEHALF OF)
OTHERS SIMILARLY SITUATED AND ON BEHALF OF)
THE GENERAL PUBLIC,)**

Case No. RCV 054976

CLASS ACTION

Plaintiffs,

**NOTICE OF CLASS ACTION SETTLEMENT
AND FAIRNESS HEARING; CLAIM FORM AND
REQUEST FOR EXCLUSION FORM**

vs.

**ALLMARK, INC., A CALIFORNIA CORPORATION,
ET ALIA,**

Date: July 10, 2006

Time: 9:00 a.m.

Defendants.

Department: R12

TO: ALL CURRENT OR FORMER TENANTS AND CO-SIGNERS OF TENANTS WHO DURING THE CLASS PERIOD OF MAY 17, 1997 THROUGH APRIL 17, 2006, EXECUTED WRITTEN RENTAL DOCUMENTS FOR ANY APARTMENT IN 1) ARROW TERRACE, 2) COUNTRY CLUB TERRACE, 3) COUNTRY CLUB VILLAS, 4) CRESCENT HEIGHTS, 5) CUCAMONGA TERRACE, 6) CYPRESS TERRACE, 7) FIR TERRACE, 8) LOMA VISTA WOODS, 9) MOUNTAIN TERRACE, 10) MOUNTAIN TERRACE II, 11) NINTH STREET TERRACE, 12) OLIVEWOOD TERRACE, 13) PEPPERWOOD, 14) PLACER TERRACE, 15) QUAD, 16) QUAD II OR QUAD TWO, 17) TURNER TERRACE 12, 18) TURNER TERRACE 78, 19) VICTORIA WOODS, AND 20) VINEYARD VILLAGE AND A) WHO PAID LATE FEES OR LEASE BREAK FEES OR BOTH, OR B) AGAINST WHOM JUDGMENT IN A LEGAL PROCEEDING WAS ENTERED FOR LATE FEES OR LEASE BREAK FEES OR BOTH, OR C) WHO ENTERED INTO SETTLEMENT AGREEMENTS WHICH INCLUDED PROMISES TO PAY LATE FEES OR LEASE BREAK FEES OR BOTH, OR D) WHO HAD AMOUNTS DEDUCTED FROM THEIR SECURITY DEPOSITS AND FROM WHOM AMOUNTS WERE DEMANDED IN EXCESS OF THEIR SECURITY DEPOSITS FOR FEES, COSTS OR CHARGES NOT PERMITTED BY CALIFORNIA CIVIL CODE SECTION 1950.5.

PLEASE READ THIS NOTICE CAREFULLY.

THIS NOTICE SETS FORTH THE PROCESS FOR SUBMISSION OF A CLAIM FORM IF YOU WISH TO RECEIVE PAYMENT FOR YOUR SHARE OF THE SETTLEMENT AWARD AVAILABLE FOR DISTRIBUTION TO SETTLEMENT CLASS MEMBERS AS WELL AS THE PROCESS FOR SUBMISSION OF A REQUEST FOR EXCLUSION FORM IF YOU WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS.

PLEASE READ THIS NOTICE CAREFULLY. THIS NOTICE RELATES TO A PROPOSED SETTLEMENT OF A CLASS ACTION LAWSUIT. THIS NOTICE CONTAINS IMPORTANT INFORMATION AS TO YOUR RIGHT TO MAKE A CLAIM FOR PAYMENT OR TO ELECT NOT TO BE INCLUDED IN THE CLASS AS FURTHER DESCRIBED BELOW.

1. YOU ARE HEREBY NOTIFIED that a proposed settlement of this class action filed in the Superior Court of California in the County of San Bernardino has been reached by the parties and has been granted preliminary approval by the Court supervising the case. The purpose of this Notice is to describe the litigation, to inform you of the terms and conditions of the Joint Stipulation for Settlement and Release (the Settlement), and to inform you of your rights and options in connection with the Settlement. The Settlement, once given final approval by the Court, will resolve all claims in this class action. **A hearing concerning the fairness of the Settlement will be held at 9:00 a.m. on July 10, 2006,** to determine whether judgment should be entered in this class action.

2. Because your rights may be affected, it is extremely important that you read this Notice carefully. You must file a Claim Form by Tuesday, May 30, 2006 if not personally delivered to the Claims Administrator or by Monday, June 5, 2006, if personally delivered to the Claims Administrator to participate in the Settlement. Alternatively, you must submit a Request for Exclusion Form by Tuesday, May 30, 2006 if not personally delivered to the Claims Administrator or by Monday, June 5, 2006, if personally delivered to the Claims Administrator to be excluded from the Settlement Class. If you do not timely file a Claim Form or a Request for Exclusion Form you will receive nothing under the Settlement and and your claim will be barred forever.

WHY SHOULD I READ THIS NOTICE?

3. If you received this Notice, it is because you were a tenant or a co-signer for a tenant in one or more of the above-named twenty apartment complexes during the Class Period and that you may have paid late fees, lease break fees, charges from your security deposits, or a combination of those charges. If that is correct, then the information contained in this Notice effects your legal rights. You should read this Notice because you may be entitled to money under the Settlement.

WHAT IS A CLASS ACTION?

4. A class action is a lawsuit in which the claims and rights of many people are decided in a single Court proceeding. Representative plaintiffs referred, to as Class Representatives, assert claims on behalf of the entire class. This avoids the necessity of hundreds or thousands of individual lawsuits and enables the Court to resolve similar claims efficiently and fairly. In a class action, the Court supervises the prosecution of class claims by class counsel to assure fairness.

PURPOSE OF THIS NOTICE

5. The Superior Court of the State of California for the County of San Bernardino has ordered that this Notice be sent to you because you may be a member of the Class. The purpose of this Notice is to inform you of the Settlement of this class action and of your rights in regard to it.

SUMMARY OF LITIGATION

6. On May 17, 2001, Plaintiff David Masucci filed a class action lawsuit against the owners and operators of Victoria Woods Apartments in the Superior Court in the County of San Bernardino. Ultimately, the owners and operators of all twenty of the above-named apartment complexes became involved in the litigation and are referred to collectively as the Defendants. In addition to the underlying Superior Court action, there are two appeals pending in the Fourth Appellate District of the California Court of Appeal, one filed by Plaintiff and one filed by the Defendants. The operative First Amended Complaint alleges, among other things, that the Defendants charged and collected unlawful fees for the late payment of rent, unlawfully charged and collected lease break fees, and unlawfully deducted amounts from security deposits and demanded and collected further payments after security deposits were exhausted for items not permitted by law.

7. This action arises, among other things, under California Civil Code §1671, §1951.2 and §1950.5, and California Business and Professions Code §17200.

8. Defendants deny all of Plaintiff's allegations and contend that all amounts charged and collected were lawfully charged and collected.

9. Neither the Superior Court nor the Court of Appeal has made any ruling on the merits of any of Plaintiff's claims.

10. For purposes of the Settlement, a Settlement Class Member is defined as follows:

A tenant or co-signer of a tenant who during the Class Period executed written rental documents for any apartment in 1) Arrow Terrace, 2) Country Club Terrace, 3) Country Club Villas, 4) Crescent Heights, 5) Cucamonga Terrace, 6) Cypress Terrace, 7) Fir Terrace, 8) Loma Vista Woods, 9) Mountain Terrace, 10) Mountain Terrace II, 11) Ninth Street Terrace, 12) Olivewood Terrace, 13) Pepperwood, 14) Placer Terrace, 15) Quad, 16) Quad II or Quad Two, 17) Turner Terrace 12, 18) Turner Terrace 78, 19) Victoria Woods, and 20) Vineyard Village **and** a) who paid late fees or lease break fees or both, or b) against whom judgment in a legal proceeding was entered for late fees or lease break fees or both, or c) who entered into settlement agreements which included promises to pay late fees or lease break fees or both, or d) who had amounts deducted from their security deposits and from whom amounts were demanded in excess of their security deposits for fees, costs or charges not permitted by California Civil Code section 1950.5

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11. Attorneys for the Settlement Class (Class Counsel) in this action are:

Jules Sandford
Lorraine grindstaff
Patten, Faith & Sandford
635 West Foothill Boulevard
Monrovia, CA 91016-2097

jsandford@pfslaw.com
lgrindstaff@pfslaw.com
(626) 359-9335 (Voice)
(626) 303-2391 (Fax)

YOUR OPTIONS

12. **A Claim Form is included with this Notice.** (If you lose or misplace your Claim Form, please contact the Claims Administrator or Class Counsel for a duplicate or you can print a copy by going to <http://www.pfslaw.com>.) If any information provided on the Claim Form is incorrect, particularly your address and telephone numbers, please make corrections directly on the Claim Form. **BE SURE TO KEEP A PHOTOCOPY OF YOUR CLAIM FORM FOR YOUR RECORDS.** If you do not personally deliver your Claim Form or have it delivered by overnight courier, it is best to send your Claim Form by certified U.S. Mail, return-receipt requested. The possibility always exists that some Claim Forms may get lost in the mail. It is strongly suggested that you send the Claim Form by certified U.S. Mail with a return-receipt request or by overnight courier so that you have an official record showing the date of mailing.

13. If you want to participate in the Settlement, you must complete, sign and date a Claim Form and either mail the completed Claim Form to the Claims Administrator by postage pre-paid U.S. First-Class mail or by overnight courier postmarked **on or before May 30, 2006**, or personally deliver it to the Claims Administrator **by no later than June 5, 2006** at the following address:

If Mailed by U.S. Postal Service:

Masucci v. Allmark, Inc. Claims Administrator
c/o Rosenthal & Company LLC
P.O. Box 6177
Novato, CA 94948-6177
1-800 207-0343

If Personally Delivered or by an Overnight Courier:

Masucci v. Allmark, Inc. Claims Administrator
c/o Rosenthal & Company LLC
300 Bel Marin Keys Boulevard, Suite 200
Novato, CA 94949
1-800 207-0343

14. If you choose to participate in the Settlement, you will be bound by all of the provisions of the Joint Stipulation for Settlement and Release, including a full release of claims that will prevent you from separately suing any or all of the Defendants, their employees or any other related persons or entities for the matters being settled in this case.

15. **A Request for Exclusion Form is included with this Notice.** (If you lose or misplace your Request for Exclusion Form, please contact the Claims Administrator or Class Counsel for a duplicate or you can print a copy by going to <http://www.pfslaw.com>.) If any information provided on the Request for Exclusion Form is incorrect, particularly your address and telephone numbers, please make corrections directly on the Request for Exclusion Form. **BE SURE TO KEEP A PHOTOCOPY OF YOUR REQUEST FOR EXCLUSION FORM FOR YOUR RECORDS.** If you do not personally deliver your Request for Exclusion Form or have it delivered by overnight courier, it is best to send your Request for Exclusion Form by certified U.S. Mail, return-receipt request. The possibility always exists that some Request for Exclusion Forms may get lost in the mail. It is strongly suggested that you send the Request for Exclusion Form by certified U.S. Mail with a return-receipt request or by overnight courier so that you have an official record showing the date of mailing.

16. If you choose not to participate in the Settlement, you must sign and date a Request for Exclusion Form and either mail the completed Request for Exclusion Form to the Claims Administrator by postage pre-paid U.S. First-Class mail or by overnight courier postmarked **on or before May 30, 2006**, or personally deliver it to the Claims Administrator **by no later than June 5, 2006** at the following address:

If Mailed by U.S. Postal Service:

Masucci v. Allmark, Inc. Claims Administrator
c/o Rosenthal & Company LLC
P.O. Box 6177
Novato, CA 94948-6177
1-800 207-0343

If Personally Delivered or by an Overnight Courier:

Masucci v. Allmark, Inc. Claims Administrator
c/o Rosenthal & Company LLC
300 Bel Marin Keys Boulevard, Suite 200
Novato, CA 94949
1-800 207-0343

17. If you do not timely submit a Request for Exclusion Form **and** do not timely submit a Claim Form, you will **not** be entitled to a share of the Settlement payment **but you will be bound by the terms of the Joint Stipulation for Settlement and Release, including the release, even though you did not receive any money.** Further you will not have the right to pursue your own claims against any or all of the Defendants or other related entities or persons if you do nothing.

ANY PERSON WHO MEETS THE CLASS DEFINITION WHO DOES NOT TIMELY SUBMIT A REQUEST FOR EXCLUSION AND DOES NOT TIMELY SUBMIT A CLAIM FORM TO THE CLAIMS ADMINISTRATOR WILL NOT RECEIVE A SHARE OF THE SETTLEMENT AND HIS OR HER CLAIMS WILL BE FOREVER BARRED.

18. If you timely submit both a Claim Form and a Request for Exclusion Form, the Request for Exclusion Form will be declared invalid, you will be included in the Settlement Class, and you will be bound by the terms of the Joint Stipulation for Settlement and Release.

19. If you do not timely submit a Request for Exclusion Form, you may object to the Joint Stipulation for Settlement and Release, personally or through an attorney, by mailing your objections to:

If Mailed by U.S. Postal Service:

c/o Rosenthal & Company LLC
Masucci v. Allmark, Inc. Claims Administrator
P.O. Box 6177
Novato, CA 94948-6177
1-800 207-0343

If Personally Delivered or by an Overnight Courier:

c/o Rosenthal & Company LLC
Masucci v. Allmark, Inc. Claims Administrator
300 Bel Marin Keys Boulevard, Suite 200
Novato, CA 94949
1-800 207-0343

All such objections must be signed and contain your name, current home address, day and evening telephone numbers, and the name of the case (*Masucci v. Allmark, Inc.*). All such objections must be **received** by the Claims Administrator by no later than five business days prior to the date of the Fairness Hearing to allow the Claims Administrator time to get the objections to the Court. If you submit an objection, you may appear personally or through an attorney, at your own expense, at the Fairness Hearing to present your objection directly to the Court. Your objection should clearly explain why you object to the Settlement and must state whether you (or someone on your behalf) intend to appear at the Fairness Hearing. You may still participate in the Settlement even if you submit an objection. In order to participate in the Settlement, you must timely submit a Claim Form as set forth in this Notice. If you file an objection but do not also timely submit a Claim Form, and the Court grants final approval after overruling any and all objections, you will not receive any Claim Share you might otherwise have been entitled to receive.

SUMMARY OF TERMS OF SETTLEMENT AGREEMENT

20. The parties entered into a Joint Stipulation of Settlement and Release (the Joint Stipulation). The Court granted preliminary approval to the Settlement on April 17, 2006. If you would like a complete copy of the Joint Stipulation or if you have any questions about the Settlement or about the Joint Stipulation, please contact Class Counsel at the address, telephone numbers or e-mail addresses listed in this Notice. The principal terms of the Settlement are summarized as follows.

21. **Settlement Award and Plan for Distribution:** The Joint Stipulation provides that the Defendants will pay \$585,000.00 to fully resolve the issues in this case (the Settlement Award). Most of the Settlement Award will be distributed to those Settlement Class Members who timely submit valid Claim Forms (the Claimants). The total amount of the Settlement Award of \$585,000.00 shall be distributed as follows:

(a) **Deductions.** The following deductions will be made from the Settlement Award:

i. **Attorneys' Fees:** Class Counsel will request that the Court award them the sum of \$194,000.00 as compensation for legal services rendered by them to and on behalf of the Class Representative and the Settlement Class, which amount is less than one-third of the total amount of the Settlement Award. This amount constitutes full and complete compensation to Class Counsel for all legal fees of all Class Counsel, including costs and expenses resulting from experts and other vendors retained by Class Counsel in connection with the litigation and all work done through the completion of the litigation, whatever date that may be. Neither the Class Representative nor the Settlement Class Members will be required to pay Class Counsel for any other attorneys' fees out of their own pockets if the Settlement is approved by the Court. Class Counsel has spent nearly five years litigating this case taking and defending depositions, making numerous lengthy court appearances, filing and defending numerous discovery motions and a motion for summary adjudication on behalf of the class, and engaging in diligent discovery and investigation which included reviewing, duplicating and analyzing tens of thousands of documents in thousands of tenant files in the course of representing the Settlement Class.

ii. **Costs Advanced and Costs of Administration:** Class Counsel will request that the Court award them their actual Costs Advanced in connection with the work they performed in this case through the completion of the litigation, whatever date that may be, and for the actual Costs of Administration of the Settlement and the claims process to be paid from the Settlement Award. Actual Costs Advanced through the date of distribution are not expected to exceed \$30,000.00, of which \$2,900.00 was advanced to pay the Class' share of the first mediator's fees for a mediation conducted in January

2004 and of which \$4,500.00 was advanced to pay the Class' share of the second mediator's fees for the mediation which resulted in the settlement of the case. Actual Costs of Administration are not expected to exceed \$30,000.00. All Costs Advanced and all Costs of Administration shall be paid from the Settlement Award and neither the Class Representative nor any Settlement Class Member will be required to pay Class Counsel any Costs Advanced or Costs of Administration out of their own pockets.

iii. Payment of Enhancement to Class Representative: In addition to any amount he is entitled to receive as a Settlement Class Member as his Claim Share, Class Representative David Masucci shall be paid \$10,000 as compensation for the services he rendered on behalf of the Settlement Class, and for the financial risks he undertook in prosecuting this action, including the fact that certain of the Defendants were awarded over \$5,000 in costs against Plaintiff David Masucci and they sought \$32,000 in attorneys' fees against him, the denial of which is the subject of an appeal currently pending in the Fourth Appellate District Court of Appeal as Case Number E038980.

iv. Amount Available to Pay Claims of Settlement Class Members: All amounts remaining after deductions from the amount of \$585,000.00 for the payment of attorneys' fees, Costs Advanced, Costs of Administration and the enhancement payment to the Class Representative shall be distributed to the Claimants who timely submit valid Claim Forms in accordance with the claims process set forth earlier in this Notice. It is anticipated that the amount of the Settlement Award Available for Distribution to Settlement Class Members for the payment of Claim Shares will be at least \$321,000.

22. Release. The Joint Stipulation provides that each Claimant will fully release and discharge Defendants from any claim, right, demand, charge, complaint, cause of action, obligation or liability for individual and/or class or injunctive or monetary relief arising out of the First Amended Complaint. You may request a complete and conformed copy of the First Amended Complaint from Class Counsel by contacting them at the address, telephone numbers or e-mail addresses listed in this Notice.

23. Conditions of the Settlement. This Settlement is conditioned upon the Court entering an order or judgment at or following the Fairness Hearing approving the Settlement as fair, reasonable, and adequate and in the best interests of the Class and upon the exhaustion of any proceedings and appeals of the order or judgment.

HEARING ON PROPOSED SETTLEMENT

24. You are not required to attend the Fairness Hearing or to file an objection although you may do either or both.

25. The Fairness Hearing on the fairness of the Settlement, the Plan for Distribution, and Class Counsel's request for attorneys' fees and reimbursement of Costs Advanced and Costs of Administration, will be held on July 10, 2006 at 9:00 a.m. in Department R12 of the Superior Court located at 8303 Haven Avenue, Rancho Cucamonga, CA 91730. The Fairness Hearing may be continued by the Court without further notice.

26. You may object, personally or through an attorney, to the Settlement by mailing or delivering your objection or following the procedures set forth in this Notice.

27. Any Settlement Class Member who does not object in the manner provided in this Notice shall be deemed to have approved the Settlement and to have waived any and all objections to the Settlement and shall be forever barred from objecting to the fairness or adequacy of the Settlement, the Plan for Distribution, the payment of attorneys' fees, the reimbursement of Costs Advanced and Costs of Administration, the claims process, the payment of compensation to the Class Representative, or to any other aspect of the Settlement of this class action lawsuit.

CHANGE OF ADDRESS

28. If you move after receiving this Notice, if this Notice was misaddressed or if for any reason you want your payment or future correspondence concerning the Settlement to be sent to a different address, you must supply your current or preferred address to the Claims Administrator at:

If Mailed by U.S. Postal Service:

c/o Rosenthal & Company LLC
Masucci v. Allmark, Inc. Claims Administrator
P.O. Box 6177
Novato, CA 94948-6177
1-800 207-0343

If Personally Delivered or by an Overnight Courier:

c/o Rosenthal & Company LLC
Masucci v. Allmark, Inc. Claims Administrator
300 Bel Marin Keys Boulevard, Suite 200
Novato, CA 94949
1-800 207-0343

REMINDER AS TO TIME LIMITS

29. **May 30, 2006** Last day to submit Claim Form by U.S. mail or by overnight courier to Claims Administrator
- May 30, 2006** Last day to submit Request for Exclusion Form by U.S. Mail or overnight courier to Claims Administrator
- June 5, 2006 at 5:00 p.m.** Last day to personally deliver Claim Form to Claims Administrator
- June 5, 2006 at 5:00 p.m.** Last day to personally deliver Request for Exclusion Form to Claims Administrator
- June 19, 2006** Last day for **receipt** of objection to Settlement by Claims Administrator

ADDITIONAL INFORMATION

30. This Notice is only a summary of certain portions and aspects of the litigation, the parties, the Joint Stipulation, and the matters relating to them. Copies of the First Amended Complaint, the Joint Stipulation, and Class Counsels' attorneys' fees petition are filed with and available from the Court. You may also send written questions concerning the Settlement, the Joint Stipulation, the claims process, the Plan for Distribution, Class Counsels' attorneys' fees petition or any other matter concerning your rights in this case to the Claims Administrator or to Class Counsel at the addresses, telephone numbers and e-mail addresses set forth in this Notice. You may also retain an attorney at your own expense to represent and advise you regarding your rights and options relative to the Settlement.

PLEASE DO NOT CONTACT THE COURT REGARDING ANY QUESTIONS.

Dated: April 17, 2006

/s/ The Honorable Ben T. Kayashima
Judge of the Superior Court of the State of California