

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

*Kelly v. Brooklyn Events Center, LLC, et al.*, No. 17 Civ. 4600

**If you applied for a food service operations position with Levy at the Barclays Center sometime between August 4, 2014 through August 15, 2018, but you were not hired based on a criminal background check, you are eligible for \$250.00.**

*A federal court authorized this notice. This is not a solicitation from a lawyer.*

An applicant for a food service operations position at the Barclays Center sued Levy Premium Foodservice Limited Partnership (“Levy” or “Defendant”), for allegedly using an unreliable criminal background check process.

- Under this Settlement, you are entitled to a payment of \$250.00.
- Visit the Settlement Website at [www.levysettlement.com](http://www.levysettlement.com) for additional details about the Settlement. You may also get additional information by contacting the Settlement Administrator at the address, e-mail address, or phone number identified in Section 5 of the Notice.

<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:</b>	
<b>DO NOTHING</b>	If you do nothing, you will receive a payment of \$250.00. You also give up your right to sue Defendant on these claims.
<b>EXCLUDE YOURSELF</b>	If you wish to exclude yourself (“opt out”) from the Settlement you must follow the directions outlined in Section 10 below. If you exclude yourself, you will not receive any payment and you cannot object to the Settlement. <b><u>Your exclusion request must be e-mailed or postmarked no later than July 25, 2019.</u></b>
<b>OBJECT</b>	You may write to the Court about why you believe the Settlement is not fair or reasonable. You must object in writing in order to appear at the Fairness Hearing to speak to the Court about the fairness of the Settlement. <b><u>You must send a written objection e-mailed or postmarked no later than July 25, 2019.</u></b>

These rights and options – **and deadlines** – are explained in this notice.

The Court in charge of this case still has to decide whether to give final approval to the Settlement. Class Member relief in the form of hiring consideration and/or payments will be made if the Court approves the Settlement and after appeals, if any, are resolved. Please be patient.

## **BASIC INFORMATION**

### **1. Why did I receive this notice and what is this lawsuit about?**

This lawsuit claims that Levy, which hired applicants for certain food service operations positions at the Barclays Center, violated state and federal laws governing the use of criminal background check procedures to screen applicants seeking positions for employment.

Levy’s records show that you applied for a food service operations position with Levy at the Barclays Center sometime between August 4, 2014 and August 15, 2018, were subjected to a criminal background check, and were ultimately not hired based on your criminal history record or because of an administrative error.

The Court ordered that you be sent this Notice because the proposed Settlement may apply to you and you have a right to know about it and all your options before the Court decides whether to approve the Settlement.

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

The Court did not decide in favor of Plaintiff or Defendant. Both sides believe they would have prevailed, but there was no ruling in favor of either party. Instead, both sides agreed to a settlement. That way, they avoid the costs, delays, and uncertainties associated with a trial, and the people affected will get job opportunities and/or compensation. Plaintiff and Class Counsel think the Settlement is the best result for all Class Members and that the terms and conditions of the Settlement are fair, reasonable, and adequate.

## WHO IS IN THE SETTLEMENT

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

You are automatically a member of the Class if you applied for employment with Levy at the Barclays Center for a food service operations position, were otherwise eligible for employment (*e.g.* you did not fail a pre-employment drug test or have an invalid Social Security number that would have precluded Levy from procuring a background report on you), were identified by Levy as having a background report showing a criminal history through a consumer report, but were not hired because of a criminal background check or administrative error sometime between August 4, 2014 and August 15, 2018. If you are not sure about whether you qualify as a Class Member, you can contact the Settlement Administrator at the address, e-mail address, or phone number identified in Section 5 of this Notice.

## THE SETTLEMENT BENEFITS – WHAT YOU GET

### 4. What does the Settlement provide?

#### Injunctive Relief

This Settlement calls for injunctive relief in the form of review and potential revisions to Levy's background check policies and practices. Levy agreed to hire a consultant to thoroughly review its current background check policies and practices at the Barclays Center, and provide written proposed modifications if necessary. For more details, Class Members can access the settlement agreement available at [www.levysettlement.com](http://www.levysettlement.com).

#### Individual Payments

There are two categories of eligibility for Individual Payments:

#### Tier One:

Class Members receive a monetary award of \$250.00 for claims related to Levy's failure to provide proper notice relating to your background check. As explained below, you qualify for Tier One relief.

#### Tiers Two & Three:

Class Members who qualify for employment under Levy's approved background check policy (*i.e.*, the policy approved by the consultant hired by Levy) for hiring individuals with criminal records may get a job offer for the position for which they applied previously (or a similar one) and payment of \$1,950.00 OR, if they do not want the job opportunity, a monetary payment of \$2,350.00.

Following the consultant's work with Levy's on its revised policy, and pursuant to the terms of the Settlement Agreement, you qualify as a Tier 1 Class Member and are entitled to \$250 for claims related to Levy's failure to provide proper notice relating to your background check. Please note that you were considered for but did not qualify as a Tier 2 or 3 Class Member.

#### Additional Payments

Subject to the Court's approval, Levy has also agreed to separately pay Class Counsel's attorneys' fees and costs of no more than \$165,000.00, the cost of administering the Settlement, and a payment to a non-profit organization that provides re-entry support to individuals with criminal history records of no more than \$5,000.00. Subject to the Court's approval, Levy will also pay a service award of \$5,000.00 to Plaintiff Felipe Kelly for bringing the suit, his service to the Class, and reaching this Settlement.

### 5. How do I participate in the Settlement?

You do not need to do anything to receive payment. If the Court grants final approval of the settlement, the Settlement Administrator will mail via First Class Mail the \$250.00 monetary award to the address on your Notice. To update your address or contact information contact the Settlement Administrator via mail, e-mail, or telephone:

Kelly v. Levy Settlement Administrator  
PO Box 23668  
Jacksonville, FL 32241-3668  
(877) 312-9253  
[info@levysettlement.com](mailto:info@levysettlement.com)

Contact Christopher M. McNerney or Nina T. Martinez  
Outten & Golden LLP 685 Third Ave., 25th Floor New York, NY 10017  
(212) 245-1000 or [BarclaysBackgroundCheck@outtengolden.com](mailto:BarclaysBackgroundCheck@outtengolden.com)

**6. How will my payment be taxed?**

Your payment will be allocated as a non-wage payment and reported on an IRS Form 1099. Neither Class Counsel nor Levy make any representations concerning the tax consequences of this Settlement and you are advised to seek your own personal tax advice regarding the tax implications of the Settlement.

**7. By not excluding myself from this Settlement, what legal claims am I releasing?**

If the Court grants final approval of the Settlement, then all Class Members who do not opt-out of the Settlement are giving up (also called “releasing”) their right to sue Defendant in connection with its failure to hire them based on their criminal history. This release includes claims arising from or relating to the denial of employment by Defendant in connection with Class Members’ criminal history under the New York City Human Rights Law, Article 23-A of the New York State Correction Law, the federal Fair Credit Reporting Act, the New York State Fair Credit Reporting Act, and Title VII of the Civil Rights Act of 1964, including any right to recover any and all available damages, attorneys’ fees, and costs. Unless you opt-out of the lawsuit, you will be covered by the release.

**THE LAWYERS REPRESENTING YOU**

**8. Do I have a lawyer in this case?**

The Court has appointed the lawyers at Outten & Golden LLP and Youth Represent to represent you and all Class Members. Together, the lawyers are called “Class Counsel.” Unless you elect to exclude yourself from the Settlement, you will continue to be represented by Class Counsel in connection with the implementation of the Settlement throughout the duration of the terms of the Settlement at no cost to you.

More information about Outten & Golden LLP is available at [www.outtengolden.com](http://www.outtengolden.com) and at <http://www.criminalconvictiondiscrimination.com/>.

More information about Youth Represent is available at <http://youthrepresent.org/>.

If you have questions about the proposed Settlement, you can get free legal help by contacting Class Counsel:

Ossai Miazad  
Christopher M. Mc Nerney  
Nina T. Martinez  
Outten & Golden LLP  
685 Third Avenue, 25<sup>th</sup> Floor  
New York, NY 10017  
212-245-1000

Michael Pope  
Eric Eingold  
Youth Represent  
11 Park Place, Suite 1512  
New York, NY 10007  
646-759-8080

[BarclaysBackgroundCheck@outtengolden.com](mailto:BarclaysBackgroundCheck@outtengolden.com)

**9. How will the lawyers be paid?**

Class Counsel will ask the Court to approve payment of up to \$165,000.00 for their attorneys’ fees and costs. The Court may award less than this requested amount.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

If you want to be able to sue Defendant on your own, then you must exclude yourself from the Class. The process is also sometimes referred to as “opting out.”

**10. How do I opt out of the Settlement?**

To exclude yourself from the Settlement, you must send an e-mail or letter by First Class U.S. Mail stating the following: “I opt out of the Levy at the Barclays Center Applicant Settlement.” Be sure to include your name, address, e-mail address, telephone number, and your signature. Your exclusion request must be e-mailed or postmarked no later than July 25, 2019, to:

Kelly v. Levy Settlement Administrator  
PO Box 23668  
Jacksonville, FL 32241-3668  
[info@levysettlement.com](mailto:info@levysettlement.com)

Contact Christopher M. Mc Nerney or Nina T. Martinez  
Outten & Golden LLP 685 Third Ave., 25th Floor New York, NY 10017  
(212) 245-1000 or [BarclaysBackgroundCheck@outtengolden.com](mailto:BarclaysBackgroundCheck@outtengolden.com)

If you ask to be excluded, you will not receive a settlement payment, and you cannot object to the Settlement, but you will be able to separately sue Defendant. If you wish to exclude yourself in order to file an individual lawsuit against Defendant, you should speak to a lawyer as soon as possible because your claims are subject to several statutes of limitations.

## **OBJECTING TO THE SETTLEMENT**

You can tell the Court that you do not agree with the Settlement or some part of it.

### **11. How do I tell the Court that I do not like the Settlement?**

You can object to the Settlement if you do not like any part of it. To object, you must send an e-mail or letter via First Class U.S. Mail to the Settlement Administrator saying that you object to *Kelly v. Brooklyn Events Center, LLC et al*, No. 17 Civ. 4600. Be sure to include your name, address, e-mail, telephone number, and all reasons why you object to the Settlement. Any reasons not included in your statement will not be considered. E-mail or mail the objection to:

Kelly v. Levy Settlement Administrator  
PO Box 23668  
Jacksonville, FL 32241-3668  
[info@levysettlement.com](mailto:info@levysettlement.com)

Your letter must be e-mailed or postmarked no later than **July 25, 2019**.

## **THE COURT'S FAIRNESS HEARING**

The Court will hold a fairness hearing at **10:00 a.m.** on **September 9, 2019** at the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, NY 11201, Courtroom [13C South]. You do not need to attend the hearing, but you may attend if you would like at your own expense. At this hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the hearing, the Court will decide whether to approve the Settlement. We do not know how long the Court's decision will take.

DATED: June 10, 2019

Contact Christopher M. McNerney or Nina T. Martinez  
Outten & Golden LLP 685 Third Ave., 25th Floor New York, NY 10017  
(212) 245-1000 or [BarclaysBackgroundCheck@outtengolden.com](mailto:BarclaysBackgroundCheck@outtengolden.com)