

Empirian, inter alia, manages by contract all of the multi-family apartment complexes owned and/or controlled by Empire American Holdings LLC.

3. From August 30, 2007 to June 20, 2011, Empirian managed the day-to-day operations of The Overlook, a multi-family residential apartment property located at 2882 Comstock Plaza, Bellevue, Nebraska, 68123 in Sarpy County.
4. From August 30, 2007 to June 20, 2011, Empirian managed the day-to-day operations of The Landings, a multi-family residential apartment property located at 10215 Cape Cod Landing, Bellevue, Nebraska, 68123 in Sarpy County.
5. In managing the day-to-day operations of The Overlook and The Landings, Empirian, inter alia, regularly leased residential apartments at those complexes to active duty servicemembers assigned to Offutt AFB.
6. In its Complaint, the United States alleges that Empirian, from August 30, 2007, to June 20, 2011, in the course of carrying out its duties as the property manager, lessor and/or agent for the owners of The Overlook and The Landings, refused to terminate residential leases entered into by active duty members of the USAF assigned to Offutt AFB, and/or refused to refund security deposits due, after those servicemembers received military orders for a permanent change of station (hereinafter "PCS") and provided Empirian or the prior management company with copies of those orders and written notices of lease termination.
7. The United States and Empirian agree that the Court has jurisdiction over the subject matter of this case pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. app. § 597a.

8. The United States and Empirian have entered into this Consent Order to resolve the allegations contained in the United States' Complaint and in order to avoid the risks and burdens of litigation. Empirian denies any wrongdoing as alleged by the United States or otherwise. The parties agree that full implementation of the terms of this Consent Order will provide a fair and reasonable resolution, in a manner consistent with Empirian's legitimate business interests, of the allegations of the United States regarding Empirian's failure to terminate certain residential leases. Therefore, as indicated by the signatures appearing below, the United States and Empirian have entered into this Consent Order.

It is hereby ORDERED, ADJUDGED and DECREED:

II. INJUNCTIVE RELIEF

9. Empirian, its officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with Empirian are hereby enjoined from:
- a. Refusing, in violation of 50 U.S.C. app. § 535(a)(1), to terminate a servicemember's residential lease after receiving a written notice of lease termination and 1) a copy of that servicemember's military orders for a PCS, including PCS orders discharging, releasing, or separating that servicemember from military service under honorable conditions; 2) a copy of that servicemember's military orders in support of a military operation lasting at least ninety (90) days; or 3) a copy of orders showing that an individual is entering military service;

- b. Refusing to timely return rents or lease amounts paid in advance by a servicemember for a period after the effective date of the termination of a lease, in violation of 50 U.S.C. app. § 535(f); and
- c. Knowingly seizing, holding, or detaining the personal effects, security deposits, or other property of a servicemember or a servicemember's dependent, in violation of 50 U.S.C. app. § 535(h).

III. COMPLIANCE WITH THE SCRA AND COMPLAINT POLICY

- 10. Within forty-five (45) days of the date of entry of this Consent Order and throughout its term, Empirian shall post and prominently display in all of its leasing offices located within twenty-five (25) miles of a military installation a sign no smaller than ten (10) inches by fourteen (14) inches indicating that Empirian complies with all provisions of the SCRA and welcomes servicemembers as applicants for tenancy.
- 11. Throughout the term of this Consent Order, Empirian shall include in any new advertising that Empirian causes to appear in telephone directories, on the internet, or on Empirian's website, and in any fliers, banners, pamphlets, brochures, or other promotional literature, for any multi-family apartment complex managed by Empirian that is located within twenty-five (25) miles of a military installation, the following sentence:

We comply with the Servicemembers Civil Relief Act and welcome servicemembers as applicants for tenancy.

- 12. Empirian shall revise its written complaint policy. The revised complaint policy shall inform applicants for tenancy at, and tenants of, all of Empirian's multi-family residential apartment complexes located within twenty-five (25) miles of a military installation how and where to file a complaint with Empirian about the practices of

Empirian, its employees and its agents that relate to residential lease terminations under the SCRA, and/or to other rights afforded by that Act. Within forty-five (45) days of the date of entry of this Consent Order, Empirian shall provide a draft copy of the revised complaint policy to counsel for the United States for approval. The United States shall respond to Empirian's proposed revised complaint policy within thirty (30) days of its receipt. If the United States objects to any part of Empirian's proposal, the parties shall have thirty (30) days to resolve their disagreement. If they are unable to do so, the parties shall submit the dispute to the Court for resolution. Empirian shall implement the revised complaint policy within ten (10) days of approval by the United States or the Court.

13. Within forty-five (45) days of the date of implementation of the revised complaint policy, Empirian shall provide a copy of that complaint policy to each current resident of all of Empirian's multi-family residential apartment complexes located within twenty-five (25) miles of a military installation. For the duration of this Consent Order, Empirian shall provide a copy of the revised complaint policy to each new resident of all of Empirian's multi-family residential apartment complexes located within twenty-five (25) miles of a military installation within forty-five (45) days of the beginning of his or her residency.
14. Within forty-five (45) days of the date of implementation of the revised complaint policy, and for the term of this Consent Order, Empirian shall post and prominently display the revised complaint policy in all of its leasing offices located within twenty-five (25) miles of a military installation.

15. If at any time during the term of this Consent Order Empirian proposes to change its revised complaint policy, it shall first provide counsel for the United States with a copy of the proposed changes. If the United States does not deliver written objections to Empirian within sixty (60) days of receiving the proposed changes, the changes may be effected. If the United States makes any objections to the proposed changes within the sixty (60) day period, the specific changes to which the United States objects shall not be effected until the objections are resolved.

IV. TRAINING

16. Within forty-five (45) days of the date of entry of this Consent Order, Empirian shall provide a copy of the Consent Order to all Empirian employees and agents whose duties, in whole or in part, involve terminating leases and/or determining final rental account charges at multi-family housing complexes within twenty-five (25) miles of a military installation and Empirian senior management ("covered Empirian employees"). Within forty-five (45) days of the implementation of Empirian's revised complaint policy, Empirian shall provide a copy of that policy to all covered Empirian employees. Empirian shall secure signed statements conforming to Appendices A and B from each covered Empirian employee acknowledging that he/she has received, read and understands the Consent Order and the revised complaint policy, and has had his/her questions about these documents answered. Copies of those signed statements shall be provided to the United States in accordance with the provisions of Paragraph 26.
17. Within ninety (90) days of the date of entry of this Consent Order, Empirian shall provide a draft outline of a proposed training program focused on the provisions of

the SCRA and, in particular, Section 535 of the SCRA to counsel for the United States for approval. The United States shall respond to Empirian's draft proposed training outline within thirty (30) days of its receipt. If the United States makes any objections to the draft proposed training outline within the thirty (30) day period, the training program shall not be implemented until the objections are resolved. Within forty-five (45) days of the United States' approval of Empirian's draft proposed training outline, Empirian, through one or more in-house trainers approved by the United States, shall provide training focused on the provisions of the SCRA and, in particular, Section 535 of the SCRA, to all covered Empirian employees. Any expenses associated with this training shall be borne by Empirian. Training may be accomplished by viewing a presentation on DVD or other recording medium approved by the United States. Those who attend the training shall be required to sign a certification of completion conforming to Appendix C. Copies of those signed certifications shall be provided to the United States in accordance with the provisions of Paragraph 26.

18. During the term of this Consent Order, each new covered Empirian employee shall be given a copy of this Consent Order and the revised complaint policy. Each such new covered Empirian employee shall sign statements conforming to Appendices A and B. Within forty-five (45) days of the date of hire of any new covered Empirian employee, Empirian shall provide the above-referenced training. Any expenses associated with this training shall be borne by Empirian. Training may be accomplished by viewing a presentation on DVD or other recording medium approved by the United States. Those who attend the training shall be required to

sign a certification of completion conforming to Appendix C. Copies of those signed certifications shall be provided to the United States in accordance with the provisions of Paragraph 26.

V. DAMAGES FOR AGGRIEVED SERVICEMEMBERS

19. Within forty-five (45) days of the date of entry of this Consent Order, Empirian shall pay a total of twelve thousand, five hundred dollars (\$12,500.00) in monetary damages to persons whom the United States has identified as aggrieved servicemembers. A list of such persons and the specific amount to be paid to each such person is attached as Appendix D. Empirian shall pay said money by sending to counsel for the United States a certified check for each identified aggrieved servicemember, made payable to the servicemember for the amount listed next to his or her name in Appendix D.
20. No aggrieved servicemember shall be paid until the United States has received and delivered to Empirian a signed release in the form of Appendix E. When counsel for the United States has received a certified check from Empirian payable to an aggrieved servicemember and a signed release in the form of Appendix E from that person, counsel for the United States shall deliver the certified check to the aggrieved servicemember after delivering the original, signed release to counsel for Empirian.
21. Within forty-five (45) days of the date of entry of this Consent Order, Empirian shall use good faith efforts to obtain consent from the current owners and managers of The Landings to provide the United States access to all tenant files for that apartment complex for the period of time from August 30, 2007 to June 20, 2011.

If, after good faith efforts, consent to access is not granted, Empirian shall promptly notify counsel for the United States of that fact. Empirian will then cooperate with the United States if the United States chooses to jointly seek consent. The United States may take other appropriate steps to gain access to the tenant files for The Landings. Any denial of access does not relieve Empirian of its obligations under Paragraph 24 of this Consent Order. Nothing in this Consent Order shall preclude the United States from making its own efforts to locate and provide notice to potential aggrieved servicemembers who were tenants at The Landings.

22. Within forty-five (45) days of being notified, in writing, by Empirian that it has obtained consent from the current owners and managers of The Landings for the United States to have access to all tenant files for that complex for the period of time from August 30, 2007 to June 20, 2011, the United States will review such files.
23. Within ninety (90) days of the United States' review of The Landings' tenant files, the United States shall make a preliminary determination of which, if any, former tenants of that complex it believes are aggrieved servicemembers and the amount of actual and emotional distress damages suffered by each such servicemember. The United States will inform Empirian, in writing, of its preliminary determinations and will provide Empirian with a copy of all relevant documents from each additional aggrieved servicemember's tenant file, including a sworn declaration from each aggrieved servicemember. Empirian shall have thirty (30) days from the date it receives the above-referenced information to review it and provide the United States with any documents or information that it believes refutes the claim. The United States shall in good faith review such information from Empirian.

24. Within thirty (30) days after receiving Empirian's documents or information, the United States shall submit its final recommendations to the Court for approval, together with a copy of the declarations and any additional information submitted by Empirian. Within ten (10) days of the Court's issuing an order or changing the United States' proposed distribution of funds for additional aggrieved servicemembers, Empirian shall deliver to the United States certified checks payable to the aggrieved servicemembers in the amounts approved by the Court. In no event shall the total amount of the United States' final recommendations exceed the sum of twenty thousand dollars (\$20,000.00), nor shall Empirian in any event be obligated to pay more than \$20,000.00 for alleged violations of the SCRA relating to additional aggrieved servicemembers, other than those identified in Appendix D, at The Landings. If the United States does not identify any additional aggrieved servicemembers, Empirian shall have no further payment obligations under this paragraph.
25. No additional aggrieved servicemember shall be paid until the United States has delivered to Empirian a signed release in the form of Appendix E. When counsel for the United States has received a certified check from Empirian payable to an aggrieved servicemember and a signed release in the form of Appendix E from that person, counsel for the United States shall deliver the check to the additional aggrieved servicemember after delivering the original, signed release to counsel for Empirian.

VI. REPORTING AND RECORD KEEPING REQUIREMENTS

26. Within one hundred twenty (120) days of the date of entry of this Consent Order, and thereafter on the anniversary of the date of this Consent Order, Empirian shall submit to counsel for the United States a compliance report, except that the final report shall be submitted sixty (60) days prior to the anniversary of this Consent Order. The compliance report shall include: (a) the signed statements and certifications of each covered Empirian employee referred to in paragraphs 16-18 obtained since the date of the Consent Order or submission of the prior compliance report; (b) a copy of the then-current complaint policy; (c) a copy of one advertisement, as referenced in paragraph 11, supra, published since the submission of the prior report, if any, for all multi-family apartment complexes managed by Empirian that are located within twenty-five (25) miles of a military installation; and (d) photographs showing the sign described in Paragraph 10 and the revised complaint policy described in Paragraph 12 posted and prominently displayed in Empirian's leasing offices located within twenty-five (25) miles of a military installation.
27. During the term of this Consent Order, Empirian shall notify counsel for the United States in writing within thirty (30) days of receipt of any written or oral complaint against Empirian and/or any of Empirian's agents or employees regarding the SCRA. If the complaint is written, Empirian shall provide a copy of it with the notification. The notification shall include the full details of the complaint, including the complainant's name, address, and telephone number. Empirian shall also promptly provide the United States all information it may request concerning any

such complaint and shall inform the United States in writing within thirty (30) days of the terms of any resolution of such a complaint.

28. For the duration of this Consent Order, Empirian shall preserve for all multi-family apartment complexes under then current management by Empirian all records related to this Consent Order. Such documents include, but are not limited to, advertisements, applications, leases, resident assessment materials, tenant files, policies, and procedures. Upon reasonable notice to Empirian, representatives of the United States shall be permitted to inspect and copy any records related to this Consent Order at any and all reasonable times so as to determine compliance with the Consent Order, provided, however, that the United States shall endeavor to minimize any inconvenience to Empirian. In the event that Empirian has not received notice of any written or oral complaint regarding the SCRA at a given property at the time it ceases to manage such property, this order imposes no additional obligations to retain records relating to that property. If Empirian has received notice of any written or oral complaint regarding the SCRA at a given property at the time it ceases to manage such property, Empirian will retain copies of all records related to any SCRA complaints at the property, even though it may no longer manage the property.
29. The United States may take steps to monitor Empirian's compliance with the Consent Order.

VII. SCOPE OF CONSENT ORDER

30. The provisions of this Consent Order shall apply to Empirian, its employees, agents, and all persons in active concert or participation with it.

**VIII. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND REMEDIES FOR
NON-COMPLIANCE**

31. Any time limits for performance imposed by this Consent Order may be extended by the mutual written agreement of the parties. The other provisions of this Consent Order may be modified by written agreement of the parties or by motion to the Court. If the modification is by written agreement of the parties, then such modification will be effective thirty (30) days from the date of the filing of the written agreement with the Court, and shall remain in effect for the duration of the Consent Order or until such time as the Court indicates through a written order that it has not approved the modification.
32. The parties to this Consent Order shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 34 below.
33. The parties to this Consent Order shall endeavor in good faith to resolve informally any differences regarding the interpretation of and compliance with this Consent Order prior to bringing such matters to the Court for resolution. However, in the event the United States contends that there has been a failure by Empirian, whether willful or otherwise, to perform in a timely manner any act required by this Consent Order or otherwise comply with any provision thereof, the United States shall provide notice to Empirian describing the factual basis thereof. Upon receipt of such notice, Empirian shall have fifteen (15) days in which to respond to and attempt to cure such alleged failure to comply; the United States shall review Empirian's response in a good faith attempt to resolve any remaining disputes. If the parties do not reach a resolution, the United States may move the Court to

impose any remedy authorized by law or equity, including, but not limited to, an order requiring the performance of such act or deeming such act to have been performed, and an award of any damages, costs, and attorney's fees which may have been caused by Empirian's violation or failure to perform.

IX. RETENTION OF JURISDICTION

34. This Consent Order shall be in effect for a period of two (2) years from its date of entry. The Court shall retain jurisdiction for the duration of this Consent Order to enforce its terms, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of the Consent Order in the interests of justice.

IT IS SO ORDERED.

Dated this 8th day of March, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge

APPENDIX A

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20__, I was provided with a copy of the Consent Order entered by the Court in *United States v. Empirian Property Management, Inc.*, Case No. 8:12CV87 (D. Neb.). I have read and understand this document and have had my questions about this document answered. I understand my legal responsibilities and shall comply with those responsibilities.

[PRINT NAME]

[SIGNATURE]

[JOB TITLE]

APPENDIX B

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20__, I was provided with a copy of Empirian Property Management, Inc.'s revised complaint policy. I have read and understand this document and have had my questions about this document answered. I understand my legal responsibilities and shall comply with those responsibilities.

[PRINT NAME]

[SIGNATURE]

[JOB TITLE]

APPENDIX C

EMPLOYEE TRAINING CERTIFICATION

I certify that on _____, 20__, I received training with respect to my responsibilities under the Consent Order entered by the Court in *United States v. Empirian Property Management, Inc.*, Case No. 8:12CV87 (D. Neb.), and the Servicemembers Civil Relief Act. I have had the opportunity to have my questions about them answered. I understand my legal responsibilities not to violate the Servicemembers Civil Relief Act and shall comply with those responsibilities.

[PRINT NAME]

[SIGNATURE]

[JOB TITLE]

APPENDIX D

Identified Aggrieved Servicemembers and Amounts to be Paid

Ryan M. Miller	\$3,125.00
Amber L. Shaw	\$3,125.00
David L. McManus	\$3,125.00
<u>Daniel Rose</u>	<u>\$3,125.00</u>
Total	\$12,500.00

APPENDIX E

RELEASE OF ALL CLAIMS

In consideration for the parties' agreement to the terms of the Consent Order entered by the Court in *United States v. Empirian Property Management, Inc.*, Case No. 8:12CV87 (D. Neb.), and Empirian Property Management, Inc.'s payment to me of \$_____, pursuant to the Consent Order, I hereby release and forever discharge all claims related to the facts at issue in the Consent Order referenced above, or in any way related to that Consent Order, up to and including the date of execution of this release, that I may have against Empirian Property Management, Inc. and any and all past and present officers, agents, managers, supervisors and employees of Empirian Property Management, Inc., and their heirs, executors, administrators, successors, and assigns.

Executed this ____ day of _____, 20__.
