

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Norfolk Division

UNITED STATES OF AMERICA	)	
	)	
Plaintiff,	)	
	)	CASE NO.: 2:19-CV-125
v.	)	
	)	
PRG REAL ESTATE	)	
MANAGEMENT, INC.;	)	
	)	
WATERGATE/TREEHOUSE	)	
ASSOCIATES, L.P.;	)	
	)	
CHANTICLEER ASSOCIATES, L.P.;	)	
	)	
NEW COLONY HILTON	)	
ASSOCIATES, LLC;	)	
	)	
HERITAGE TRACE APARTMENTS, LLC;	)	
	)	
PRG ASHTON CREEK ASSOCIATES,	)	
LLC; and	)	
	)	
NEW HYDE PARK ASSOCIATES, LLC,	)	
	)	
Defendants.	)	

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**COMPLAINT**

Plaintiff, the United States of America (“United States”), by and through its undersigned attorneys, alleges as follows:

**INTRODUCTION**

1. The United States brings this action under the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, against PRG Real Estate Management, Inc.; Watergate/Treehouse Associates, L.P.; Chanticleer Associates, L.P.; New Colony Hilton

Associates, LLC; Heritage Trace Apartments, LLC; PRG Ashton Creek Associates, LLC; and New Hyde Park Associates, LLC (collectively “Defendants”).

2. Between January 1, 2006 and May 30, 2017, Defendants obtained default judgments against SCRA-protected servicemembers without filing proper affidavits of military service, in violation of 50 U.S.C. § 3931.

3. Between October 13, 2010 and June 29, 2018, Defendants also charged early termination fees to and wrongfully withheld security deposits from servicemembers who terminated their leases pursuant to military orders and imposed restrictions on military lease terminations that were inconsistent with the SCRA, in violation of 50 U.S.C. § 3955.

4. The purpose of the SCRA is to provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service, so that they can devote their entire energy to the defense of the Nation.

5. Section 3931 of the SCRA protects servicemembers from default judgments in circumstances in which, because of their military service, they may be unable to appear and defend themselves. The SCRA requires that when seeking a default judgment, a plaintiff must “file with the court an affidavit -- (A) stating whether or not the defendant is in military service and showing necessary facts to support the affidavit; or (B) if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.” 50 U.S.C. § 3931(b)(1). If the plaintiff informs the court that the defendant is in military service, the court may not enter judgment until it appoints an attorney to represent the defendant. The court shall also grant a stay of

proceedings for a minimum of 90 days upon application of counsel, or on the court's own motion, if the court determines that there may be a defense to the action that cannot be presented without the presence of the servicemember or that, after due diligence, counsel has been unable to contact the servicemember or otherwise determine if a meritorious defense exists.

6. Section 3955 of the SCRA allows servicemembers to terminate certain residential leases pursuant to qualifying military orders, thereby providing some relief to servicemembers who would otherwise be forced to pay rent for housing they cannot occupy because they are relocating pursuant to military orders. If a servicemember terminates his or her residential lease pursuant to Section 3955, the lessor may not make a claim for rent accruing after the effective date of termination and may not impose an early termination charge or wrongfully withhold a security deposit.

#### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this action under 28 U.S.C. §§ 1331 and 1345, and 50 U.S.C. § 4041.

8. Venue is proper in this judicial district under 28 U.S.C. § 1391(b) because the events giving rise to the United States' claims occurred in the Eastern District of Virginia.

#### **DEFENDANTS**

9. Defendant PRG Real Estate Management, Inc. ("PRG") is a corporation organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business in Philadelphia, Pennsylvania. PRG manages residential real estate in Florida, Kansas, Kentucky, Missouri, North Carolina, South Carolina, Pennsylvania, and Virginia.

10. Defendant Watergate/Treehouse Associates, L.P. d/b/a Linkhorn Bay Apartments (“Watergate”) is a limited partnership organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Virginia Beach, Virginia. From December 16, 1989 to the present, Watergate has owned Linkhorn Bay Apartments (“Linkhorn Bay”), an 864-unit residential apartment complex located at 1201 Waterfront Drive, Virginia Beach, Virginia 23451. At all times relevant to this complaint, Linkhorn Bay was managed by PRG.

11. Defendant Chanticleer Associates, L.P. d/b/a Courtyards of Chanticleer (“Chanticleer”) is a limited partnership organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Virginia Beach, Virginia. From June 28, 1990 to the present, Chanticleer has owned Courtyards of Chanticleer, a 306-unit residential apartment complex located at 1421-B Automne Circle, Virginia Beach, Virginia 23451. At all times relevant to this complaint, Courtyards of Chanticleer was managed by PRG.

12. Defendant New Colony Hilton Associates, LLC d/b/a Hilton Village Townhomes (“New Colony”) is a limited liability company organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Philadelphia, Pennsylvania. From November 28, 2007 to July 11, 2014, New Colony owned Hilton Village Townhomes (“Hilton Village”), a 160-unit residential apartment complex located at 531 Bulkeley Place, Newport News, Virginia 23601. At all times relevant to this complaint, Hilton Village was managed by PRG.

13. Defendant Heritage Trace Apartments, LLC d/b/a Heritage Trace Apartments (“Heritage LLC”) is a limited liability company. From October 3, 2008 to November 12, 2010,

Heritage LLC owned Heritage Trace Apartments (“Heritage Trace”), a 200-unit residential apartment complex located at 168 A Heritage Way, Newport News, Virginia 23602. At all times relevant to this complaint, Heritage Trace was managed by PRG.

14. Defendant PRG Ashton Creek Associates, LLC d/b/a Ashton Creek (“PRG Ashton Creek”) is a limited liability company organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Philadelphia, Pennsylvania. From December 11, 2015 to the present, PRG Ashton Creek has owned Ashton Creek, a 232-unit residential apartment complex located at 4201 Creek Way, Chester, Virginia 23831. At all times relevant to this complaint, Ashton Creek was managed by PRG.

16. Defendant New Hyde Park Associates, LLC d/b/a Hyde Park Apartments (“New Hyde Park”) is a limited liability company organized and existing under the laws of the Commonwealth of Virginia with its principal place of business in Norfolk, Virginia. From September 12, 1996 to the present, New Hyde Park has owned Hyde Park Apartments (“Hyde Park”), a 262-unit residential apartment complex located at 4223 Hyde Park Drive, Chester, Virginia 23831. At all times relevant to this complaint, Hyde Park was managed by PRG.

### **FACTUAL ALLEGATIONS**

17. On December 12, 2016, Navy legal assistance attorneys in Norfolk, Virginia notified the Department of Justice that PRG had obtained default judgments against SCRA-protected servicemembers using inaccurate affidavits of military status.

18. On January 9, 2017, the Department of Justice notified PRG that it was opening an investigation into PRG’s SCRA policies, practices, and procedures.

**Obtaining Default Judgments in Violation of 50 U.S.C. § 3931**

19. Since at least January 1, 2006, Defendants have filed civil claims for eviction and money damages against servicemembers in general district courts throughout the Commonwealth of Virginia.

20. General district courts in the Commonwealth of Virginia require plaintiffs, when they are filing for entry of a default judgment, to complete Form DC-418 – Affidavit – Default Judgment Servicemembers Civil Relief Act (VA. CODE § 8.01-15.2) (“Form DC-418”).

21. Form DC-418 requires the plaintiff to check one of three boxes stating that the defendant/respondent:

(a) is in military service;

(b) is not in military service; or

(c) that “[t]he affiant is unable to determine whether or not the defendant/respondent is in military service.”

22. Defendants’ standard residential rental application required prospective tenants to provide information that would permit Defendants to verify their military status, including their full name, former last names, Social Security number, date of birth, present employer, present employer’s address, work telephone number, position with the employer, start date of present employment, and supervisor’s name and telephone number.

23. Defendants also required prospective tenants to sign and submit an employment verification form and provide proof of income.

24. Defendants failed to file affidavits that accurately disclosed servicemembers’ military service to the court even when they had evidence in their own files suggesting that the

tenants were in military service, such as rental applications listing a branch of the armed forces as an employer, military leave and earning statements and military orders.

25. The Department of Defense Manpower Data Center (“DMDC”) maintains a free public website with a database that anyone seeking to comply with the SCRA can search to determine an individual’s military status using the individual’s last name and Social Security number or date of birth. A DMDC certificate showing the individual’s military status can be printed after a search of the DMDC database, thereby proving that the database was searched on a particular date.

26. Until at least November 2016, Defendants had no written policy requiring a DMDC database search, file review, or any other method to determine an individual’s military status prior to completing and filing an affidavit of military status; nor did they have a regular practice of searching the DMDC database or thoroughly reviewing their files before filing affidavits of military status.

27. From January 1, 2006 to May 30, 2017, Defendants obtained at least 152 default judgments against 127 SCRA-protected servicemembers by failing to disclose their military service or inaccurately stating that they were not in the military. These included:

- a. 25 default judgments Defendants obtained by filing affidavits stating that a servicemember was not in military service when the servicemember was in military service;
- b. 123 default judgments Defendants obtained by filing affidavits stating that they were unable to determine if the servicemember was in military service when the servicemember was in military service;

- c. Three default judgments Defendants obtained without filing the required affidavit when the servicemember was in military service; and
- d. One default judgment Defendants obtained by filing an affidavit that did not have any of the boxes checked when the servicemember was in military service.

28. By failing to file true and accurate affidavits indicating the military status of the servicemembers, Defendants deprived the servicemembers of their right to have the court postpone their cases and appoint attorneys to represent them.

29. In April 2016, PRG settled a dispute with two SCRA-protected servicemembers who claimed that PRG had used inaccurate affidavits to obtain default judgments against them. Following this settlement, PRG continued to obtain default judgments against SCRA-protected servicemembers without accurately disclosing their military statuses to the court.

**Limiting Servicemembers' Rights to Terminate their Leases under 50 U.S.C. § 3955(e)(1)**

30. Since at least October 13, 2010, Defendants have used leases that charge early termination fees and impose restrictions on military lease terminations that violate the SCRA.

31. Until about 2011, Defendants used a standard "Military Transfer" clause in their leases requiring servicemembers who terminated their leases after receiving military orders to pay liquidated damages of up to one month's rent.

32. The "Military Transfer" clause also imposed limitations on a servicemember's right to terminate the lease that violate the SCRA, by limiting the type of military orders that would allow a servicemember to terminate the lease early and imposing additional restrictions on the effective date of the termination.

33. Since about 2011, Defendants have been using a “Military Personnel Clause” in their leases that also contains restrictions that violate the SCRA. These restrictions include provisions limiting the type of military orders that would allow a servicemember to terminate the lease early.

34. The “Military Personnel Clause” also states that a dependent of a servicemember is not allowed to terminate the lease “without applying to a court and showing that [his or her] ability to comply with the lease is materially affected by reason of the servicemember’s military service.” Under the SCRA, the servicemember’s termination of a lease automatically terminates any obligation of a dependent. 50 U.S.C. § 3955(a)(2).

35. The “Military Personnel Clause” also requires servicemembers to certify that they will not retire from the military during the lease term and that their enlistment contract or service obligation will not end before the expiration of the lease term, and further provides that servicemembers will waive all rights to terminate if they misrepresent facts regarding their retirement or term of service. These requirements violate the SCRA, which simply provides that a servicemember may terminate a residential lease any time after he or she receives military orders for a “permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.” 50 U.S.C. § 3955(b)(1)(B). Under applicable military regulations, the term “permanent change of station” includes discharge, resignation, or separation under honorable conditions or retirement.

36. From October 13, 2010 to June 29, 2018, Defendants imposed unlawful early termination charges, seized or withheld security deposits or other property, and enforced lease

terms that prevented at least ten SCRA-protected servicemembers and their dependents from exercising their full lease termination rights under 50 U.S.C. § 3955.

**SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS**

**COUNT ONE**

**Violations of 50 U.S.C. § 3931 (Default Judgments)**

37. The United States realleges and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

38. The SCRA provides that, in any civil action or proceeding in which the defendant does not make an appearance, “the court, before entering judgment for the plaintiff, shall require the plaintiff to file with the court an affidavit . . . stating whether . . . the defendant is in military service and showing necessary facts to support the affidavit; or . . . if the plaintiff is unable to determine whether or not the defendant is in military service, stating that the plaintiff is unable to determine whether or not the defendant is in military service.” 50 U.S.C. § 3931(a), (b)(1).

39. Defendants engaged in a pattern or practice of violating Section 3931 of the SCRA by obtaining at least 152 default judgments against SCRA-protected servicemembers without filing true and accurate affidavits of military status.

40. Defendants’ violations of Section 3931 of the SCRA raise issues of significant public importance. Servicemembers should not have to worry that a default judgment may be entered against them when they are unable to appear and defend themselves. Default judgments damage servicemembers’ creditworthiness and may adversely impact their security clearances and continued military service.

41. The SCRA-protected servicemembers against whom Defendants obtained default judgments in violation of the SCRA are “person[s] aggrieved” under 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Defendants’ conduct.

42. Defendants’ conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

## **COUNT TWO**

### **Violations of 50 U.S.C. § 3955 (Lease Terminations)**

43. The United States realleges and incorporates by reference each allegation in the preceding paragraphs as if fully set forth herein.

44. The SCRA allows a servicemember to terminate a residential lease “at any time after . . . the lessee’s entry into military service; or . . . the date of the lessee’s military orders” if “the lease is executed by or on behalf of a person who thereafter and during the term of the lease enters military service; or . . . [if] the servicemember, while in military service, executes the lease and thereafter receives military orders for a permanent change of station or to deploy with a military unit, or as an individual in support of a military operation, for a period of not less than 90 days.” 50 U.S.C. § 3955(a), (b). “A lessee’s termination of a lease pursuant to this section shall terminate any obligation a dependent of the lessee may have under the lease.” 50 U.S.C. § 3955(a)(2).

45. When a servicemember terminates a lease under the SCRA, “[t]he lessor may not impose an early termination charge[.]” 50 U.S.C. § 3955(e)(1). Further, it is unlawful to knowingly seize, hold, or detain the security deposit of a servicemember or a servicemember’s dependent in order to cover rent accruing after the termination of the lease. 50 U.S.C. § 3955(h).

46. Defendants engaged in a pattern or practice of violating Section 3955 of the SCRA by: (1) including provisions in their leases that violate the SCRA; (2) enforcing those provisions to prevent SCRA-protected servicemembers and their dependents from exercising their lease termination rights; and (3) assessing early termination charges against and/or withholding security deposits from at least ten SCRA-protected servicemembers and dependents who properly terminated their leases under Section 3955 of the SCRA.

47. Defendants' violations of Section 3955 of the SCRA raise issues of significant public importance. Servicemembers and their dependents should not be forced to pay for housing that they cannot live in because they have received orders for a permanent change of station or orders to deploy. Early termination fees impose financial burdens on servicemembers and their families and negatively impact military readiness.

48. The SCRA-protected servicemembers and dependents whose rights under Section 3955 of the SCRA were violated are aggrieved persons under 50 U.S.C. § 4041(b)(2), and they have suffered damages as a result of Defendants' conduct.

49. Defendants' conduct was intentional, willful, and taken in disregard for the rights of servicemembers.

#### **PRAYER FOR RELIEF**

WHEREFORE, the United States respectfully requests that the Court enter an ORDER that:

1. Declares that Defendants' conduct violated the SCRA;
2. Enjoins Defendants, their subsidiaries, agents, employees, and successors, and all other entities in active concert or participation with Defendants, from:

- a. obtaining a default judgment in any action without first filing with the court an affidavit that is prepared after performing a check of the DMDC and reviewing the tenant file for indicia of military service and that:
  - i. states whether the defendant is in military service and shows necessary facts to support the affidavit; or
  - ii. if the plaintiff is unable to determine whether or not the defendant is in military service, states that the plaintiff is unable to determine whether or not the defendant is in military service and sets forth specific facts establishing the plaintiff's efforts to determine whether the defendant is in military service;
- b. including or enforcing provisions in any residential lease that violate Section 3955 of the SCRA, 50 U.S.C. § 3955;
- c. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each person aggrieved by Defendants' illegal conduct to the position he or she would have been in but for Defendants' illegal conduct;
- d. failing or refusing to take actions as may be necessary to prevent the recurrence of any unlawful conduct in the future and to eliminate, to the extent practicable, the effects of their unlawful conduct, including implementing policies and procedures to ensure that Defendants afford SCRA-protected servicemembers all protections contained in the SCRA;

