

FILED

September 30, 2020

CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS

BY: Magda Muzza
DEPUTY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

CIVIL ACTION NO. SA-20-CV-1147

**WESTERN RIM INVESTORS 2011-4, L.P.
d/b/a THE ESTATES AT BRIGGS RANCH and
WESTERN RIM INVESTORS 2011-3, L.P d/b/a
THE MANSIONS AT BRIGGS RANCH,**

Defendants.

CONSENT ORDER

I. INTRODUCTION

1. This Consent Order resolves the allegations contained in the United States' Complaint that Western Rim Investors 2011-4, L.P. d/b/a The Estates at Briggs Ranch and Western Rim Investors 2011-3, L.P. d/b/a The Mansions at Briggs Ranch (collectively referred to herein as "Defendants") violated the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. §§ 3901-4043, when they required servicemembers who were terminating their residential leases to repay rent concessions and discounts they had received and when they allegedly wrongfully denied other servicemembers' requests to terminate their leases pursuant to the SCRA.
2. Defendant Western Rim Investors 2011-4, L.P. d/b/a The Estates at Briggs Ranch ("Defendant Estates") is a domestic limited partnership registered in the State of Texas. Defendant Estates owned the Estates at Briggs Ranch ("the Estates"), a multi-family

- residential apartment property located at 5525 Mansions Bluffs, San Antonio, Texas, 78245 within the Western District of Texas from December 1, 2011 to March 31, 2020.
3. Defendant Western Rim Investors 2011-3, L.P. d/b/a The Mansions at Briggs Ranch (“Defendant Mansions”) is a domestic limited partnership registered in the State of Texas. Defendant Mansions owned the Mansions at Briggs Ranch (“the Mansions”), a multi-family residential apartment property located at 5565 Mansions Bluffs, San Antonio, Texas, 78245 within the Western District of Texas from December 1, 2011 to March 31, 2020.
 4. In its Complaint, the United States alleges that Defendants required servicemembers who were terminating their leases pursuant to the SCRA to pay back rent concessions or discounts they had received during their tenancies. The United States alleges that requiring these “chargebacks” constituted early termination charges, which are prohibited under 50 U.S.C. § 3955(e)(1).
 5. Defendants also required servicemembers to sign a “Lease Addendum Regarding Limited Waiver and Modification of Rights Under U.S. Servicemembers Civil Relief Act” (the “Waiver Addendum”) promulgated by the Texas Apartment Association (“TAA”).
 6. The SCRA allows servicemembers to waive their rights, as long as the waiver meets certain requirements. 50 U.S.C. § 3918(a). One of those requirements is that the waiver be “executed as an instrument separate from the obligation or liability to which it applies.”
 7. The United States alleges that the Waiver Addendum used by Defendants was not a valid waiver of SCRA rights, because it was not executed as an instrument separate from the

- lease. The Waiver Addendum was expressly incorporated into the lease, was signed at the same time as the lease and was not supported by any additional consideration.
8. In addition, the United States alleges that on at least four occasions, Defendants improperly denied early lease termination requests made by servicemembers.
 9. The United States alleges that two of these requests were denied on the grounds that the servicemembers provided a notification, certification or verification from their commanding officer, instead of official military orders.
 10. Under the SCRA, a servicemember may terminate a lease by providing the lessor with “written notice of such termination, and a copy of the servicemember’s military orders[.]” 50 U.S.C. § 3955(c)(1)(A). The statute specifies that “[t]he term ‘military orders’, with respect to a servicemember, means official military orders, *or any notification, certification or verification from the servicemember’s commanding officer*, with respect to the servicemember’s current or future military duty status.” 50 U.S.C § 3955(i) (emphasis added).
 11. The United States alleges that the Defendants denied the termination requests of two other servicemembers who had provided written notices of termination and copies of their official military orders honorably discharging them from military service.
 12. The SCRA provides that a servicemember may terminate a lease early, if, after executing the lease, the servicemember “receives military orders for a permanent change of station.” 50 U.S.C. § 3955(b)(1)(B). The term “permanent change of station” includes separation or retirement from military service. 50 U.S.C § 3955(i)(3).
 13. Defendants allege that they relied in good faith on the Apartment Lease Contracts, Rent Concession Addenda and SCRA Waiver Addenda promulgated by the TAA.

14. The parties 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. § 4041(a).
15. The parties agree that, to avoid costly and protracted litigation, the claims against Defendants should be resolved without further proceedings or an evidentiary hearing. Therefore, as indicated by the signatures appearing below, the United States and Defendants agree to the entry of this Consent Order.
16. The effective date of this Consent Order will be the date on which it is approved and entered by the Court.

It is hereby ORDERED, ADJUDGED and DECREED:

II. PROHIBITED CONDUCT AND AFFIRMATIVE OBLIGATION

17. Defendants represent that they no longer own, lease or manage real property. In the event that Defendants reenter the business of owning, leasing or managing real property, they shall notify the United States at least sixty (60) days before they intend to reenter that line of business. Prior to implementing such reentry, Defendants shall implement policies, procedures, and training designed to prevent and detect potential SCRA violations in their leasing and management of real property. Defendants shall provide counsel for the United States¹ with the details of the policies, procedures, and training forty-five (45) days prior to implementation of such reentry. The United States shall have thirty (30) days to review and agree or object to the proposed policies, procedures and training.

¹ All materials required by this Consent Order to be sent to counsel for the United States shall be sent by email to counsel for the United States, as well as by commercial overnight delivery addressed as follows: Chief, Housing and Civil Enforcement Section, Civil Rights Division, U.S. Department of Justice, 4 Constitution Square, 150 M Street NE, Washington, DC 20002, Attn: DJ 216-76-8.

III. COMPENSATION

18. The United States has determined that between November 1, 2013, and November 15, 2018, Defendants required at least forty-one (41) servicemembers to repay rent discounts or concessions received at signing when they terminated their leases early pursuant to the SCRA. The United States has determined that these required repayments constituted early termination charges, in violation of 50 U.S.C. § 3955(e)(1). The United States has previously provided Defendants with a list of these servicemembers and the amount of the termination fee charged to each. For each servicemember identified pursuant to this paragraph, Defendants shall compensate the servicemember by providing: (1) a refund of any termination charge that the servicemember paid to the Defendants; and (2) an additional payment equal to two (2) times the termination fee charged by Defendants.
19. The United States has determined that between November 1, 2013, and November 15, 2018, Defendants improperly denied early lease termination requests made by at least four (4) servicemembers in violation of 50 U.S.C. § 3955. The United States has previously provided Defendants a list of these servicemembers and the amount of compensation to be paid to each servicemember. For each servicemember identified pursuant to this paragraph, Defendants shall compensate the servicemember-tenant in the amount specified by the United States.
20. Within ten (10) business days of the effective date of this Consent Order, Defendants shall deposit the sum of SEVENTY-ONE THOUSAND ONE HUNDRED AND FORTY-NINE DOLLARS AND FIFTY CENTS (\$71,149.50) into a separate account for the purpose of compensating the servicemembers identified pursuant to Paragraphs 18 and 19. Title to the escrow account will be in the name of "Western Rim Investors 2011-

4, L.P. and Western Rim Investors 2011-3, L.P. for the benefit of aggrieved persons pursuant to Order of the Court in Civil Action No. [XXX].” Defendants will provide written verification of the deposit to the United States within ten (10) business days of the effective date of this Consent Order. Any taxes, costs, or other fees related to the escrow account shall be paid by Defendants.

21. Defendants shall conduct the settlement administration activities set forth in Paragraphs 21-29. Defendants shall bear all costs and expenses of settlement administration. Defendants shall work cooperatively with the United States in the conduct of their activities, including reporting regularly to and providing all reasonably requested information to the United States.
22. Defendants shall establish and maintain throughout the period of this Consent Order multiple cost-free means for affected servicemembers to contact them, including an electronic mail address, a website, and a toll-free telephone number.
23. Defendants shall deliver payment to each servicemember identified in Paragraphs 18 and 19, except for those servicemembers currently residing in Oregon, in the amount specified by the United States within sixty (60) days of the effective date of this Consent Order. All compensation checks may include the phrase “Settlement in Full” in the memorandum section. All compensation checks shall be accompanied by a letter (the content of which is to be approved in advance by DOJ) explaining that cashing or endorsing the check releases all claims related to the SCRA Section 3955 violations alleged in the complaint.
24. For any servicemembers currently residing in Oregon, Defendants shall send the servicemember a Release in the form attached as Exhibit A within forty-five (45) days of

- the effective date of this Consent Order. Within thirty (30) days of receiving a properly executed copy of the Release at Exhibit A, Defendants shall issue and mail a compensation check to the servicemember in the amount specified by the United States.
25. Defendants shall be required to search the National Change of Address (NCOA) database to obtain each servicemember's most recent mailing address prior to the initial mailing of any compensation check or Release. Defendants shall adopt effective methods, including "skip tracing," emailing or placing telephone calls to non-responsive servicemembers, as requested by the United States, in order to make contact with, and obtain a response from, each identified servicemember.
 26. Defendants shall skip trace and redeliver any payment that is returned as undeliverable, or that is not deposited or cashed within three (3) months of the date that the compensation checks are sent to servicemembers.
 27. Defendants, for a period of three (3) years following the effective date of this Consent Order, shall provide the United States with a monthly accounting of all releases received, checks issued (including copies of issued checks), and notifications without responses or that were returned as undeliverable. During the term of this Consent Order, Defendants shall, at the request of any servicemember entitled to compensation, reissue any check that is not cashed or deposited prior to its expiration.
 28. Three (3) years after the effective date of this Consent Order, for each servicemember who has not been located and compensated, Defendants shall submit a property report and the unclaimed funds to the Texas Comptroller of Public Accounts to be administered in accordance with the State of Texas Unclaimed Property Program. Under this program, a servicemember who has been identified as an aggrieved person in this case will be able

- to file a signed claim form and photo identification with the Comptroller. Funds will remain with the Comptroller until they are claimed by the aggrieved servicemembers or otherwise finally distributed in accordance with state unclaimed property laws.
29. Defendants will not be entitled to a set-off, or any other reduction, of the amount of compensation payments required under Paragraphs 18 and 19 because of any amounts owed by the recipient. Defendants will not refuse to make a payment based on a waiver or release of legal claims or arbitration agreement previously signed by any such recipient.
30. No individual may obtain review by the Parties of the identifications made, and payments disbursed, pursuant to Paragraphs 18-29.

IV. OTHER RELIEF

31. Within thirty (30) calendar days of the effective date of this Consent Order, Defendants must deliver a written request to each of the three (3) major credit bureaus² to remove any negative entries resulting from Defendants' reports of or attempts to collect early termination charges or other charges arising from the wrongful denial of a servicemember's lease termination request. Defendants shall also instruct any of their collection agents or attorneys who have engaged in credit reporting to deliver a written request to each of the three (3) major credit bureaus to remove any negative entries resulting from Defendants' reports of or attempts to collect early termination charges or other charges arising from the wrongful denial of a servicemember's lease termination request.

² Equifax, Experian and TransUnion.

32. Defendants shall not pursue, and must indemnify any aggrieved person against any third-party's pursuing, any outstanding balance or deficiency that is related to early termination charges or denials of termination requests that the United States alleges were in violation of the SCRA.

V. CIVIL PENALTY

33. Within thirty (30) calendar days of the effective date of this Consent Order, Defendants shall pay a total of SIXTY-FOUR THOUSAND SEVEN HUNDRED AND FIFTEEN DOLLARS (\$64,715) to the United States Treasury as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3) and 28 C.F.R. § 85.5 to vindicate the public interest. The payment shall be in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.

VI. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

34. For the duration of this Consent Order, Defendants shall retain all records relating to their obligations hereunder, including all records relating to compliance activities as set forth herein. The United States shall have the right to review and copy any such records, including electronic data, upon reasonable request during the term of this Consent Order.
35. During the term of this Consent Order, a Defendant shall notify counsel for the United States in writing within thirty (30) days of the Defendant's receipt of any complaint relating to rights provided to tenants under the SCRA. Defendants shall provide a copy of the complaint with the notification. Whether regarding a written or oral SCRA complaint, the notification to the United States shall include the details of the complaint, including when it was received, the complainant's name, last-known address, last-known telephone number, and last-known email address. The Parties shall meet and confer to

consider appropriate steps to address any concerns raised by the United States' review. If the Parties are unable to come to an agreement regarding such complaint, either party may bring the dispute to this Court for resolution.

VII. SCOPE OF CONSENT ORDER

36. The provisions of this Consent Order shall apply to Defendants and any of their subsidiaries, predecessors, or acquired companies. The affirmative obligations of Defendants to comply with the provisions of this Consent Order shall also be the responsibility of the officers, employees, agents, attorneys, representatives, and assignees of Defendants.
37. In the event that Defendants are acquired by or merge with another entity, Defendants shall, as a condition of such acquisition or merger, obtain the written agreement of the acquiring or surviving entity to be bound by any obligations remaining under this Consent Order for the remaining term of this Consent Order.
38. This Consent Order does not release claims for practices not addressed in the Complaint's allegations, and it does not resolve and release claims other than claims against Defendants for violations of 50 U.S.C. § 3955 that are addressed in this Consent Order. This Consent Order does not release any claims that may be held or are currently under investigation by any other federal agency.
39. Nothing in this Consent Order will excuse Defendants' compliance with any currently or subsequently effective provision of law or order of a regulator with authority over Defendants that imposes additional obligations on them.
40. The Parties agree that, as of the effective date of this Consent Order, litigation is not "reasonably foreseeable" concerning the matters described above. To the extent that any

party previously implemented a litigation hold to preserve documents, electronically stored information, or things related to the matters described above, the party is no longer required to maintain such litigation hold. Nothing in this Paragraph relieves any party of any other obligations imposed by this Consent Order.

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

41. Any time limits for performance imposed by this Consent Order may be extended or reduced by the mutual written agreement of the Parties.
42. The Parties shall be responsible for their own attorney's fees and court costs, except as provided for in Paragraph 43.
43. The Parties 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 Defendants, 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 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 occasioned by Defendants' violation or failure to perform.

IX. RETENTION OF JURISDICTION

44. The Court shall retain jurisdiction over all disputes between the Parties arising out of the Consent Order, including but not limited to interpretation and enforcement of the terms of the Consent Order.

45. This Consent Order shall be in effect for a period of three (3) years from its date of entry, after which time this case shall be dismissed with prejudice. The United States may move the Court to extend the duration of this Consent Order in the interests of justice.

SO ORDERED

This 30th day of September 2020.



UNITED STATES DISTRICT JUDGE

By their signatures below, the Parties consent to the entry of this Consent Order.

For the United States:

Dated: September 28, 2020

JOHN F. BASH
United States Attorney

/s/ Jacquelyn M. Christilles

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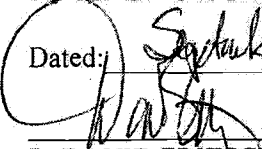
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*For Western Rim Investors 2011-4, L.P.
d/b/a The Estates at Briggs Ranch and
Western Rim Investors 2011-3, L.P. d/b/a
The Mansions at Briggs Ranch:*

Dated:

September 28, 2020



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EXHIBIT A

RELEASE (for residents of Oregon)

In consideration for the parties' agreement to the terms of the Consent Order resolving the United States' allegations in *United States v. Western Rim Investors 2011-4, L.P. d/b/a The Estates at Briggs Ranch, et al.*, Civil No. _____ (W.D. Tex.) and payment to me of \$ [AMOUNT], I, [NAME], hereby release and forever discharge all claims, arising prior to the date of this Release, related to the facts at issue in the litigation referenced above that pertain to alleged violations of Section 3955 of the Servicemembers Civil Relief Act that I may have against Western Rim Investors 2011-4, L.P., Western Rim Investors 2011-3, L.P. and all related entities, parents, predecessors, subsidiaries, and affiliates and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, or assigns. I do not release any other claims that I may have against Western Rim Investors 2011-4, L.P. or Western Rim Investors 2011-3, L.P. under any other section of the Servicemembers Civil Relief Act.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

MAILING ADDRESS: _____

PHONE: _____

EMAIL: _____