

1 LORETTA LYNCH  
 Attorney General  
 2 VANITA GUPTA  
 Principal Deputy Assistant Attorney General  
 3 SAMEENA SHINA MAJEED  
 Chief, Housing and Civil Enforcement Section  
 ELIZABETH A. SINGER  
 4 Director, U.S. Attorneys' Fair Housing Program  
 Housing and Civil Enforcement Section  
 5 Civil Rights Division  
 U.S. Department of Justice  
 6

7 LAURA E. DUFFY  
 United States Attorney  
 JOSEPH P. PRICE, JR.  
 8 DYLAN M. ASTE  
 Assistant U.S. Attorneys  
 9 California Bar No. 131689/281341  
 Office of the U.S. Attorneys  
 10 880 Front Street, Room 6293  
 San Diego, CA 92101  
 11 Tel: (619) 546-7642/7621  
 Fax: (619) 546-7751  
 12 Email: Joseph.Price@usdoj.gov  
 Email: Dylan.Aste@usdoj.gov  
 13

14 Attorneys for the  
 United States of America

15 **IN THE UNITED STATES DISTRICT COURT FOR THE**  
 16 **SOUTHERN DISTRICT OF CALIFORNIA**  
 17

18 THE UNITED STATES OF AMERICA,

19 Plaintiff,

20 v.

21 SAN DIEGO FAMILY HOUSING, LLC;  
 22 and LINCOLN MILITARY PROPERTY  
 23 MANAGEMENT, LP d/b/a LINCOLN  
 24 MILITARY HOUSING,

25 Defendants.

Case No.: '16CV2008 BAS KSC

**COMPLAINT**

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 27  
 28 The United States of America, by its undersigned attorneys, alleges as follows:

**NATURE OF ACTION**

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2  
3 1. This action is brought by the United States to enforce the provisions of  
4 the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043.

5 2. Defendants own and operate military housing properties in San Diego  
6 County. Defendants provide housing to members of the United States military,  
7 including members of the Department of the Navy. Defendants improperly pursued  
8 and obtained default judgments in unlawful detainer actions to evict servicemembers  
9 from housing without filing a correct affidavit as to each servicemember’s military  
10 status, in violation of the SCRA.

11 3. A purpose of the SCRA is to provide servicemembers with protections  
12 against certain transactions that could adversely affect their civil legal rights while  
13 they are in military service. One of those protections is the requirement that if the  
14 defendant does not make an appearance in a civil action, the plaintiff must file an  
15 affidavit with the court stating whether the defendant is in military service and  
16 showing necessary facts to support the affidavit. Once put on notice that the  
17 defendant is in military service, the court may not enter judgment until it appoints an  
18 attorney to represent the defendant. The court shall also grant a stay of proceedings  
19 for a minimum of 90 days upon application of counsel, or on the court’s own motion  
20 if there may be a defense to the action that cannot be presented without the presence  
21 of the defendant or, after due diligence, counsel has been unable to contact the  
22 defendant or otherwise determine if a meritorious defense exists.

23 4. By failing to file proper affidavits of military service with the court,  
24 Defendants denied servicemembers their right to have an attorney appointed to  
25 represent them and their right to have the court review whether their evictions should  
26 be delayed to account for their military service.  
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1 herein because such acts were committed by employees or agents of Lincoln within  
2 the scope of their actual and apparent authority and for the benefit of the Lincoln.

3  
4 **FACTUAL ALLEGATIONS**

5 13. Lincoln owns and operates military residential properties that house  
6 servicemembers.

7 14. Lincoln contracts with the Navy and other branches of the United States  
8 Military to provide residential housing units for servicemembers and their dependents.

9 15. Lincoln conducts all landlord duties and responsibilities at its residential  
10 properties.

11 16. To evict a tenant, Lincoln files an unlawful detainer action in a California  
12 state court, as is required by California state law.

13 17. If the tenant does not respond, Lincoln files a Request for Entry of  
14 Default.<sup>1</sup>

15 18. From 2008 through 2013, Lincoln filed Request for Entry of Default  
16 forms in unlawful detainer actions naming multiple active duty servicemembers as  
17 defendants.

18 19. Lincoln incorrectly represented to the court that these servicemember-  
19 defendants in the unlawful detainer actions were not servicemembers.

20 20. Lincoln failed to file an affidavit stating the military status of each of  
21 these servicemember-defendants and necessary facts to support the affidavit, or an  
22 affidavit stating that Lincoln could not determine the servicemember-defendant's  
23 military status after performing adequate due diligence.

24 21. No attorney was appointed to represent any of these servicemember-  
25

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26 <sup>1</sup> Lincoln requests default judgments using CIV-100 forms.  
27  
28

1 defendants for which Lincoln requested default judgments.

2 22. Lincoln obtained default judgments against these servicemember-  
3 defendants.

4 23. Lincoln's conduct constitutes a violation of 50 U.S.C. § 3931.

5 24. These servicemember-defendants and their dependents have been injured  
6 by, and have suffered damages as a result of, Lincoln's illegal conduct.

7 25. Lincoln's practice of improperly obtaining default judgments against  
8 servicemembers in unlawful detainer actions is of significant public importance  
9 because servicemembers and their dependents have been evicted from their residences  
10 while on military duty without being given a chance to be heard in the court  
11 proceedings against them.

12 26. Lincoln's conduct was intentional, willful, and taken in disregard for the  
13 rights of servicemembers.

14 **SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS**

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

17 28. The SCRA provides that, in any civil action or proceeding in which the  
18 defendant does not make an appearance, "the court, before entering judgment for the  
19 plaintiff, shall require the plaintiff to file with the court an affidavit . . . stating  
20 whether . . . the defendant is in military service and showing necessary facts to support  
21 the affidavit . . ." 50 U.S.C. § 3931(a)-(b)(1)(A).

22 29. Lincoln engaged in violations of 50 U.S.C. § 3931 that raise an issue of  
23 significant public importance when it improperly obtained default judgments against  
24 multiple servicemembers during periods of military service in unlawful detainer  
25 proceedings in which the servicemembers did not make appearances.

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**PRAYER FOR RELIEF**

WHEREFORE, the United States prays for judgment against Lincoln, as follows:

1. Declare that Lincoln’s conduct violated the SCRA;
2. Enjoin Lincoln, its agents, employees, and successors, and all other persons in active concert or participation with Lincoln, from:
  - a. obtaining a default judgment in an unlawful detainer action against any servicemember during a period of military service without first filing with the court an affidavit:
    - i. stating whether the defendant is in military service and showing necessary facts to support the affidavit; or
    - ii. 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;
  - b. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, each identifiable victim of Lincoln’s illegal conduct to the position he or she would have been in but for Lincoln’s illegal conduct;
  - c. failing or refusing to take such 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 its unlawful conduct, including implementing policies and procedures to ensure that no servicemembers are evicted without being afforded all the protections contained in the SCRA;
3. Award appropriate monetary damages to each identifiable victim of

1 Lincoln's violation of the SCRA; and

2 4. Assess civil penalties against Lincoln in order to vindicate the public  
3 interest pursuant to 50 U.S.C. § 4041(b)(3).

4 The United States further prays for such additional relief as the interests of  
5 justice may require.

6 The United States requests a trial by jury.

7 DATED: August 10, 2016

Respectfully submitted,

8 LAURA E. DUFFY  
9 United States Attorney  
10 Southern District of California

LORETTA LYNCH  
Attorney General

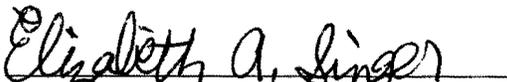
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VANITA GUPTA  
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19 Tel: (619) 546-7642/7621  
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Civil Rights Division

SAMEENA SHINA MAJEED  
Chief  
Housing and Civil Enforcement Section  
Civil Rights Division

23   
24 ELIZABETH A. SINGER

25 Director, U.S. Attorneys' Fair Housing  
26 Program  
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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

United States of America

(b) County of Residence of First Listed Plaintiff San Diego (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number) United States Attorney's Office AUSA Dylan M. Aste, (619) 546-7321 880 Front Street, Room 6293, San Diego, CA 92101 (see attachment)

DEFENDANTS

San Diego Family Housing, LLC; and Lincoln Military Property Management, LP d/b/a Lincoln Military Housing

County of Residence of First Listed Defendant San Diego (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys(If Known) Michael L. Lipman Heather U. Guerena Duane Morris LLP 750 B Street, Suite 2900

'16CV2008 BAS KSC

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and incorporation status. Includes categories like Citizen of This State, Citizen of Another State, and Foreign National.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with columns for CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, SOCIAL SECURITY, FEDERAL TAX SUITS, BANKRUPTCY, and OTHER STATUTES. Contains numerous checkboxes for specific legal categories.

V. ORIGIN

(Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from another district (specify) 6 Multidistrict Litigation 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

50 U.S.C. §§ 3901-4043 Brief description of cause: Servicemembers Civil Relief Act

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE August 10, 2016 SIGNATURE OF ATTORNEY OF RECORD daste@usa.doj.gov

Digitally signed by daste@usa.doj.gov DN: cn=daste@usa.doj.gov Date: 2016.08.10 10:45:22 -07'00'

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

## INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

### Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553

Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.