

United States v. Twin Creek Apartments, LLC, d/b/a Pavilion at Twin Creek,
Civil Action No. 8:18-cv-00428-JMG-SMB (D. Neb.)

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND
TWIN CREEK APARTMENTS, LLC, D/B/A PAVILION AT TWIN CREEK**

I. INTRODUCTION

1. This Settlement Agreement (“Agreement”) is entered into between Plaintiff, the United States of America (“the United States”), through the Department of Justice, and Defendant Twin Creek Apartments, LLC, d/b/a Pavilion at Twin Creek (“Twin Creek”), through its authorized representatives. The United States and Twin Creek are referred to herein as the “Parties.”

II. RECITALS

2. This Agreement resolves the allegations contained in the United States’ lawsuit, *United States v. Twin Creek Apartment, LLC, d/b/a/ Pavilion at Twin Creek* (D. Neb.), filed in the United States District Court for the District of Nebraska against Twin Creek on September 11, 2018 (hereinafter “Civil Action”).
3. The Civil Action alleges that Twin Creek engaged in a pattern or practice of violating the Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901-4043, by imposing early termination charges against servicemembers who terminated their residential leases in compliance

with the SCRA. Specifically, the United States alleges that Twin Creek required 65 servicemembers who properly terminated their leases upon receipt of military orders to pay back all “rent concession” amounts they had received over the course of the lease.

4. Twin Creek is a limited liability corporation incorporated in Indiana with a principal place of business at 4007 Raynor Parkway, Bellevue, Nebraska 68123.
5. This Agreement covers all lease terminations for leases entered into by Twin Creek, or any subsidiaries, predecessors, acquired companies, or successor entities.
6. The Parties agree, and the United States believes that it is in the public’s best interest, that the Civil Action should be resolved amicably and without further litigation.
7. Twin Creek denies that it violated the SCRA or any other federal, state, or local statute or regulation. Nothing herein shall be construed as a finding of any noncompliance with the SCRA or any other federal, state, or local statute or regulation.
8. To avoid the delay, uncertainty, inconvenience and expense of protracted litigation of the United States’ claims, and in consideration

of the mutual promises and obligations set forth below, the Parties agree and covenant to the following material terms and conditions:

III. STATEMENT OF CONSIDERATION

9. In consideration of, and consistent with, the terms of this Agreement, the Parties will jointly dismiss the Civil Action, as set forth in Paragraph 38. The Parties agree and acknowledge that this consideration is adequate and sufficient.

IV. TERMS AND CONDITIONS

A. COMPLIANCE WITH THE SCRA AND SCRA POLICIES AND PROCEDURES

10. Within thirty (30) calendar days of the effective date of this Agreement, Twin Creek shall develop SCRA Policies and Procedures for Lease Terminations in compliance with Section 3955 of the SCRA, 50 U.S.C. § 3955. These policies and procedures – which must apply to Twin Creek and Twin Creek’s agents – must include the following provisions:
 - a. permitting servicemembers to terminate their leases during the term of the lease where:
 - i. one or more lessees enter military service, *see* 50 U.S.C. § 3955(b)(1)(A);

- ii. one or more lessees, while in military service, execute a lease and thereafter receive 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, *see* 50 U.S.C. § 3955(b)(1)(B);
- b. accepting terminations of leases by delivery to Twin Creek or Twin Creek's agent of written notice of termination and a copy of military orders (to include any notification, certification, or verification from the servicemember's commanding officer or other document prepared exclusively by a branch of the military or the Department of Defense demonstrating that the lessee is eligible for lease termination under 50 U.S.C. § 3955(b)(1)), including by hand delivery, private business carrier, U.S. Mail, e-mail, or text message;
- c. permitting eligible servicemembers to terminate their residential leases at any time after their entry into military service or the issuance date of their qualifying military orders, *see* 50 U.S.C. § 3955(a)(1);
- d. setting the effective date of the lease termination as no later than 30 days after the first date on which the next rental

payment is due and payable after the date on which the notice of termination is delivered, *see* 50 U.S.C. § 3955(d)(1);

- e. not requiring servicemembers to repay rent concessions or other lease discounts or incentives received at lease signing when they terminate their leases pursuant to the SCRA;
- f. limiting any charges that must be paid upon termination to those permitted by Section 3955(e)(1) of the SCRA; and
- g. designating employees who have been specifically trained on the protections of the SCRA with respect to residential leases and who are responsible for the intake of and response to servicemembers' inquiries regarding the SCRA. Twin Creek shall also include a page on its website detailing eligibility for early lease termination under the SCRA, and providing a telephone number and electronic mail address to obtain information regarding lease-related rights under the SCRA.¹

11. No later than thirty (30) calendar days after the effective date of this Agreement, Twin Creek shall provide a copy of the proposed SCRA Policies and Procedures required under Paragraph 10 to counsel for the

¹ Nothing in this Agreement shall preclude Twin Creek from offering greater protections to servicemembers than those afforded by the Agreement or the SCRA.

United States.² The United States shall respond to Twin Creek's proposed SCRA Policies and Procedures within forty-five (45) calendar days of receipt. If the United States objects to any part of Twin Creek's SCRA Policies and Procedures, the Parties shall confer to resolve their differences. Twin Creek shall begin the process of implementing the SCRA Policies and Procedures within ten (10) calendar days of approval by the United States.

12. To the extent Twin Creek intends to ask servicemembers to waive any of their SCRA rights, Twin Creek shall first provide a copy of the proposed waiver (which must comply with the requirements set forth at 50 U.S.C. § 3918) to counsel for the United States for review and approval pursuant to the process described in Paragraph 11.
13. If, at any time during the term of this Agreement, Twin Creek proposes to materially change its SCRA Policies and Procedures or SCRA waiver form, it shall first provide a copy of the proposed changes to counsel for the United States. If the United States does not deliver

² All materials required by this Agreement to be sent to counsel for the United States shall be sent by private business carrier (non-USPS) delivery service addressed as follows: Chief, Housing & Civil Enforcement Section, Civil Rights Division, United States Department of Justice, 1800 G Street, N.W., Suite 7002, Washington, DC 20006, Attn: DJ 216-45-3
Correspondence may also be sent via electronic mail to the U.S. Department of Justice, care of the undersigned counsel for the United States.

written objections to Twin Creek within forty-five (45) calendar days of receiving the proposed changes, the changes may be implemented. If the United States makes any objections to the proposed changes within the forty-five (45)-day period, the specific changes to which the United States objects shall not be implemented until the objections are resolved pursuant to the process described in Paragraph 11.

B. TRAINING

14. Within thirty (30) calendar days of the United States' approval of the SCRA Policies and Procedures pursuant to Paragraph 11, Twin Creek shall provide to the United States the curriculum, instructions, and any written materials included in the training required by Paragraphs 15 and 16. The United States shall have forty-five (45) calendar days from receipt of these documents to raise any objections to Twin Creek's training materials, and, if it raises any, the Parties shall confer to resolve their differences.
15. Within forty-five (45) calendar days after Twin Creek's training program is approved by the United States pursuant to Paragraph 14, Twin Creek shall provide SCRA compliance training to any employees who: (a) provide customer service to servicemembers in connection with entering into or terminating leases; or (b) have significant

involvement in leasing, including the ability to terminate leases for servicemembers. Twin Creek shall provide to each covered employee:

(a) training on the terms of the SCRA with respect to lease terminations; (b) training on Twin Creek's SCRA Policies and Procedures (both those required pursuant to Paragraph 10, and all others adopted by Twin Creek specific to the employee's responsibilities associated with that employee's position); (c) training on the terms of this Agreement; and (d) the contact information for the employees described in Paragraph 10(g). Twin Creek shall also follow these training procedures for any employee who subsequently becomes a covered employee within thirty (30) calendar days of his or her hiring, promotion, or transfer.

16. During the term of this Agreement, Twin Creek shall provide annual SCRA training, with the same content as described in Paragraph 15, to covered employees with respect to their responsibilities and obligations under the SCRA, the SCRA Policies and Procedures, and this Agreement.

17. The covered employees may undergo the training required by Paragraphs 15 and 16 via live training, computer-based training, web-based training, or via interactive digital media. If the training is

conducted in any format other than live training, Twin Creek shall ensure that covered employees have the opportunity to have their questions answered by a company contact that Twin Creek identifies as having SCRA expertise within two (2) business days of the training. Any expenses associated with the training program required by Paragraphs 15 and 16 shall be borne by Twin Creek.

18. Twin Creek shall secure a signed statement in the form attached as Appendix A³ from each covered employee at the training required by Paragraphs 15 and 16 acknowledging that he or she has received, read, and understands the Agreement and the SCRA Policies and Procedures specific to the employee's responsibilities associated with the loan being serviced, has had the opportunity to have his or her questions about these documents answered, and agrees to abide by them. For the duration of this Agreement, copies of those signed statements shall be provided to the United States upon request. Twin Creek shall also certify in writing to counsel for the United States that the covered employees successfully completed the training required by Paragraphs 15 and 16.

³ The electronic signature of a covered employee shall be deemed satisfactory for purposes of verifying completion of the training required under this Agreement.

C. COMPENSATION

19. The United States alleges that it has identified sixty-five (65) instances since January 1, 2012 where servicemembers were required to repay rent concessions received during the course of their leases when they terminated their leases properly pursuant to the SCRA. The United States alleges that these required repayments constituted early termination charges, in violation of Section 3955(e)(1) of the SCRA, 50 U.S.C. § 3955(e)(1). A list of such instances has been provided to Twin Creek by the United States.
20. In each of the sixty-five (65) instances where the United States alleges that Twin Creek imposed an early termination charge in violation of the SCRA, Twin Creek shall compensate the lessees by providing: (1) a refund of the early termination charge; and (2) an additional payment of two times the amount of the refund referenced in subsection (1). The compensation described in subsection (1) shall be distributed equally among the servicemember and any co-lessees named on the lease. The compensation described in subsection (2) shall be paid entirely to the servicemember who terminated the lease under the SCRA.
21. Within fourteen (14) days of the effective date of this Agreement, Twin Creek shall deposit \$76,516.00 into an interest-bearing escrow account

for the purpose of fulfilling its obligations under Paragraph 20. Twin Creek shall provide written verification of the deposit to the United States within three (3) business days of depositing the funds described in this Paragraph. Any taxes, costs, or other fees incurred on the escrow funds shall be paid by Twin Creek.

22. In order to receive any compensation under Paragraph 20, SCRA-protected servicemembers and co-lessees must complete the Release at Appendix B.
23. Within ten (10) days of notification by the United States that a Release has been received, Twin Creek shall deliver to counsel for the United States a compensation check payable to the aggrieved person.
24. When counsel for the United States has received a check from Twin Creek payable to an aggrieved person and a signed Release from the aggrieved person, counsel for the United States shall deliver the check to the aggrieved person and the original, signed Release to counsel for Twin Creek. No aggrieved person shall be paid until he or she has signed and delivered a Release to counsel for the United States.
25. Servicemembers and co-lessees shall have six (6) months after issuance to cash or deposit their compensation checks. During the term of this Agreement, Twin Creek shall, upon the request of counsel for the

United States, reissue any checks that are not cashed or deposited prior to their expiration.

26. Any amounts remaining in the escrow account that have not been distributed to aggrieved persons within five years of the date of this Agreement shall be paid to the United States Treasury in the form of an electronic funds transfer pursuant to written instructions to be provided by the United States.
27. No individual may obtain review by the Parties of the identifications made, and payments disbursed, pursuant to Paragraphs 19-26.

D. CREDIT REPAIR

28. Within thirty (30) days of the effective date of this Agreement, Twin Creek must request that all credit bureaus to which it reports remove negative entries for the servicemember(s) and any co-lessee(s) attributable to non-payment of any amounts that were due and unpaid at the time of lease termination⁴ that would not have been considered unpaid if the early termination charge had not been applied to the account.

⁴ See 50 U.S.C. § 3955(e)(2) (“any taxes, summonses, title and registration fees, or other obligations and liabilities of the lessee in accordance with the terms of the lease, including reasonable charges to the lessee for excess wear or use and mileage, that are due and unpaid at the time of termination of the lease shall be paid by the lessee”).

E. CIVIL PENALTY

29. Within fourteen (14) calendar days of the effective date of this Agreement, Twin Creek shall pay a total Twenty Thousand Dollars (\$20,000.00) to the United States Treasury as a civil penalty pursuant to 50 U.S.C. § 4041(b)(3), 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.

F. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

30. For the duration of this Agreement, Twin Creek shall retain all records relating to its obligations hereunder, including its records with respect to all loans for which a servicemember has sought a lease termination, and all records relating to compliance activities under this Agreement. 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 Agreement.
31. During the term of this Agreement, Twin Creek shall notify counsel for the United States in writing within fifteen (15) days of receipt of any SCRA or military-related complaint. Twin Creek shall provide a copy of any written complaint with the notification. Whether regarding a written or oral SCRA complaint, the notification to the United States

shall include the full details of the complaint, including the complainant's name, address, and telephone number, and the full details of all actions Twin Creek took to resolve the complaint. Twin Creek shall also promptly provide the United States all information it may request concerning any such complaint. If the United States raises any objections to Twin Creek's actions, the Parties shall meet and confer to consider appropriate steps to address any concerns raised by the United States.

V. SCOPE OF SETTLEMENT AGREEMENT

32. The provisions of this Agreement shall apply to Twin Creek and any subsidiaries, predecessors, acquired companies, or successor entities. It shall also apply to the officers, employees, agents, representatives, assigns, successors-in-interest, and all persons and entities in active concert or participation with all of those entities, including with respect to any leases that were subject to early termination from January 1, 2012 to the effective date of this Agreement.
33. In the event that Twin Creek is acquired by or merges with another entity, Twin Creek 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 Agreement for the remaining term of this Agreement.

34. This Agreement releases only the claims for violations of Section 3955(e)(1) of the SCRA addressed in the Complaint or identified in this Agreement. This Agreement does not release any other claims that may be held or are currently under investigation by any federal agency against Twin Creek or any of its affiliated entities.
35. Nothing in this Agreement will excuse Twin Creek's noncompliance with any currently or subsequently effective provision of law or order of a regulator with authority over Twin Creek that imposes additional obligations on it.

VI. IMPLEMENTATION AND ENFORCEMENT

36. The United States may review compliance with this Agreement at any time. Twin Creek agrees to cooperate with the United States in any review of compliance with this Agreement. Upon reasonable notice, Twin Creek shall permit counsel for the United States to inspect and copy all non-privileged records pertinent to this Agreement.
37. The Parties shall endeavor in good faith to resolve informally any differences regarding interpretation of, or compliance with, this Agreement prior to initiating any court action.

38. Within fourteen (14) days after the deposit of escrow funds as set forth in Paragraph 21 and the payment to the United States as set forth in Paragraph 29, the Parties shall sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), subject to reinstatement as set forth in Paragraph 39.
39. Should Twin Creek materially breach any provision of this Agreement, the Parties agree that the United States may move to restore the present Civil Action to the active docket of this Court for purposes of resolving any such claim of breach. If the United States makes a claim of breach, Twin Creek consents to and agrees not to contest the United States' motion to restore the present Civil Action to the Court's active docket. Alternatively, the United States may bring a civil action for breach of this Agreement or any provision thereof, in the United States District Court for the District of Nebraska. The United States may in such action seek to have the Court impose any remedy authorized at law or equity. This Court shall serve as the exclusive jurisdiction and venue for any dispute concerning this Agreement. Defendant consents to and agrees not to contest the exercise of personal jurisdiction over Defendant by this Court. The Parties further acknowledge that venue in

this Court is appropriate and agree not to raise any challenge on this basis.

40. In the event the United States moves to reinstate the Civil Action as contemplated by the above Paragraph 39, or any other civil action is commenced to remedy breach of this Settlement Agreement, the United States may seek the following: (1) an order mandating specific performance of any term or provision in this Agreement, without regard to whether monetary relief would be adequate; (2) an award of reasonable attorneys' fees and costs incurred in bringing an action to remedy breach of this Agreement; and (3) any additional relief that may be authorized by law or equity. Twin Creek expressly agrees not to count the time during which this Agreement is in place, or use the terms or existence of this Agreement, to plead, argue or otherwise raise any defenses under theories of claim preclusion, issue preclusion, statute of limitations, estoppel, laches, or similar defenses.
41. Failure by the United States to enforce any provision of this Agreement shall not operate as a waiver of the United States' right or ability to enforce any other provision of this Agreement.

VII. TERMINATION OF LITIGATION HOLD

42. The Parties agree that, as of the date of the dismissal of the Civil Action, litigation is not anticipated concerning the matters described in the United States' Complaint. To the extent that any Party previously implemented a litigation hold to preserve documents, electronically stored information (ESI), 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 Agreement.

VIII. DURATION, EXECUTION, AND OTHER TERMS

43. This Agreement is effective on the date of signature of the last signatory to the Agreement. The Agreement may be executed in multiple counterparts, each of which together shall be considered an original but all of which shall constitute one agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.
44. The duration of this Agreement shall be for a period of five (5) years from the date of execution.
45. Any time limits for performance imposed by this Agreement may be extended by the mutual written agreement of the Parties.

46. Each Party shall bear its own legal and other costs incurred in connection with this litigation, including the preparation and performance of this Agreement, except as set forth in Paragraph 40.
47. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.
48. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.
49. This Agreement, including Appendices A & B, constitutes the complete agreement between the Parties. No prior or contemporaneous communications, oral or written, or prior drafts shall be relevant or admissible for purposes of determining the meaning of any provision herein or in any other proceeding.
50. This Agreement is governed by and shall be interpreted under the laws of the United States.
51. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the entities indicated below.

52. This agreement is binding on the Parties and their transferees, heirs, and assigns.
53. Except where this Agreement expressly conditions or predicates performance of a duty or obligation upon the performance of a duty or obligation by another Party, the performance of one Party's duties or obligations under this Agreement shall not be discharged or excused by the actual or alleged breach of the duties and obligations by another Party.
54. This Agreement is a public document. Both Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.
55. Should any provision of this Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and said illegal or invalid part, term or provision shall be deemed not to be a part of this Agreement.
56. The Parties agree that they will not, individually or in combination with another, seek to have any court declare or determine that any provision of this Agreement is illegal or invalid.

57. The Parties agree that they will defend this Agreement against any challenge by any third party. In the event that this Agreement or any of its terms are challenged by a third party in a court other than the United States District Court for the District of Nebraska, the Parties agree that they will seek removal and/or transfer to the United States District Court for the District of Nebraska.
58. This Agreement may be modified only with the written consent of the Parties. Any modifications must be in writing and signed by the Parties through their authorized representatives.

For the United States of America:

DATE: September 11, 2018

JOSEPH P. KELLY
United States Attorney
District of Nebraska

JOHN M. GORE
Acting Assistant Attorney General
Civil Rights Division

/s/ Laurie A. Kelly
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For Twin Creek Apartments, LLC, d/b/a Pavilion at Twin Creek:

DATE: September 11, 2018

/s/ Gene M. Eckel

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APPENDIX A

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on [INSERT DATE], I was provided training regarding SCRA compliance, a copy of the Settlement Agreement resolving the United States' allegations in *United States v. Twin Creek Apartments, LLC, d/b/a Pavilion at Twin Creek*, Civil Action No. 8:18-cv-00428-JMG-SMB (D. Neb.), that Twin Creek violated the Servicemembers Civil Relief Act, and copies of Twin Creek's SCRA Policies and Procedures applicable to my duties. I have read and understand these documents and have had my questions about these documents and the SCRA answered. I understand my legal responsibilities and shall comply with those responsibilities.

[PRINT NAME]

[SIGNATURE]

[JOB TITLE]

APPENDIX B

RELEASE

In consideration for the parties' agreement to the terms of the Settlement Agreement resolving the United States' allegations in *United States v. Twin Creek Apartments, LLC, d/b/a Pavilion at Twin Creek*, Civil Action No. 8:18-cv-00428-JMG-SMB (D. Neb.) that Twin Creek violated the Servicemembers Civil Relief Act, and Twin Creek's payment to me of \$ [AMOUNT], I, [SERVICEMEMBER OR CO-LESSEE'S 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 and related to the alleged violation of Section 3955(e)(1) of the Servicemembers Civil Relief Act, that I may have against Twin Creek and all related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of its past and present directors, officers, agents, managers, supervisors, shareholders, and employees and its heirs, executors, administrators, successors or assigns.

Executed this _____ day of _____, 20____.

SIGNATURE: _____

PRINT NAME: _____