

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

**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.

CIVIL NO.: SA-20-CV-1147

COMPLAINT

Plaintiff, the United States of America (the “United States”), by its undersigned attorneys, files this Complaint and 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 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 “Defendants”) for imposing early termination charges against servicemembers who were exercising their federally-protected right to terminate their residential leases after receiving qualifying military orders and for denying other servicemembers’ requests to terminate their leases pursuant to the SCRA. *See* 50 U.S.C. § 3955.

2. Because of Defendants’ actions, members of our Nation’s Armed Forces suffered financial harm as the result of complying with their military orders.

3. The purpose of the SCRA is to provide servicemembers with protections to enable them to devote their entire energy to the defense needs of the Nation and to protect their civil rights during military service. *See* 50 U.S.C. § 3902. One of those protections is the right of a servicemember-tenant to terminate a residential lease without penalty upon entering into military service or receiving qualifying military orders. 50 U.S.C. § 3955(a)(1), (e)(1). Qualifying orders include orders for a permanent change of station (including separation or retirement orders) or for a deployment of at least 90 days. 50 U.S.C. § 3955(b)(1)(B). “Military orders” are defined as “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).

4. Upon receiving qualifying orders, the servicemember can terminate the lease without penalty by providing the lessor written notice of the termination and a copy of the military orders. 50 U.S.C. § 3955(c)(1).

5. The termination of the lease is effective 30 days after the first date on which the next rental payment is due. 50 U.S.C. § 3955(d)(1). The lessor may not impose an early termination charge against the servicemember. 50 U.S.C. § 3955(e)(1).

6. This lawsuit is brought to vindicate the rights of servicemembers who were wrongly required to pay an early termination charge by Defendants or had their early termination requests wrongfully denied by Defendants, to vindicate the public interest, and to protect servicemembers from future violations of their rights. *See* 50 U.S.C. § 4041.

JURISDICTION AND VENUE

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

8. Venue is proper in this district under 28 U.S.C. § 1391(b) because Defendants' principal places of business are in the Western District of Texas, and because a substantial portion of the events that form the basis of the United States' claim occurred within this district.

DEFENDANTS

9. 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 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 from December 1, 2011 to March 31, 2020.

10. 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 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 from December 1, 2011 to March 31, 2020.

11. The Estates and the Mansions are both located within the Western District of Texas. Both properties are approximately ten miles from Joint Base San Antonio-Lackland.

FACTUAL ALLEGATIONS

12. In January 2018, the Department of Justice (the "Department") received reports that servicemember-tenants at the Estates were being asked to pay back rent concessions or discounts after they exercised their right under the SCRA to terminate their leases.

13. Further, the Department was told that servicemember-tenants at the Mansions had their lease termination requests denied outright because they provided the landlord with a

commander's memo confirming the details of their upcoming deployment, instead of standard military orders.

14. By letter dated November 15, 2018, the Department notified Defendants that it was opening an investigation into Defendants' residential leasing practices and requested documents from Defendants, including documents relating to lease terminations and Defendants' policies and procedures regarding the SCRA.

15. Defendants provided documents and information in response to the Department's request.

EARLY TERMINATION CHARGES

16. The documents and information provided by Defendants show that, from November 1, 2013, through November 15, 2018, Defendants imposed early termination charges on at least forty-one servicemembers who terminated their residential leases pursuant to the SCRA.

17. The early termination charges were in the form of "chargebacks" of rent concessions or discounts servicemembers had received during their tenancies. After terminating their leases pursuant to the SCRA, servicemembers were required to pay back these concessions or discounts to the Defendants. The amount of the chargebacks ranged from \$116 to \$1,012.

18. All of the servicemembers who were charged early termination charges entered military service, received permanent change of station orders, or received deployment orders for at least 90 days after entering into leases with Defendants, as required by 50 U.S.C. § 3955(b)(1).

19. All of the servicemembers who were charged early termination charges provided Defendants with written notices of termination and copies of military orders or notifications,

certifications or verifications from their commanding officers, as required by 50 U.S.C § 3955(c)(1)(A).

20. From November 1, 2013, through November 15, 2018, both Defendants had an express written policy, contained in an addendum to their standard lease, “Lease Addendum Regarding Limited Waiver and Modification of Rights Under U.S. Servicemembers Civil Relief Act” (the “Waiver Addendum”), requiring servicemembers to pay back rent concessions or discounts if they terminated their lease before the end of the lease term, even if they were terminating the lease in accordance with the SCRA.

21. The Waiver Addendum stated that “[f]or purposes of this addendum, ‘you’ means a servicemember as defined by the ‘U.S. Servicemembers Civil Relief Act’ (SCRA).” The Waiver Addendum further stated that “[u]pon early termination of the [lease], you will reimburse us for any free or discounted rent that you received prior to termination and that was noted as free or discounted rent in the [lease].”

22. From November 1, 2013, through November 15, 2018, Defendants maintained and enforced the written policy set forth in the Waiver Addendum by demanding that servicemembers pay back any free or discounted rent after they terminated their leases early in accordance with the SCRA.

23. The Waiver Addendum was a form drafted and promulgated by the Texas Apartment Association. Under the SCRA, for a waiver of rights to be valid, it must be “executed as an instrument separate from the obligation or liability to which it applies.” 50 U.S.C. § 3918(a).

24. The Waiver Addendum was not a valid waiver of SCRA rights, because it was not executed as an instrument separate from the Defendants’ standard 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.

DENIAL OF EARLY TERMINATION REQUESTS

25. The documents and information provided by Defendants provided also show that, from November 1, 2013 to November 15, 2018, on at least four occasions, Defendants improperly denied early lease termination requests made by servicemembers.

26. In two of these cases, Servicemembers M.E. and N.A. provided Defendant Mansions with written notices of termination and a notification, certification or verification from their commanding officer in lieu of official military orders.

27. Beginning in or around 2018, Defendant had a policy at the Mansions of not accepting notifications, certifications or verifications from commanding officers in lieu of official military orders.

28. Servicemember M.E. was not allowed to terminate his lease until he provided copies of his official military orders, a delay which resulted in his having to pay an additional two months of rent. Servicemember N.A. was not permitted to terminate his lease and was forced to have his girlfriend assume his lease before he deployed to Afghanistan.

29. In the other two cases, Servicemembers D.W. and D.B. provided Defendant Mansions and Defendant Estates, respectively, with written notices of termination and copies of their official military orders honorably discharging them from military service, as required by 50 U.S.C § 3955(c)(1)(A). Defendants denied Servicemembers D.W. and D.B.'s early lease termination requests and charged them accelerated rent for the remaining lease term, less any rents received from reletting the premises, as well as a "reletting charge" equal to 85% of the monthly rent.

**COUNT I: SERVICEMEMBERS CIVIL RELIEF ACT VIOLATIONS
(EARLY TERMINATION CHARGES)**

30. The SCRA provides that “[t]he lessee on a [residential] lease . . . may, at the lessee’s option, terminate the lease at any time after . . . the date of the lessee’s military orders[.]” 50 U.S.C. § 3955(a)(1).

31. The SCRA states that if a servicemember terminates a lease early in accordance with 50 U.S.C. § 3955, “[t]he lessor may not impose an early termination charge.” 50 U.S.C. § 3955(e)(1).

32. Defendants’ policy requiring servicemember-tenants who terminate leases early pursuant to the SCRA to repay any rent concession or rent discounts received during the lease term violated the SCRA. These rent concession fees constitute “early termination charges,” which are expressly prohibited under 50 U.S.C. § 3955(e)(1).

33. Defendants engaged in a pattern or practice of violating 50 U.S.C. § 3955(e)(1) by imposing early termination charges against servicemembers who terminated their residential leases in compliance with the SCRA. Defendants’ imposition of early termination charges also raises issues of significant public importance.

34. The servicemembers who were required to pay early termination charges are “person[s] aggrieved” under 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Defendants’ conduct.

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

**COUNT II: SERVICEMEMBER CIVIL RELIEF ACT VIOLATIONS
(DENIAL OF LEASE TERMINATION REQUESTS)**

36. The SCRA provides that “[t]he lessee on a [residential] lease . . . may, at the lessee’s option, terminate the lease at any time after . . . the date of the lessee’s military orders[.]” 50 U.S.C. § 3955(a)(1).

37. The option under the SCRA to terminate a lease applies to servicemembers who, “while in military service, execute[] the 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.” 50 U.S.C. § 3955(b)(1)(B).

38. Termination may be made “by delivery by the lessee of written notice of such termination, and a copy of the servicemember’s military orders, to the lessor.” 50 U.S.C. § 3955(c)(1)(A).

39. 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).

40. The term “permanent change of station” includes separation or retirement from military service. 50 U.S.C § 3955(i)(3).

41. Defendant Mansion’s policy of denying early lease termination requests by servicemembers who provided a notification, certification or verification from their commanding officer in lieu of official military orders violated the SCRA.

42. Defendants’ denial of early lease termination requests by servicemembers who were separating from military service violated the SCRA.

43. Defendants' denial of early lease termination requests made by servicemembers who were separating from military service or who provided notification, certification or verification from their commanding officers raises issues of significant public importance.

44. The servicemembers who had their lease terminations denied are "person[s] aggrieved" under 50 U.S.C. § 4041(b)(2) and have suffered damages as a result of Defendants' conduct.

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

RELIEF REQUESTED

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

1. Declares that Defendants' conduct violated the Servicemembers Civil Relief Act, 50 U.S.C. § 3901, *et seq.*;
2. Enjoins Defendants, their agents, employees, and all other persons and entities in active concert or participation with Defendants from:
 - a. including a provision in any residential lease or lease addendum or any other document that requires servicemembers who terminate the lease in accordance with the SCRA to return any rent concession or discount or to pay any other early termination charge;
 - b. imposing an early termination charge when a servicemember properly terminates a residential lease under the SCRA;
 - c. denying early lease termination requests made by SCRA-protected servicemembers on the basis of having provided separation orders;

d. denying early lease termination requests made by SCRA-protected servicemembers on the basis of having provided a notification, certification or verification from the servicemember's commanding officer in lieu of official military orders;

e. failing or refusing to take such affirmative steps as may be necessary to restore, as nearly as practicable, the identified victims of Defendants' illegal conduct to the positions they would have been in but for that illegal conduct; and

f. failing or refusing to take such affirmative steps as may be necessary to prevent the recurrence of any illegal conduct in the future;

3. Awards appropriate monetary damages under 50 U.S.C. § 4041(b)(2) to the identifiable victims of Defendants' violations of the SCRA; and

4. Assesses civil penalties against Defendants' under 50 U.S.C. § 4041(b)(3) in order to vindicate the public interest.

The United States further requests such additional relief as the interests of justice may require. The United States hereby requests that trial of the above and foregoing action be held in San Antonio, Texas, and that the case be calendared accordingly.

Dated: September 28, 2020

Respectfully submitted,

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