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10 ATTORNEYS FOR PLAINTIFF UNITED STATES

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF CALIFORNIA**

14 THE UNITED STATES OF AMERICA,) Case No. 2:23–CV–01126–JAM–AC
15 Plaintiff,) **CONSENT ORDER**
16 v.)
17 FPI MANAGEMENT, INC.,)
18 Defendant.)
19

20 **I. INTRODUCTION**

21 1. This Consent Order resolves the allegations contained in the United States’ Complaint that FPI
22 Management, Inc. (“Defendant”) violated the Servicemembers Civil Relief Act (“SCRA”), 50
23 U.S.C. §§ 3901-4043, when it imposed early termination charges – including requiring the
24 repayment of rent concessions received – on nine servicemembers who terminated their
25 residential leases after receiving qualifying military orders.

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- 1 2. Defendant is a domestic stock corporation incorporated in the State of California, with its
2 headquarters in Folsom, California. Defendant manages multi-family residential apartment
3 properties in 16 states, including within the Eastern District of California.
- 4 3. The parties agree that the Court has jurisdiction over the subject matter of this case pursuant to
5 28 U.S.C. § 1331, 28 U.S.C. § 1345, and 50 U.S.C. § 4041(a).
- 6 4. The parties agree that, to avoid costly and protracted litigation, the claims against Defendant
7 should be resolved without further proceedings or an evidentiary hearing. Therefore, as
8 indicated by the signatures appearing below, the United States and Defendant agree to the entry
9 of this Consent Order. This Consent Order does not constitute an admission by Defendant that it
10 has engaged in any unlawful act or has violated the SCRA, or that the request for repayment of
11 lease incentives constitutes an early termination charge. Defendant denies that it has engaged in
12 any unlawful act.
- 13 5. The effective date of this Consent Order will be the date on which it is approved and entered by
14 the Court.

15 It is hereby ORDERED, ADJUDGED and DECREED:

16 **II. INJUNCTIVE RELIEF**

- 17 6. Defendant, its officers, employees, agents, and representatives (including attorneys, contractors,
18 or vendors) will not impose or seek to collect any early termination charge, including requiring
19 the repayment of a lease incentive, from a servicemember or a dependent of a servicemember
20 who lawfully terminates a residential lease in accordance with 50 U.S.C. § 3955.
- 21 7. Defendant, its officers, employees, agents, and representatives (including attorneys, contractors
22 or vendors) shall comply with the SCRA Policies and Procedures for Lease Termination
23 established in Part III of this Consent Order.

24 **III. SCRA POLICIES AND PROCEDURES**

- 25 8. Within thirty (30) calendar days of the effective date of this Consent Order, Defendant shall
26 develop SCRA Policies and Procedures for Lease Terminations in compliance with 50 U.S.C. §
27 3955. These policies and procedures must include the following provisions:
28

- 1 a. Defendant shall permit servicemembers to terminate residential leases at any time
2 after their entry into military service or receipt of military orders for (i) a permanent
3 change of station¹ or (ii) to deploy with a military unit, or as an individual in
4 support of a military operation, for a period of not less than 90 days. A
5 servicemember's termination of a lease shall terminate any obligation a dependent
6 of the servicemember may have under the lease;
- 7 b. Defendant shall accept terminations upon delivery of written notice of termination
8 and a copy of military orders² to Defendant, its employees, agents or
9 representatives. Delivery of the written notice and orders may be accomplished by
10 hand delivery, private business carrier, U.S. mail, or electronic means reasonably
11 calculated to ensure actual receipt of the communication by Defendant (including
12 electronic mail, facsimile, text message or internet portal);
- 13 c. Defendant shall treat any residential lease termination as effective no later than 30
14 days after the first date on which the next rental payment is due and payable after
15 the date on which the notice was delivered. Any rent amounts that are unpaid for
16 the period preceding the effective date of the lease termination must be prorated.
17 Rents or lease amounts paid in advance for a period after the effective date of the
18 termination of the lease shall be refunded to the lessee within 30 days of the
19 effective date of termination;
- 20 d. Defendant may not impose any early termination charge on servicemembers
21 terminating their leases pursuant to the SCRA, including by requiring a
22 servicemember to repay a rent concession, incentive, or discount at termination;
- 23 e. Defendant shall limit any charges that must be paid upon termination to those
24 permitted by Section 3955(e)(1) of the SCRA;

25
26 ¹ The term "permanent change of station" shall include separation or retirement from military service.

27 ² The term "military orders" in this Consent Order shall include any notification, certification, or
28 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)(2).

- 1 f. Defendant shall not initiate or pursue a waiver of any of the lease termination rights
2 provided under 50 U.S.C. § 3955, nor shall it enforce any such waiver that has been
3 previously executed;
- 4 g. Defendant shall revise its standard lease forms to ensure that any SCRA-related or
5 early termination provisions comply with 50 U.S.C. § 3955; and
- 6 h. In any instances where Defendant does not use its standard lease forms, Defendant
7 shall provide a notice with the lease packet detailing eligibility for, and relief
8 provided by, the SCRA, and providing the designated telephone number and
9 electronic mail address to obtain SCRA relief, or raise questions or concerns
10 regarding such relief; and
- 11 i. Defendant shall ensure that it has a designated telephone number and electronic
12 mail address at which servicemembers may reach a designated employee, who will
13 address questions or concerns regarding the SCRA. Defendant shall also include a
14 page on its website, which is presently located at www.fpimgt.com, detailing
15 eligibility for, and relief provided by, the SCRA, and providing the designated
16 telephone number and electronic mail address to obtain SCRA relief, or raise
17 questions or concerns regarding such relief.

18 9. No later than thirty (30) calendar days after the effective date of this Consent Order, Defendant
19 shall provide a copy of the proposed SCRA Policies and Procedures for Lease Terminations,
20 along with any revised lease forms, as required under Paragraph 8 to counsel for the United
21 States.³ The United States shall respond to Defendant's proposed SCRA Policies and Procedures
22 within thirty (30) calendar days of receipt. If the United States objects to any part of Defendant's
23 SCRA Policies and Procedures, the parties shall confer to resolve their differences. Defendant
24 shall begin the process of implementing the SCRA Policies and Procedures within ten (10)
25 calendar days of non-objection by the United States.

27 ³ All materials required by this Consent Order to be sent to counsel for the United States shall be
28 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 216-11E-4.

- 1 10. If, at any time during the term of this Consent Order, Defendant proposes to materially change its
2 SCRA Policies and Procedures described herein, it shall first provide a copy of the proposed
3 changes to counsel for the United States. If the United States does not deliver written objections
4 to Defendant within thirty (30) calendar days of receiving the proposed changes, the changes
5 may be implemented. If the United States makes any objections to the proposed changes within
6 the thirty (30) day period, the specific changes to which the United States objects shall not be
7 implemented until the objections are resolved pursuant to the process described in Paragraph 9.
- 8 11. No later than thirty (30) calendar days after the effective date of this Consent Order, Defendant
9 shall designate employees who have been specifically trained on the protections of the SCRA
10 and who are responsible for the intake of and response to servicemembers' inquiries regarding
11 the SCRA.

12 IV. TRAINING

- 13 12. Within thirty (30) calendar days of the United States' non-objection to the SCRA Policies and
14 Procedures for Lease Terminations pursuant to Paragraph 9, Defendant shall develop and
15 provide to counsel for the United States proposed training materials related to compliance with
16 the SCRA. The training shall include: (a) training on the terms of the SCRA with respect to
17 lease terminations; (b) training on Defendant's SCRA Policies and Procedures required pursuant
18 to Paragraph 8; (c) training on the terms of this Consent Order; and (d) the contact information
19 for the employees described in Paragraph 11. Defendant shall provide to counsel for the United
20 States the curriculum, instructions, and any written material included in the training. The United
21 States shall have thirty (30) calendar days from receipt of these documents to raise any
22 objections to Defendant's training materials, and, if it raises any, the parties shall confer to
23 resolve their differences. In the event that the parties are unable to do so, either party may bring
24 the dispute to this Court for resolution.
- 25 13. Within thirty (30) calendar days of the United States' non-objection to the SCRA compliance
26 training pursuant to Paragraph 12, Defendant shall ensure that all employees involved in leasing
27 operations and/or lease terminations have completed the SCRA compliance training.
- 28

- 1 14. During the term of this Consent Order, Defendant shall provide annual SCRA compliance
2 training to any employee involved in leasing operations and/or lease terminations. Defendant
3 shall also provide SCRA compliance training within thirty (30) calendar days of hiring to any
4 new employee who will be involved in leasing operations and/or lease terminations.
- 5 15. Defendant shall secure a signed statement in the form attached as Exhibit A from each employee
6 at the trainings required by Paragraphs 13 and 14 acknowledging that he or she has received,
7 read, and understands the Consent Order and the SCRA Policies and Procedures, has had the
8 opportunity to have his or her questions about these documents answered, and agrees to abide by
9 them. For the duration of this Consent Order, copies of those signed statements shall be
10 provided to counsel for the United States upon request. Defendant shall also certify in writing to
11 counsel for the United States, on at least an annual basis, that the covered employees
12 successfully completed the trainings required by Paragraphs 13 and 14. Any expenses associated
13 with the trainings required by Paragraphs 13 and 14 shall be paid by Defendant.

14 **V. COMPENSATION**

- 15 16. The United States has determined that, since April 13, 2016, Defendant imposed repayment of
16 rent discounts or concessions provided at lease signing on eight (8) servicemembers who
17 terminated their leases early pursuant to the SCRA. The United States has determined that these
18 repayment amounts constituted early termination charges, in violation of 50 U.S.C. § 3955(e)(1).
19 Additionally, the United States has determined that Defendant imposed an early termination
20 charge, in the form of a lease break fee, on one (1) other servicemember when she terminated her
21 lease. The United States has provided Defendant with a list of these nine servicemembers and
22 the amount of the early termination charge as to each.
- 23 17. For each servicemember identified pursuant to Paragraph 16, Defendant shall compensate the
24 servicemember by providing: (1) a refund of any early termination charge paid; and (2) an
25 additional payment, the amount of which the United States has provided to Defendant. The
26 compensation described in subsection (1) shall be distributed equally among the servicemember
27 and any co-lessees named on the lease. The compensation described in subsection (2) shall be
28 paid entirely to the servicemember who terminated the lease under the SCRA.

- 1 18. In cases where Defendant has already taken remedial actions with respect to a lease termination,
2 the United States has considered such remedial actions and adjusted the compensation awarded.
- 3 19. Within ten (10) business days of the effective date of this Consent Order, Defendant shall deposit
4 the sum of \$51,587 into an interest-bearing account for the purpose of fulfilling its obligations
5 under Paragraph 17. Title to the escrow account will be in the name of “FPI Management, Inc.
6 for the benefit of aggrieved persons pursuant to Order of the Court in *United States v. FPI*
7 *Management, Inc.*” Defendant will provide written verification of the deposit to the United
8 States within ten (10) business days of the effective date of this Consent Order. Any taxes, costs,
9 or other fees related to the escrow account shall be paid by Defendant. The United States
10 acknowledges that the amounts in the escrow account required by this Paragraph are for the
11 benefit of the aggrieved persons identified pursuant to Paragraph 16. In the event that an
12 aggrieved person refuses to accept their allocated compensation and has elected to pursue an
13 independent claim for relief under the SCRA against Defendant, Defendant shall be permitted to
14 withdraw the amount of compensation allocated to that aggrieved person from the escrow
15 account. If Defendant wishes to make such a withdrawal, it shall notify the United States of the
16 aggrieved person involved and provide relevant supporting documentation at least twenty (20)
17 days before it intends to withdraw the funds. If the United States objects to the proposed
18 withdrawal, the parties shall confer to resolve their differences. If the parties are unable to come
19 to an agreement, either party may bring the dispute to this Court for resolution.
- 20 20. Defendant must deliver payment to each servicemember, except for any servicemembers
21 currently residing in Oregon, in the amount calculated pursuant to Paragraph 17 within thirty
22 (30) days of the effective date of this Consent Order.
- 23 21. All compensation checks may include the phrase “Settlement in Full” in the memorandum
24 section. All compensation checks shall be accompanied by a copy of a letter (the form of which
25 is to be approved in advance by the United States) explaining that cashing or endorsing the check
26 releases all claims related to the SCRA Section 3955 violations alleged in the complaint.
- 27 22. For any servicemembers that Defendant believes are currently residing in Oregon, Defendant
28 shall send a letter (the form of which is to be approved in advance by the United States)

1 containing a Release in the form attached as Exhibit B within thirty (30) days of the effective
2 date of this Consent Order. Within thirty (30) days of receiving a properly executed copy of the
3 Release at Exhibit B, Defendant shall issue and mail a compensation check to the servicemember
4 in the amount calculated pursuant to this Consent Order.

5 23. Defendant shall promptly stop trace and redeliver or reissue any payment or notification that is
6 returned as undeliverable, or that is not deposited, cashed, or returned within six (6) months of
7 the date the initial payment is sent.

8 24. Servicemembers shall have six (6) months after issuance to cash or deposit their compensation
9 checks. During the term of this Consent Order, Defendant shall, upon the request of a
10 servicemember or co-lessee entitled to compensation, or upon the request of the counsel for the
11 United States, reissue any checks that have not been cashed or deposited prior to their expiration.

12 25. Every six (6) months for a period of four and a half (4.5) years following the mailing of notices
13 to those who are entitled to compensation, or until all compensation payments have been
14 completed, Defendant shall provide counsel for the United States with an accounting of all
15 releases received, checks issued, checks cashed or deposited (including check copies), and
16 notifications without responses or that were returned as undeliverable.

17 26. Any amounts in the escrow account required by Paragraph 19 that have not been distributed to
18 aggrieved persons within five (5) years of the date of this Consent Order shall be paid to the
19 United States Treasury in the form of an electronic funds transfer pursuant to written instructions
20 to be provided by the United States.

21 27. Defendant will not refuse to make a payment based on a waiver or release of legal claims or an
22 arbitration agreement previously signed by any such recipient.

23 28. No individual may obtain review by the Parties of the identifications made and payments
24 disbursed (including the amounts thereof) pursuant to the Consent Order.
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VI. OTHER RELIEF

- 1
- 2 29. Within thirty (30) calendar days of the effective date of this Consent Order, Defendant must
- 3 request that all three (3) major credit bureaus⁴ and any other database to which it reports remove
- 4 any negative entries resulting from Defendant’s reports of non-payment of early termination
- 5 charges, including those related to lease concessions and discounts.
- 6 30. Within sixty (60) days after completion of its obligations in Paragraph 29, Defendant shall
- 7 provide counsel for the United States with an accounting of all credit and tenant database entries
- 8 repaired.
- 9 31. Defendant shall not pursue, and must indemnify any servicemember against any third-party’s
- 10 pursuing, any outstanding balance or deficiency that is related to repayment by servicemembers
- 11 who terminated their residential leases under the SCRA of lease incentives that were provided to
- 12 them or other early termination charges.

VII. CIVIL PENALTY

- 13
- 14 32. Within thirty (30) calendar days of the effective date of this Consent Order, Defendant shall pay
- 15 a total of \$22,500 to the United States Treasury as a civil penalty pursuant to 50 U.S.C. §
- 16 4041(b)(3) and 28 C.F.R. § 85.5 to vindicate the public interest. The payment shall be in the
- 17 form of an electronic funds transfer pursuant to written instructions to be provided by the United
- 18 States.

VIII. ADDITIONAL REPORTING AND RECORD-KEEPING REQUIREMENTS

- 19
- 20 33. For the duration of this Consent Order, Defendant shall retain all records relating to its
- 21 obligations hereunder, including its records with respect to the termination of servicemember
- 22 leases and all records relating to compliance activities as set forth herein. The United States
- 23 shall have the right to review and copy any such records, including electronic data, upon
- 24 reasonable request during the term of this Consent Order. Defendant shall not be obligated to
- 25 retain records relating to its obligations hereunder to the extent Defendant is required by
- 26 applicable law or by the owner of the records to relinquish control of the records or destroy
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⁴ Equifax, Experian and TransUnion.

1 records. In instances where Defendant is required to relinquish control or destroy records (e.g.,
2 where a property management agreement is terminated and Defendant no longer manages the
3 property and no longer has access to the records), Defendant will not be required to retain such
4 records as otherwise required under this Paragraph.

- 5 34. During the term of this Consent Order, Defendant shall notify counsel for the United States in
6 writing every three months of receipt of any SCRA or military-related complaint against
7 Defendant or its agents or principals. Defendant shall provide a copy of any written complaints
8 with the notifications. Whether regarding a written or oral SCRA complaint, the notification to
9 the United States shall include the full details of the complaint, including the complainant's
10 name, address, telephone number, and email address. Defendant shall also promptly provide
11 counsel for the United States all information it may request concerning any such complaint and
12 shall inform counsel for the United States in writing within thirty (30) calendar days of the terms
13 of any resolution of such complaint. If the United States raises any objections to Defendant's
14 actions, the Parties shall meet and confer to consider appropriate steps to address the concerns
15 raised by the United States' review. If the Parties are unable to come to an agreement regarding
16 such objections or concerns, either party may bring the dispute to this Court for resolution.

17 **IX. SCOPE OF CONSENT ORDER**

- 18 35. The provisions of this Consent Order shall apply to Defendant and any of its subsidiaries,
19 predecessors, acquired companies, or successors. It shall also apply to the officers, employees,
20 agents, attorneys, representatives, assigns, successors-in-interest, and all persons and entities in
21 active concert or participation with any of those entities.
- 22 36. In the event that Defendant is acquired by or merges with another entity, Defendant shall, as a
23 condition of such acquisition or merger, obtain the written agreement of the acquiring or
24 surviving entity to be bound by any obligations remaining under this Consent Order for the
25 remaining term of this Consent Order.
- 26 37. Defendant shall not be liable or responsible for SCRA violations committed by property owners
27 of properties that Defendant manages, so long as Defendant does not encourage or actively
28 participate in those violations.

1 38. This Consent Order releases the United States' claims against Defendant and its principals
2 (including the owners of the properties where the servicemember tenants resided), officers,
3 directors, employees, agents, attorneys and shareholders, as well as their successors and assigns
4 for violations of Section 3955(e) of the SCRA addressed in the Complaint or identified in this
5 Consent Order. This Consent Order does not release claims for practices not addressed in the
6 Complaint's allegations, and it does not resolve and release claims other than claims against
7 Defendant for violations of 50 U.S.C. § 3955 that are addressed in this Consent Order. This
8 Consent Order does not release any claims that may be held or are currently under investigation
9 by any other federal agency.

10 39. Nothing in this Consent Order will excuse Defendant's compliance with any currently or
11 subsequently effective provision of law or order of a regulator with authority over Defendant that
12 imposes additional obligations on it.

13 **X. TERMINATION OF LITIGATION HOLD**

14 40. The Parties agree that, as of the effective date of this Consent Order, litigation is not "reasonably
15 foreseeable" concerning the matters described above. To the extent that any party previously
16 implemented a litigation hold to preserve documents, electronically stored information, or things
17 related to the matters described above, the party is no longer required to maintain such litigation
18 hold. Nothing in this Paragraph relieves any party of any other obligations imposed by this
19 Consent Order.

20 **XI. MODIFICATIONS, ATTORNEY'S FEES AND COSTS, AND**
21 **REMEDIES FOR NON-COMPLIANCE**

22 41. Any time limits for performance imposed by this Consent Order may be extended by the mutual
23 written agreement of the Parties.

24 42. The Parties shall be responsible for their own attorney's fees and court costs, except as provided
25 for in Paragraph 43.

26 43. The Parties shall endeavor in good faith to resolve informally any differences regarding the
27 interpretation of and compliance with this Consent Order prior to bringing such matters to the
28 Court for resolution. However, in the event the United States contends that there has been a

1 failure by Defendant, whether willful or otherwise, to perform in a timely manner any act
2 required by this Consent Order or otherwise comply with any provision thereof, the United
3 States may move the Court to impose any remedy authorized by law or equity, including, but not
4 limited to, an order requiring the performance of such act or deeming such act to have been
5 performed, and an award of any damages, costs, and attorney’s fees which may have been
6 occasioned by Defendant’s violation or failure to perform.

7 **XI. RETENTION OF JURISDICTION**

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

11 45. This Consent Order shall be in effect for a period of five (5) years from its date of entry, after
12 which time this case shall be dismissed with prejudice. The United States may move the Court to
13 extend the duration of this Consent Order in the interests of justice.

14 **IT IS SO ORDERED.**

15
16 Dated: June 13, 2023

/s/ John A. Mendez

17 THE HONORABLE JOHN A. MENDEZ
18 SENIOR UNITED STATES DISTRICT JUDGE

19
20 By their signatures below, the Parties consent to the entry of this Consent Order.

21 *For the United States:*

22
23 Dated: JUNE 13, 2023

24 KRISTEN CLARKE
25 Assistant Attorney General
26 Civil Rights Division

27 /s/ Alan A. Martinson
28 CARRIE PAGNUCCO, Acting Chief
ELIZABETH A. SINGER, Director
U.S. Attorneys’ Fair Housing Program

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ALAN A. MARTINSON, Trial Attorney
Civil Rights Division
U.S. Department of Justice
Housing and Civil Enforcement Section

PHILLIP A. TALBERT
United States Attorney
COLLEEN M. KENNEDY
Assistant United States Attorney

For FPI Management, Inc.

Dated: JUNE 13, 2023

WILKE FLEURY LLP

/s/ Daniel J. Foster
DANIEL J. FOSTER
Attorneys for FPI MANAGEMENT, INC.

EXHIBIT A

EMPLOYEE ACKNOWLEDGMENT

I acknowledge that on _____, 20__, I was provided training regarding Servicemembers Civil Relief Act (SCRA) compliance, the Consent Order entered in *United States v. FPI Management, Inc.*, Civil No. _____ (E.D. Cal.), and the SCRA Policies and Procedures that are 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]

EXHIBIT B

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. FPI Management, Inc.*, Civil No. _____ (E.D. Cal.) 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 FPI Management, Inc. and the owner of the property FPI Management, Inc. managed during my tenancy at the property ("Property Owner") and all FPI Management, Inc.'s and Property Owner's related entities, parents, predecessors, successors, subsidiaries, and affiliates and all of their past and present directors, officers, agents, managers, supervisors, shareholders, and employees and their heirs, executors, administrators, successors or assigns. I do not release any other claims that I may have against FPI Management, Inc. or the Property Owner under any other section of the Servicemembers Civil Relief Act.

Executed this _____ day of _____, 20__.

SIGNATURE: _____

PRINT NAME: _____

MAILING ADDRESS: _____

PHONE: _____

EMAIL: _____