

**Roberson v. ECI Group, Inc., et al**

State Court of DeKalb County  
State of Georgia  
Civil Action File No. 17A64506-4

**Comprehensive Settlement Agreement**

August 3, 2020

1. **Background.**

Plaintiff Nichon Roberson, individually and on behalf of the Class, and Defendants ECI Group, Inc., ECI Management, LLC, and DeKalb-Lake Ridge, LLC (the “ECI Defendants”) enter into this Comprehensive Settlement Agreement, which replaces the November 27, 2019 Class Settlement Term Sheet. *See* Term Sheet at 4 (“The parties agree that this Class Settlement Term Sheet contains all of the material terms of their agreement, and it is binding and enforceable on its own. The purpose of the Comprehensive Settlement Agreement is to memorialize the agreement of the parties in more detail and to address other, non-material issues.”). To the extent that the Class Settlement Term Sheet imposed any obligations due to be satisfied prior to this Agreement, such obligations have been satisfied.

Roberson and the ECI Defendants hereby agree to the following terms in full settlement of the action styled *Roberson v. ECI Group, Inc.*, Civil Action File No. 17A64506-4 (the “Action”), pending before the State Court of DeKalb County, State of Georgia, subject to approval by the Court.

2. **The Class.**

For settlement purposes, the Class shall be defined as follows:

(a) Any person; (b) who had an agreement for the rental of real property with any of the Defendants, or any of their subsidiaries or affiliated entities or persons, including but not limited to DeKalb-Lake Ridge, LLC; (c) who had all or some of their security deposit not returned within one month of the termination of the lease due, at least in part, to alleged damage to the premises; (d) had all or some of their security deposit retained during the time period beginning on May 19, 1997 and continuing through June 30, 2018; and (e) did not receive a list of alleged damage to the premises within three business days of termination of the occupancy.

If the settlement is not fully and finally approved for any reason, no party shall be bound by this class definition. Further, no party shall use the fact that this class definition was proposed as a settlement class as evidence in support of any argument or position in any motion, briefing, hearing, appeal, or otherwise.

3. **Notice And Settlement Administration**

The parties agree that Kurtzman Carson Consultants (“KCC”) shall serve as the Class Action Administrator and perform the duties, tasks, and responsibilities associated with providing Class Notice and administering the settlement.

The ECI Defendants shall be solely responsible for all fees, costs, and expenses associated with Class Notice and settlement administration (including but not limited to all fees, costs, and expenses of the Class Action Administrator, mailing Class Notice, and publishing Class Notice). The Class Notice and settlement administration costs are in addition to, and not to be deducted from, the Monetary Consideration set forth in Section 4 below.

4. **Monetary Consideration.**

(a) **Claims-Made Payment to the Class.**

A claims-made process will be set up and run by the Class Action Administrator (described in Section 3 above). If an individual is a member of the Class, as defined in Section 2 above, and the Class member submits a claim that is ultimately approved by the Class Action Administrator, following the process set forth below, the Class member will receive payment of that portion of their security deposit that was withheld for alleged damage to the premises. All claims must be made within 150 calendar days of the Court's preliminary approval order as set forth below.

The amount any individual Class member may receive will be capped at the total amount of their security deposit ("Individual Capped Amount"). For example, if a Class member's security deposit was \$50, the most the Class member could receive is \$50 and, as consideration for this settlement, the Class member would have no right to receive trebling.

The aggregate amount of money to be made available to the Class – including the total amount all Class members could receive through the claims-made process, attorney fees, costs, and expenses, and Class Representative Service Award for which the ECI Defendants shall be responsible to pay – is capped at **\$2,400,000** (two million, four-hundred thousand dollars) (the "Class Capped Amount").

If the total amount of approved claims, when aggregated with attorney fees, costs, and expenses, and Class Representative Service Award, exceeds the Class Capped Amount, the approved claims submitted by class members shall be reduced on a *pro rata* basis, such that the total aggregate amount of approved claims, attorney fees, costs and expenses, and Class Representative Service Award does not exceed the Class Capped Amount.

The ECI Defendants will not be required to provide the monetary consideration to satisfy the claims-process upfront. Instead, the ECI Defendants will be required to provide the consideration within thirty business days of the Class Action Administrator's final determination of the claims-made process. As such, if the Class Action Administrator determines that the total claims made Class members is below the Class Capped Amount, the ECI Defendants will not be required to pay the Class Capped Amount; they will pay only the approved claims made, attorney fees, costs, and expenses, and Class Representative Service Award subject to the Class Capped Amount and Individual Capped Amount.

A Class member's settlement check will be mailed to Class members, who do not timely and properly opt out, at the Class member's last known address within ten business days of the Class Administrator's receipt of payment of the monetary consideration by the ECI Defendants.

If a Class member's settlement check is not deposited or cashed within 180 days of the check being mailed, the settlement check will become null and void and the Class member will have no right to receive any additional payment.

Any Class member settlement paid to a deceased Class member shall be made payable to the estate of the deceased Class member, provided that the Class member's estate informs the Class Administrator, prior to the date that settlement payments are mailed, of the Class member's death.

Any settlement checks returned by the Postal Service (or private delivery service) as undeliverable shall invalidate the claim of such Settlement Class Member.

Roberson, the ECI Defendants, and their counsel have no responsibility or liability for any federal, state, or other taxes owed by Class members as a result of, or that arise from, any Class member's settlement or any other term or condition of this Comprehensive Settlement Agreement.

The Class Action Administrator shall prepare, send, file, and furnish all tax information reporting forms required for payments made by the Settlement Fund as required by the Internal Revenue Service pursuant to the Internal Revenue Code and related Treasury Regulations. Roberson and the ECI Defendants agree to cooperate with the Class Action Administrator and each other to the extent reasonably necessary to carry out any tax reporting.

In the event that Roberson, the ECI Defendants, any Class member, or any person claiming to be a Class Member raises a dispute as to an individual's membership in the Class or the calculation of the Class member's settlement, Roberson and the ECI Defendants shall meet and confer as to how to resolve the dispute. If they are unable to resolve the dispute, it will be resolved by the Class Action Administrator. The Class Action Administrator's decisions on such disputes shall be final, binding, and non-appealable.

The Class Action Administrator shall provide Roberson and the ECI Defendants with a reconciliation and accounting of the Settlement Fund at each of the following times: (a) no later than ten business days after the Class Member settlements are mailed; and (b) no later than ten business days after the expiration of the 180-day period for depositing or cashing a Class member's settlement check.

(b) **Payment for Class Representative Service Award.**

Roberson, through her counsel, shall be entitled to apply to the Court for a Class Representative Service Award of **\$12,500** (twelve-thousand, five-hundred dollars) for her service as Class Representative. The ECI Defendants shall not oppose or appeal such application for a Class Representative Service Award up to the amount set forth above.

If, and in whatever amount, the Court approves such application, and Roberson does not appeal or otherwise object to such order, then within ten business days of such approval by the Court, the ECI Defendants will provide the Class Action Administrator with the monetary consideration to pay for such Class Representative Service Award. Within ten business days of receipt of such payment from ECI, the Class Action Administrator will provide Roberson, through her counsel, with a check for her Class Representative Service Award.

(c) **Payment for Class Counsel Attorney Fees And Expenses.**

Michael B. Terry and Naveen Ramachandrappa of Bondurant, Mixson & Elmore, LLP; Bryant Lamer, Angus Dwyer, and Blake Smith of Spencer & Fane, LLP; and Shimshon Wexler of The Law Offices of Shimshon Wexler, P.C. shall be entitled to apply to the Court to serve as Class Counsel. The ECI Defendants shall not oppose or appeal such application.

Class Counsel shall be entitled to apply to the Court for payment of fees and expenses in the amount of **\$600,000** (six-hundred thousand dollars). The ECI Defendants shall not oppose or appeal such application for payment of fees and expenses up to the amount set forth above.

If, and in whatever amount, the Court approves such application, and Class Counsel does not appeal or otherwise object to such order, then within ten business days of such approval by the Court, the ECI Defendants will provide the Class Action Administrator with the monetary consideration to pay for such Class Counsel fees and expenses. Within ten business days of receipt of such payment from ECI, the Class Action Administrator will distribute the Class Counsel fees and expenses to Class Counsel pursuant to their fee-sharing agreement among Class Counsel.

Roberson and the ECI Defendants agree and intend to demarcate clearly between the settlement proceeds in which Class members have an interest and which may subject them to tax liability and the Class Representative Service Award and Class Counsel's fees and expenses for which Class members should not have any obligation to pay taxes. Accordingly, the amount paid separately as the Class Representative Service Award and Class Counsel's fees and expenses are independent and apart from the amounts paid to Class members, and Class members do not have an interest in such awards.

The ECI Defendants and any of their subsidiaries or affiliated entities or agents shall bear their own attorney fees, expenses, and other costs associated with this litigation and settlement.

5. **Settlement Procedures.**

(a) **Preliminary Approval Motion.**

Roberson's counsel will prepare and submit for the Court's consideration a Motion for Preliminary Approval of the Class Settlement and a proposed order preliminarily approving the Class Settlement as fair, reasonable, and adequate. Roberson's Counsel shall draft the Motion for Preliminary Approval and proposed order, and work with the ECI Defendants' Counsel in good faith effort to agree on the Motion and proposed order. In the event that no agreement is able to be reached, despite good faith effort, Roberson's counsel shall submit a Motion and proposed order, and the ECI Defendants have the right to submit a Response (though still in support of approval) and a proposed order.

Roberson and the ECI Defendants agree to a Short-Form Notice, attached as Exhibit A to this Agreement, a Long-Form Notice, attached as Exhibit B to this Agreement, and a Claim Form, attached as Exhibit C to this Agreement. The Short-Form Notice, Long-Form Notice, and Claim Form will be submitted to the Court along with the Preliminary Approval Motion, and ultimately, the Notices and Form given must be approved by the Court.

(b) **Schedule.**

Roberson and the ECI Defendants agree to the following schedule:

- within 15 calendar days of the Court's preliminary approval order, the ECI Defendants shall provide the Class Action Administrator with the information needed to administer the Class, including but not limited to, names of Class members (to the extent known), last known addresses of known Class members, and any other information the Class Action Administrator deems necessary for administration;
- within 60 calendar days of the Court's preliminary approval order, the Class Action Administrator shall provide notice to Class members using a methodology that will ensure notice is received by at least 70 percent of Class members as set forth below, and such notice shall include a copy of the Claim Form;
- within 90 calendar days of the Court's preliminary approval order, Roberson and Class Counsel shall file motions for Class Representative Service Award and Class Counsel fees and expenses;
- within 150 calendar days of the Court's preliminary approval order (and such date shall constitute the Deadline for Class Claims, Opt-Outs, and Objections), Class Members must submit any claims, requests to opt out of the Class, or objections;
- no earlier than 30 calendar days from the Deadline for Class Claims, Opt-Outs, and Objections, the Court shall hold a final approval hearing.

(c) **Class Notice.**

Roberson and the ECI Defendants agree that the Class Action Administrator shall provide class notice by mail and publication.

For mail notice, the Class Action Administrator shall take the last known addresses provided by the ECI Defendants for those known Class members and attempt to update those addresses through the National Change of Address system or similar databases. With respect to any mail notices that are returned undelivered, the Class Action Administrator shall attempt one trace and, if the trace establishes another address, shall attempt one additional notice by mail to that address.

For publication notice, the Class Action Administrator shall place notice via advertisement once each in the Atlanta Journal Constitution, the Savannah Morning News, and the USA Today. The Class Action Administrator shall also run internet banner ads targeting desktop and mobile devices over a 30-day campaign duration.

The Class Action Administrator shall also maintain a website containing the latest Complaint, Notice, Order Granting Preliminary Approval, Applications for Class Representative Service Award, and Class Counsel's attorney fees and expenses, and order granting final approval. The website shall be maintained until 180 days after the last settlement check is mailed or 90 days after the Court's final approval order, whichever is later.

(d) **Claim.**

The Class Action Administrator shall, in good faith, determine whether claims submitted by Class members substantially comply with the Claim Form and provide a reasonable basis for determining that the person is a Class member. Non-material or minor deviations shall not preclude a Class member from receiving a settlement check.

The Class Action Administrator shall, in summary form, reasonably and weekly update Roberson and ECI regarding the number of claims made, the number of claims accepted, the number of claims rejected, and any other information needed for the parties to determine the effectiveness of the claims-made process. Upon request, Roberson and/or ECI may request to view the individual claims submitted and may challenge the validity of any such claims within 14 days of the receipt of them. If necessary, the Class Action Administrator will consult with Roberson's and ECI's counsel to answer any questions or resolve any disputes that arise regarding the validity of Claims Forms.

(e) **Opting Out.**

If a Class member wishes to be excluded from the Class and this Settlement, the Class Member is required to submit to the Class Action Administrator, as provided in the Notice, a signed, written, and dated statement that the person opts out of the Class and understands that they will receive no money from the Settlement.

To be effective, the opt-out statement (i) must be timely received by the Class Action administrator, (ii) must include the Class member's name and last four digits of their social security number, and (iii) must be personally signed and dated by the Class member (or by someone with authority to do so on behalf of the Class member).

The Class Action Administrator will provide, within five business days of any opt-out statement, the statement to Roberson and ECI. At least ten business days before the final approval hearing, the Class Action Administrator will file all opt-out statements with the Court.

(f) **Objections.**

Any Class member who has not submitted a timely and proper opt-out statement and who wishes to object to the fairness, reasonableness, or adequacy of the Settlement must both timely file a written objection with the Court and send a copy of that written objection by mail to Roberson's counsel and ECI's counsel at the address provided in the Notice.

To be valid and considered by the Court, an objection must (i) be received by the Court on or before the Objection deadline; (ii) state each objection the Class Member raises and the specific factual and legal bases for each objection; (iii) include proof that the individual is a Class member; (iv) identify, with specificity, each instance in which the Class member or their counsel has objected to a class action settlement in the past ten years; and (v) be personally signed by the Class member. All evidence and legal argument a Class member wishes to use to support an objection must be timely filed with the Court and sent to Roberson's counsel and ECI's counsel. An

objection will not be considered unless the requirements of this Section are met.

Roberson and the ECI Defendants may file responses to any objections that are submitted. Any Class member who timely and properly files and serves an objection may appear at the final approval hearing, but only if the Class member files a notice of intention to appear with the Court least 14 days before the final approval hearing. Failure to adhere to the requirements of this Section will bar a Class member from having the right to be heard at the final approval hearing.

(g) **Release.**

The “Effective Date” of this settlement shall be the first date on which all the following statements are true:

- (a) All parties have executed this Comprehensive Settlement Agreement;
- (b) No party has terminated this Comprehensive Settlement Agreement;
- (c) The Court has preliminarily approved the Comprehensive Settlement Agreement and proposed settlement;
- (d) The Court has entered a final judgment approving the Comprehensive Settlement Agreement and the proposed settlement without material alteration, and dismissing the Action with prejudice;
- (e) One of the following has occurred: (i) The time to appeal from the Final Judgment has expired without the filing of any appeal of any terms of or any Court rulings pertaining to terms of the proposed settlement, the Comprehensive Settlement Agreement, or the request for attorney’s fees, or (ii) any such appeal has been dismissed or grounds for such appeal overruled by final appellate ruling, and the passage of time and/or decision of an appellate court has made further appellate review unavailable.

On the Effective Date, Roberson and the Class members, including their heirs, trustees, executors, administrators, principals, beneficiaries, assigns, and successors will be bound by the Final Judgment and conclusively deemed to have fully released, acquitted, and forever discharged any and all known or unknown claims, causes of action, or suits of whatever kind or nature arising from the acts alleged in the Action, whether at law, in equity, or under any statute or regulation, against the ECI Defendants and all of their past and present officers, directors, agents, attorneys, employees, stockholders, divisions, parent companies, holding companies, affiliated companies, and subsidiaries, and all of their successors, assigns, and legal representatives of any of the entities and/or persons listed in these paragraphs. The claims released in this paragraph do not include any claim for enforcement of the Comprehensive Settlement Agreement or the Final Judgment. Similarly, the claims released in this paragraph do not include claims against ECI unrelated to alleged damage to the apartment premises.

On the Effective Date, the ECI Defendants, including their heirs, trustees, executors, administrators, principals, beneficiaries, assigns, and successors will be bound by the Final Judgment and conclusively deemed to have fully released, acquitted, and forever discharged any and all known or unknown claims, causes of action, or suits of whatever kind or nature arising from the acts alleged in the Action, whether at law, in equity, or under any statute or regulation, against Roberson and the Class members and all of their past and present officers, directors, agents, attorneys, employees, stockholders, divisions, parent companies, holding companies, affiliated



companies, and subsidiaries, and all of their successors, assigns, and legal representatives of any of the entities and/or persons listed in these paragraphs. For additional clarity, this means that the counterclaims against Roberson in this action are released. The claims released in this paragraph do not include any claim for enforcement of the Comprehensive Settlement Agreement or the Final Judgment. Similarly, the claims released in this paragraph do not include claims against Class Members unrelated to alleged damage to apartment premises, such as outstanding rent, and therefore will not impact ECI's ability to collect amounts for those claims.

7. **No Admission Of Liability.**

Nothing in the fact of or the terms of the settlement or mediation (including but not limited to communications and documents made pursuant to the settlement or mediation, the Class Settlement Term Sheet, and this Comprehensive Settlement Agreement) shall constitute or be used as an admission of any act or omission or wrongdoing by any party in this action, nor constitute or be used as evidence against any party in this action as an admission, concession, presumption, or inference in any way, in any matter or otherwise. Any and all communications and documents made pursuant to the settlement or mediation are and will remain confidential subject to Rule 408 of the Georgia evidence code or other applicable law. However, and of course, this Comprehensive Settlement Agreement may be used to enforce the Comprehensive Settlement Agreement itself or to enforce any orders of the Court pursuant to this Comprehensive Settlement Agreement.

8. **Representation And Warranty.**

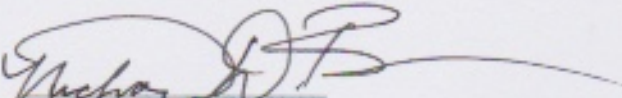
The ECI Defendants represent and warrant that the spreadsheets containing data provided to Class Counsel prior to the September 20, 2018 mediation and any additional spreadsheets or similar tenant data provided to Class Counsel during the mediation or after the mediation was, to the best of their knowledge, complete and accurate and included relevant data that they reasonably had access to and could provide. From that data, the parties made reasonable, good-faith extrapolations of the Class's claims and damages. The ECI Defendants are providing and affirming this Representation And Warranty, which is attached as Exhibit D to this Comprehensive Settlement Agreement.

9. **Entire Agreement.**

The terms set forth in this Comprehensive Settlement Agreement constitute the complete statement of the agreement between the parties relating to the subject matter of this agreement, superseding all previous negotiations and understandings and may not be contradicted by evidence of any prior or contemporaneous agreement.

Each party and their counsel agree, represent, and warrant that no representations, warranties, consideration, or inducements have been made to any party or their counsel concerning this agreement other than the terms contained and covered in this Comprehensive Settlement Agreement and the Class Settlement Term Sheet and that they have not executed this agreement in reliance on any promise, statement, representation, or warranty, written or oral, not expressly contained in this Comprehensive Settlement Agreement or the Class Settlement Term Sheet.

On Behalf of ECI Defendants

  
On Behalf of Roberson

  
On Behalf of ECI Defendants  


On Behalf of Roberson