

**STATE COURT OF DEKALB COUNTY
STATE OF GEORGIA**

NICHON ROBERSON, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

ECI GROUP, INC., ECI MANAGEMENT,
LLC, and DEKALB-LAKE RIDGE, LLC,

Defendants.

Civil Action File No.
17-A-64506-4

CLASS ACTION
JURY TRIAL

**Order Granting Preliminary Approval Of Class Settlement
And Directing Class Notice**

Plaintiff Nichon Roberson and Defendants ECI Group, Inc., ECI Management, LLC and DeKalb-Lake Ridge, LLC (collectively, “ECI”) have reached a negotiated Class Settlement, which if approved by this Court, will resolve their claims on a class-wide basis. Pursuant to Rule 23 of the Georgia Civil Practice Act, Roberson has filed a motion with this Court for an order certifying a class for purposes of effectuating the Class Settlement, preliminarily approving the Class Settlement, and directing class notice.

Having reviewed the Class Settlement and the Motion for Preliminary Approval of the Class Settlement and Class Notice, the Court **GRANTS** the motion. The Court hereby certifies the class for purposes of effectuating the Class Settlement, preliminarily approves the Class Settlement, and directs class notice be given and administered as set forth in the Class Settlement and exhibits attached to the motion.

A final approval hearing pursuant to Rule 23 shall be held before this Court on **May 20, 2021**, at 1:00 pm which is a date at least 180 days from the date of this order, to finally **determine whether the Class Settlement is fair, reasonable, and adequate to the Class, and**

should be approved by the Court; to consider any application by Class Counsel for payment or reimbursement of attorneys' fees, costs and expenses; to consider any application for a Class Representative Service Award; and to rule upon such other matters as appropriate.

The Court also makes the following specific findings.

1. The Court preliminarily approves the Class Settlement as fair, just, reasonable and adequate as to the members of the Class, subject to further consideration at the Final Approval Hearing described below.

2. Pursuant to Rules 23(a) and 23(b)(3) of the Georgia Civil Practice Act, and for the purposes of the Class Settlement only and contingent upon the Class Settlement being finally approved, this action is hereby certified as a class action. The "Class" is defined as:

(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.

3. For the purposes of the Class Settlement, the Court finds that the requirements of a class action under Rules 23 (a) and 23 (b)(3) of the Georgia Civil Practice Act have been satisfied in that: (a) the number of Class members is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Class; (c) Roberson's claims are typical of the Class's claims; (d) Roberson will fairly and adequately represent the interests of the Class; (e) the questions of law and fact common to the members of the Class predominate over any questions affecting only individual members of the Class; and (f) a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

4. With respect to numerosity, numerosity is easily established, given that, the Columns at

Lake Ridge is one of around twenty-five apartment complexes owned, operated, and managed by the ECI Defendants during the last twenty years in Georgia. Today, ECI owns, operates, and manages around 4,000 to 5,000 individual apartment units across Georgia.

5. With respect to commonality and typicality, “[t]o satisfy the commonality requirement, Plaintiff must show the presence of questions of law or fact common to the entire class.” *In re Tri-State Crematory Litig.*, 215 F.R.D. 660, 690 (N.D. Ga. 2003). The Eleventh Circuit has described the commonality requirement as a “low hurdle” to overcome. *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1356 (11th Cir. 2009). Typicality is satisfied when the plaintiff’s claims and the class’s claims “arise from the same event or pattern or practice and are based on the same legal theory.” *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). To satisfy this standard, the Plaintiff’s “interest in prosecuting [her] own case must simultaneously tend to advance the interests of the absent class members.” *Deiter v. Microsoft Corp.*, 436 F.3d 461, 466 (4th Cir. 2006). “When the class representative’s claim and the claims of the other ‘class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality’.” *In re Quick Cash, Inc.*, 541 B.R. 526, 534 (Bankr. D.N.M. 2015). Here, commonality and typicality is also easily established, given that there is one central, common legal question in this case—does the Georgia security deposit statute require ECI to provide a tenant with the list of damages within three business days in order to withhold the tenant’s security deposit for damage done to the premises?

6. With respect to adequacy, adequacy is established when “class members share common objectives and the same factual and legal positions and have the same interest in establishing the liability of defendants.” *In re Delta/AirTran Baggage Fee Antitrust Litig.*, 317 F.R.D. 675, 680 (2016). Adequacy is also established here. Roberson has the same material interests as the rest of

the Class. Roberson and the Class all share the same factual and legal positions given that Roberson and the Class are all asserting the same claim that the list of alleged damage to the premises was not provided within three business days—*i.e.*, a statutory claim that applies to the entire Class. Meanwhile, Class Counsel has extensive experience litigating class actions, including specifically litigating other Georgia security deposit class actions before this Court.

7. With respect to predominance and superiority, this class action is based on a statutory cause of action, which means that every class member’s claim depends on the same uniform language from the statute, not from any individual lease or contract. As a result, there is a strong case for predominance and superiority here because there will be no individual leases to consider and no need to evaluate the individual damage allegedly done to the premises. Further, because the average class member’s damages are a few hundred dollars at most, this case presents a “negative value suit”; *i.e.*, a case where an individual suit will cost a Class member more than they could recover. One of the “most compelling rationale[s] for finding superiority in a class action” is “the existence of a negative value suit.” *Castano v. Am. Tobacco Co.*, 84 F.3d 734, 748 (5th Cir. 1996). That is because where, as here, the costs of litigating exceed the potential recovery, there is no alternative to class actions for fairly and efficiently adjudicating the controversy. Further, even if the cost of individual lawsuits did not exceed the potential recovery, proceeding on an individual basis would result in duplicative, unnecessary work for the parties and the Court.

8. For purposes of Class Settlement, the Court appoints Nichon Roberson as the Class Representative.

9. For purposes of Class Settlement, the Court also hereby appoints the following attorneys as Class Counsel for the Class:

Naveen Ramachandrappa
Michael B. Terry

BONDURANT, MIXSON & ELMORE, LLP
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404-881-4100

Shimshon Wexler
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678-699-1938

Bryant T. Lamer
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1000 Walnut St Ste 1400
Kansas City, MO 64106
816-474-8100

10. A hearing pursuant to Rule 23 of the Georgia Civil Practice Act shall be held before this Court on May 20, 2021, at 1:00 pm which is a date at least 180 days from the date of this order, to finally determine whether the Class Settlement is fair, reasonable, and adequate to the Class, and should be approved by the Court; to consider any application by Class Counsel for payment or reimbursement of attorneys' fees, costs and expenses; to consider any application for a Class Representative Service Award; and to rule upon such other matters as appropriate.

11. The Court appoints Kurtzman Carson Consultants ("KCC") to serve as the Class Action Administrator and perform the duties, tasks, and responsibilities associated with providing Class Notice and administering the settlement. KCC should follow the notice and schedule as set forth in this Order and in the Comprehensive Settlement Agreement, which provides for several types of publication notice (three newspapers and internet banner ads) and direct mail notice, as well as maintaining a website for the Class.

12. The Court also approves the forms of notice, short form and long form¹, and the claims form, all of which were attached as exhibits to the motion for preliminary approval, subject to KCC entering in and finalizing the deadlines which run from the entry of the Court's preliminary

1. Subject to correction of the typographical error in Section 19, regarding the deadline for electronically filing objections with the Clerk of the Court for the State Court of DeKalb County, Georgia.

approval order. Once the Court issues its preliminary approval order, those dates will be filled in with date-certain deadlines.

13. The Court adopts the following schedule for notice, motions for service award and class counsel fees and expenses, class claims, opt-outs, and objections, and a final approval hearing:

- 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.

14. Regarding opt-outs, 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.

15. Regarding 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 at 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.

The Court issues this order on September 29, 2020.



Johnny N. Pafos, Judge
State Court of DeKalb County
STATE COURT OF
DEKALB COUNTY, GA.
9/30/2020 9:49 AM
E-FILED
BY: Michelle Cheek

Order Proposed By

/s/ Naveen Ramachandrappa

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