

Anderson v. WSE Property Management, LLC

State Court of Fulton County
State of Georgia
Civil Action File No. 20EV005363

Comprehensive Settlement Agreement

January 11, 2023

1. **Background.**

Plaintiff Amanda Anderson (“Anderson”), individually and on behalf of the Class, and Defendant WSE Property Management, LLC (“WSE”) enter into this Comprehensive Settlement Agreement.

Anderson and WSE hereby agree to the following terms in full settlement of the action styled *Anderson v. WSE Property Management, LLC*, Civil Action File No. 20EV005363 (the “Action”), pending before the State Court of Fulton County, State of Georgia, subject to approval by the Court.

2. **The Class.**

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

- (a) Any person;
- (b) Who had an agreement for the rental of real property with WSE, or any of its subsidiaries or affiliated entities or persons, including but not limited to Windward Place Apartments;
- (c) And who either:
 - (i) had all or some of their security deposit not returned due, at least in part, to alleged damage to the premises or otherwise were charged for said alleged damages;
 - (ii) had all or some of their security deposit retained during the time period beginning on September 17, 2000 and continuing through the date of the Final Approval Hearing; and
 - (iii) did not receive a list of alleged damage to the premises within thirty (30) business days of termination of the occupancy (the “***Security Deposit Class***”);
- (d) or:
 - (i) had a lease that contained a provision that the tenant would only be charged for their actual sub-metered utility usage; yet
 - (ii) were charged an amount for utilities based on an estimate that was greater than their utility usage during the time period beginning on September 17, 2014 and continuing through the date of the Final Approval Hearing (the “***Utility Meter Class***”);
- (e) or:

were charged fees, including “administrative fees” associated with the collection of utility payments that were greater than the amount their contracts said they would be charged, during the time period beginning on September 17, 2014 and continuing through the date of the Final Approval Hearing (the “*Utility Fees Class*”);

(f) or:

- (i) had a lease with a “Special Provision” which provides that if the lease goes month to month they will be charged a \$200 surcharge in addition to market rent; and
- (ii) their lease did in fact go to month-to-month (as opposed to entering into a new lease agreement); but
- (iii) nevertheless were charged more than \$200 above their previous monthly rent, during the time period beginning on September 17, 2014 and continuing through the date of the Final Approval Hearing (the “*Holdover Rent Class*”).

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.

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) shall be paid from the common fund.

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 one of the following, as applicable:

- (i) *For the Security Deposit Class, payment of that portion of their security deposit that was withheld for alleged damage to the premises.*

- (ii) *For the Utility Meter Class, \$10;*
- (iii) *For the Utility Fees Class, a refund of all fees charged to them for collection of utilities beyond the amount that was disclosed and agreed to in the lease; and/or*
- (iv) *For the Holdover Rent Class, payment of the difference between their-previous-monthly-rent-plus-\$200 and the monthly rent they were actually charged.*

All claims must be made within 150 calendar days of the Court's preliminary approval order as set forth below.

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 WSE shall be responsible to pay – is capped at **\$800,000** (eight-hundred thousand dollars) (the “Class Capped Amount” or the “common fund”).

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.

WSE will not be required to provide the monetary consideration to satisfy the claims-process upfront. Instead, WSE will be required to provide the consideration within thirty business days of the Class Action Administrator's final determination of the claims-made process.

If the Class Action Administrator determines that the total claims made by Class members is below the Class Capped Amount, WSE 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.

If any class member opts out pursuant to provision 6(e) below, WSE shall be entitled to retain funds from the Class Capped Amount to defend against said opt-out suits. \$5,000 shall be calculated for each opt-out so that WSE may defend against each opt-out suit. If the total amount of claims, fees, costs and expense, plus the amounts calculated for opt-outs meets or exceeds the Class Capped Amount, \$5,000 shall be deducted from the Class Capped Amount for each opt-out. After these amounts are deducted, the approved claims shall be reduced on a *pro rata* basis, such that the total aggregate amount of approved claims, fees, costs, and expenses do not exceed the Class Capped Amount, as reduced by the set aside amounts. If the total amount of claims, fees, costs and expense, plus the amounts calculated for opt-outs does not meet or exceed the Class Capped Amount, no amount of money will be removed from the Class Capped Amount for opt-outs.

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, or the address provided by the Class member for an approved claim, within ten business days of the Class Administrator's receipt of payment of the monetary consideration by WSE.

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.

WSE 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. WSE agrees to cooperate with the Class Action Administrator to the extent reasonably necessary to carry out any tax reporting.

In the event that WSE, 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, counsel 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 WSE and Class Counsel 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.**

Anderson, through her counsel, shall be entitled to apply to the Court for a Class Representative Service Award of **\$15,000** (fifteen thousand dollars) for her service as Class Representative. WSE 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 Anderson does not appeal or otherwise object to such order, then within ten business days of such approval by the

Court, WSE 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 WSE, the Class Action Administrator will provide Anderson, through her counsel, with a check for her Class Representative Service Award.

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

James Radford of Radford & Keebaugh, LLC; 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. WSE 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 **\$360,000** (three-hundred and sixty thousand dollars) from the common fund. Attorneys' fees are paid by the Class from the common fund and not WSE. WSE 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, WSE 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 WSE, the Class Action Administrator will distribute the Class Counsel fees and expenses to Class Counsel pursuant to their fee-sharing agreement among Class Counsel.

Anderson and WSE 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.

WSE 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. **Additional Consideration**

WSE shall not pursue any claims for debt related to security deposits against any Class Members.

6. **Settlement Procedures.**

(a) **Preliminary Approval Motion.**

Anderson'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. Anderson's Counsel shall draft the Motion for

Preliminary Approval and proposed order, and work with WSE' 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, Anderson's counsel shall submit a Motion and proposed order, and WSE have the right to submit a Response (though still in support of approval) and a proposed order.

Anderson and WSE 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.**

Anderson and WSE agree to the following schedule:

- within 15 calendar days of the Court's preliminary approval order, WSE 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, last known email 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 reasonably calculated to reach as many Class members as possible based on obtainable information, as set forth below, and such notice shall include a copy of the Claim Form or information regarding how to file a claim online;
- within 90 calendar days of the Court's preliminary approval order, Anderson 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.**

Anderson and WSE 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 WSE 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 Anderson and WSE 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, Anderson and/or WSE 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 Anderson's and WSE'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 Anderson and WSE. 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 Anderson's counsel and WSE'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 Anderson's counsel and WSE's counsel. An objection will not be considered unless the requirements of this Section are met.

Anderson and WSE 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, Anderson and the Class members, including their heirs, trustees, executors, administrators, principals, beneficiaries, assigns, and successors, and WSE 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 which have been alleged or which could have been alleged in the Action by any Class member, whether at law, in equity, or under any statute or regulation arising from or in any way related to the claims asserted in the Action (the “Released Claims”) against WSE 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, and insurers, property owners, and any individual or entity in privity with WSE or the property owners in connection with any of the claims alleged or that could have been alleged arising out of the underlying factual allegations in the operative complaint (the “Released Parties”). The Released Claims do not include any claim for enforcement of the Comprehensive Settlement Agreement or the Final Judgment.

This release shall not affect the right of any person who is sued by a Released Party to raise an affirmative defense. For example, although this Agreement releases property owners from future claims for damages for violating Georgia’s security deposit statute, this Agreement would not preclude a tenant, as a defense to an action to collect for damages to a property, to assert as a defense that the property owner violated the security deposit statute.

Upon the entry of the Final Judgment described above, the case will be dismissed with prejudice as to WSE, and Anderson, individually and on behalf of the Class, will release all Released Parties from any and all Released Claims.

The release language as written above is a material term of this Agreement.

7. **No Admission Of Liability.**

Nothing in the fact of or the terms of the settlement 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.**

WSE represent and warrant that the spreadsheets containing data provided to Class Counsel and any additional spreadsheets or similar tenant data provided to Class Counsel 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.¹

WSE 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 WSE

On Behalf of Anderson

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¹ If this settlement agreement terminates for any reason, all data provided pursuant to this settlement agreement will be destroyed and/or returned to WSE. Anderson and class counsel will not use the data for any purpose in any future suit.