

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT,  
IN AND FOR PALM BEACH COUNTY, FLORIDA

Samantha S. Moss, Claudio Jaffe, Christopher Todd and  
Paul Adams as Class Representatives of those similarly  
situated;

CASE NO. 50 2006 CA 002080 xxxxMB  
Division AH

Plaintiffs,

v.

Olen Properties Corporation a Florida corporation and  
Olen Residential Realty Corporation a foreign  
corporation all licensed to do business in Florida

Defendants.

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**PLEASE REVIEW AS YOU MAY QUALIFY FOR SIGNIFICANT MONEY DAMAGES  
AND OTHER BENEFITS.**

**Attention Former Tenants of**

**OLEN PROPERTIES FLORIDA APARTMENTS**

**Notice of Pendency of Class Action Settlement**  
**go to [www.olenclassaction.org](http://www olenclassaction.org)**

**To: Tenants and their roommates who moved or left their Olen Properties (“Olen”) Florida apartment from March 2, 2002 to October 31, 2007, who signed an Olen form lease and who received a demand for fees resulting from approximately 3 months rent “liquidated damages”.** To be included in the Class, the former tenant must have signed the form lease posted at [www.olenclassaction.org](http://www.olenclassaction.org) and must have resided at one of the Olen properties listed on that same website (an “Olen Florida Apartment”).

**THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY.**

Your rights may be affected by a lawsuit pending in this Court, CASE NO. 50 2006 CA 002080 xxxxMB

Para más Información Sobre Este Pleito, Visite A [www.olenclassaction.org](http://www.olenclassaction.org) or llame al numero telefonico gratuito (866) 428-8017.

**I. BACKGROUND OF THE CASE**

The named Plaintiffs in this action have filed a Complaint which alleges that when Tenants and their roommates moved or left their Olen Florida Apartment from March 2, 2002 to October 31, 2007, Olen charged a “**liquidated damages**” fee of approximately 3 months rent (the “Contested Charges”). Plaintiffs allege that Olen’s charging of the Contested Charges, whether paid by the tenant or not, was a violation of: Florida common law; the Florida Residential Landlord Tenant Act (Ch. 83, F.S.); the Florida Consumer Collection Practices Act, (Section 559.72, F.S) and the Florida Deceptive and Unfair Trade Practices Act, (Fla. Stat. § 501.201, et seq.) as to all members of the class and that such class members are entitled to a monetary recovery and other relief from Olen, including attorneys’ fees and costs.

Olen denies any wrongdoing and asserts that these fees are legal, clearly set forth in its leases, appropriate, and beneficial to its tenants because they set forth a definite amount that a tenant who vacates his or her premises early will have to pay in lieu of the rent that is due for the rest of the lease term.

Following an injunction and appeals, the Court entered a ruling which stated liquidated damages of three months rent under paragraph 16 of the Olen lease was unlawful and awarded injunctive relief. A copy of the Court's ruling may be found at [www.olenclassaction.org](http://www olenclassaction.org).

Plaintiffs and Olen entered into settlement negotiations with the Plaintiffs which led to a proposed settlement agreement in which former Olen tenants may qualify for relief as further explained herein.

This description of the Plaintiffs' claims and Olen's responses is general and does not cover all of the claims and contentions of the parties. For a complete statement of all the contentions and proceedings in this case, you should consult the files relating to this lawsuit that are available for your inspection at the office of the Clerk of the Fifteenth Judicial Circuit, 205 N. Dixie Highway, West Palm Beach, Florida, or go to [www.olenclassaction.org](http://www.olenclassaction.org).

## **II. CLASS ACTION RULING**

On April 16, 2008 and again on May 14, 2008, the District Court of Appeal ruled that this lawsuit may be maintained as a class action by Plaintiffs on behalf of the following class (the "Class"):

In order to be included in the Class, the former tenants must have signed the form lease posted at [www.olenclassaction.org](http://www.olenclassaction.org) and must have resided at one of Defendants' eleven (11) properties listed on that website and must have been charged a liquidated damage fee of approximately three months rent, which was a charge pursuant to paragraph 16 of the form lease.

To be included in the Class, the former tenant must have signed the form lease posted at [www.olenclassaction.org](http://www.olenclassaction.org) and must have resided at one of the Olen properties listed on that same website. The liquidated damage fees challenged by Plaintiffs in the Lawsuit are referred to in this Notice as the "Contested Charges."

The Court has named the law firms of: Babbitt and Johnson P.A., 1641 Worthington Rd, Suite 100, West Palm Beach FL, 33409 and Rod Tennyson P.A., P.O. Box 3858, Lantana FL 33465-3858, as class counsel, and the named Plaintiffs Samantha S. Moss, Claudio Jaffe, Christopher Todd and Paul Adams as representatives of the class.

Defendants' attorneys are Sheridan Weissenborn, Esq., 3001 Ponce De Leon Blvd., Suite 210, Coral Gables, FL 33134 and Joel D. Kenwood, Esq., Sachs Sax Caplan, P.L., 6111 Broken Sound Parkway NW, Ste 200, Boca Raton, FL 33487, Attorneys for Defendants.

The purpose of this Notice is to advise you of the existence of this class action, its proposed settlement and how it may affect your rights. **If you wish to remain a member of the Class, then you need not do anything at this time.** If you remain a member of the Class, you will release the right to sue Olen, and certain others, but you may be eligible to file a claim for benefits from this settlement. If you want to file a claim, then complete and mail the claim form, so that it is postmarked on or before October 5, 2009.

**If you do NOT wish to remain a member of the Class, and do not want to participate in the settlement or receive any benefits of the settlement then you will need to send a letter (See Exhibit B) addressed to the Claims Administrator stating the case number appearing at the beginning of this document and your desire to exclude yourself from the Class and the settlement by mail postmarked no later than July 27, 2009.** By making an election to be excluded, (1) in the event that the settlement proceeds are paid to members of the Class under this settlement, you will not share in such recovery; (2) you will not be bound by any settlement in this lawsuit; and (3) you may separately assert any claims you have against Olen by filing your own lawsuit.

**You also have the right to object to the settlement**, if you do not exclude yourself from the settlement. You may object to the proposed settlement by filing and serving a written objection. Your objection must state: 1) your name and address; 2) the case name and number; 3) why you object to the proposed settlement; and 4) any reasons supporting your position. You must sign your objection personally and appear personally at the Fairness Hearing. You must mail your original objection to the Clerk of Court, and mail copies of your objection to the attorneys for Plaintiffs and Defendants at the addresses listed in this Notice, all of which must be postmarked on or before July 27, 2009.

### **III. RIGHTS AND OBLIGATIONS OF CLASS MEMBERS**

If you remain a member of the Class, then Babbitt and Johnson P.A., 1641 Worthington Rd, Suite 100, West Palm Beach FL, 33409 and Rod Tennyson P.A., P.O. Box 3858, Lantana FL 33465-3858, will act as your attorneys in this case. Their telephone number is (561) 684-2500. If you desire, you may seek to intervene individually and be represented by your own attorney. You may be required as a condition to participating in any recovery through this proposed settlement to present evidence regarding your status as a member of the early terminating subclass pursuant to the attached Claims Form. You will be entitled to an opportunity to be heard respecting this proposed settlement and its fairness to class members by writing to the Claims Administrator at the address below, or by attending the Court's "fairness hearing" stated below.

### **IV. THE PROPOSED SETTLEMENT.**

This is a summary of the parties' proposed settlement. Go to [www.olenclassaction.org](http://www olenclassaction.org) or the court file in this case for the complete Settlement Agreement. That Settlement Agreement shall control in the event of any inconsistency or conflict with this summary of the parties' settlement.

**A. Appointment of an independent claims administrator:** An independent claims administrator has been chosen by Olen, with the advice and consent of Plaintiffs and subject to Court approval ("Administrator"). The Administrator shall administer the notice and claims process as described in this Agreement. The Administrator is:

In re Olen Residential  
c/o Rust Consulting, Inc.  
P.O. Box 24688  
West Palm Beach, FL 33416  
(866) 428-8017

**B. Claims Process:** The members of the Class who are eligible to file a claim are those tenants who terminated their leases early and moved out of their Olen Florida Apartment and whose Statement of Deposit [SODA] was generated (usually about 10 days after you moved out of the apartment) beginning March 2, 2002 until October 31, 2007, and who were charged the Contested Charges. To be eligible for any payment, a Tenant Class member must submit a valid and completed Claim Form in the form attached hereto as **Exhibit "A,"** ("Claim Form"), in compliance with the instructions set forth therein. **The amount of the Contested Charges that the Tenant Class member paid to Olen may be distributed as part of this settlement to qualifying members of the Tenant Class. Statutory damages up to \$1,000.00 may be paid to qualifying members of the Tenant Class.**

**C. Security Deposits:** Security deposits for Tenant Class claimants shall first be applied to uncontested charges (such as excess wear and tear and unpaid rent to a unit).

**D. Cap on damage claims, rights of tenants who paid contested charges:** Olen's total liability for claims in this settlement shall be limited to \$500,000.00. To the extent timely-filed claims total more than \$500,000.00, individual claim amounts shall be pro-rated in the same percentage that \$500,000.00 bears to the total valid claim amounts. For example, if total valid claims are \$1,000,000.00, then each individual claimant will receive 50% of the amount of his or her valid claim. The class fund shall not include attorneys' fees and costs. Any amounts remaining after the settlement is complete shall revert to Olen and Olen is released from any and all such claims, liabilities, and obligations in excess of Olen's obligations under this Section.

**E. Release and Waiver of Class member rights:** Upon entry of the Final Judgment, Olen (and the "Released Parties"), are released and forever discharged from any and all manner of claims, demands, actions, suits, causes of action, that Plaintiff or any member or members of the Class have--EXCEPT anyone who timely requests to be excluded from the Class or any future Olen tenants in Florida, or tenants' claim for personal injury, whether directly or in any other capacity--ever had, now has or hereafter can, shall or may have, arising under or relating to any claim that was asserted or that could have been asserted in the Lawsuit or the transactions or occurrences that were the subject of the Lawsuit or that concern the lease or tenancy of a Class member including, but not limited to, claims arising out of or relating to the Contested Charges, the Class member's leases with Olen, the Olen premises occupied by the Class members, and all slander of credit or other claims for damage to credit or reputation such as the Federal Fair Credit Reporting Act (the "Settled Claims"). Defendants are not releasing any claims against any class members outside of the Contested Charges being settled by this Agreement.

**F. Payments to Plaintiffs:** Upon Final Judgment, each of the four named Plaintiffs, Samantha S. Moss, Claudio Jaffe, Christopher Todd and Paul Adams shall be compensated for their time and effort in representing the Class in the amount of \$1,000.00 each as his and her sole remedy for the settlement, provided the named Plaintiffs will also be eligible to receive the benefits of adjustments to their credit reports and valid claims as provided herein.

**G. Removal of charges from tenants' credit report:** No later than 60 days from the date of Final Judgment, all members of the Class who have not requested exclusion shall have any Contested Charges dated from March 2, 2002 to the date of the Agreement removed from their credit reports through notification by Olen to the credit bureaus and Olen will not seek to collect Contested Charges from members of the Class. This removal shall be done regardless of a claim being filed in the claims process and shall be overseen by the Administrator.

**H. Attorney's Fees and Costs.** Olen will not oppose a cost and fee application by Class Counsel of up to \$1,500,000 in costs and attorneys' fees in full settlement and satisfaction of all claims for costs and fees, including attorneys' fees, incurred in connection with the prosecution or settlement of this case, and Olen shall directly pay to Plaintiffs' counsel such amount of Plaintiffs' costs and fees that are approved by the court under this Agreement. This payment will not come from the Class fund and is not a reduction in economic benefits to the class under this settlement.

#### **V. FURTHER PROCEEDINGS**

The Circuit Court for Palm Beach County will conduct a "fairness hearing" on August 5, 2009 at 9:30 a.m., at the Palm Beach County Courthouse located at 205 North Dixie Hwy, West Palm Beach FL, Courtroom 11C before the Honorable Judge Edward Fine. The purpose of this hearing is to allow any class member to address the Court on the fairness of this proposed settlement and the Plaintiffs' attorneys claim for attorneys' fees and costs. You are not required to attend this hearing but are welcome to attend if you so desire. If at this hearing the Court approves the settlement as fair, then the Administrator shall begin to process your claim if you have submitted one. You will also be allowed to submit a claim from [www.olenclassaction.org](http://www.olenclassaction.org).

**YOU ARE NOT REQUIRED TO COME TO COURT UNLESS YOU WISH TO OBJECT. IF YOU WISH TO EXCLUDE YOURSELF FROM THE PROPOSED SETTLEMENT, YOU ARE NOT REQUIRED TO COME TO COURT. IF YOU WISH TO RECEIVE A CHECK, YOU ARE NOT REQUIRED TO COME TO COURT.**

#### **VI. ADDITIONAL INFORMATION**

**DO NOT CALL THE CLERK OF COURT OR THE JUDGE WITH QUESTIONS, as they are not permitted to answer any questions.**

Any questions you have concerning the matters contained in this Notice should not be made to the Court but should be directed in writing to the Administrator at the above address or go to [www.olenclassaction.org](http://www.olenclassaction.org) for extensive details about this action.

#### **VII. REMINDER AS TO TIME LIMIT**

If you wish to be excluded from the Class, then send a letter (See Exhibit B) indicating the case number shown at the beginning of this document and stating that you wish to be excluded from the Class to the Administrator by mail postmarked no later than **July 27, 2009**.

If you wish to be a part of the Class and make a claim for monetary damages, then return the completed Claim Form to the Administrator by mail postmarked on or before **October 5, 2009**.

If you wish to be a part of the Class and object to the proposed settlement, then return your signed original objection to the Clerk of Court, and mail copies of your objection to the attorneys for Plaintiffs and Defendants at the addresses listed in this Notice, all of which must be postmarked on or before July 27, 2009.

Dated: May 21, 2009

BY ORDER OF THE COURT  
FIFTEENTH JUDICIAL CIRCUIT FOR  
PALM BEACH COUNTY, FLORIDA