

1 DOUGLAS HAN (SBN 232858)
2 SHUNT TATAVOS-GHARAJEH (SBN 272164)
3 **JUSTICE LAW CORPORATION**
4 751 N. Fair Oaks Ave., Ste. 101
5 Pasadena, California 91103
6 Telephone: (818) 230-7502
7 Facsimile: (818) 230-7259

FILED
KERN COUNTY SUPERIOR COURT
10/20/2023
BY Villalon, Maribel
DEPUTY

8 *Attorneys for Plaintiff*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF KERN**

11 JUAN BAUTISTA, individually, and on behalf
12 of other members of the general public
13 similarly situated,

14 Plaintiff,

15 v.

16 AHERN RENTALS, INC., a Nevada
17 corporation; and DOES 1 through 100,
18 inclusive;

19 Defendants.

Case No.: BCV-22-101454-BCB

Assigned for All Purposes to:
Honorable Bernard C. Barmann, Jr.
Division H

**~~PROPOSED~~ ORDER OF FINAL
APPROVAL AND JUDGMENT**

Hearing Date: October 20, 2023
Hearing Time: 8:30 a.m.
Hearing Place: Division H

Complaint Filed: June 13, 2022
Trial Date: None Set

1 The Court, having read the papers filed regarding Plaintiff Juan Bautista’s (“Plaintiff”)
2 Motion for Final Approval of Class Action Settlement, Attorneys’ Fees, Attorneys’ Costs, and
3 Class Representative Incentive Payment and considering the papers submitted in support of the
4 motion, including the Joint Stipulation of Class Action Settlement and Release of Claims
5 (“Settlement Agreement,” “Settlement,” or “Agreement”), hereby FINDS AND ORDERS as
6 follows:

7 Plaintiff and Defendant Ahern Rentals, Inc. (“Defendant”) entered the Settlement
8 Agreement on or about March 20, 2023 to settle this lawsuit.

9 The Court entered an order dated May 10, 2023 preliminarily approving the settlement
10 of this lawsuit (“Preliminary Approval Order”) consistent with the Code of Civil Procedure
11 section 382 and California Rule of Court 3.769, ordering notice to be sent to Class Members,
12 providing Class Members with an opportunity to object to the Settlement or exclude themselves
13 from the Settlement, and setting a Final Approval Hearing.

14 The Court held a Final Approval Hearing on October 20, 2023 to determine whether to
15 give final approval to the Settlement of this lawsuit.

16 1. Incorporation of Other Documents. This Order of Final Approval and Judgment
17 (“Order and Judgment”) incorporates the Settlement Agreement. Unless otherwise provided
18 herein, all capitalized terms in this Order and Judgment shall have the same meaning as set forth
19 in the Settlement Agreement.

20 2. Jurisdiction. Because adequate notice was disseminated and all Class Members
21 were given the opportunity to request exclusion from the Settlement, the Court has personal
22 jurisdiction with respect to the claims of all Class Members. The Court also has subject matter
23 jurisdiction over this lawsuit, including jurisdiction to approve the Settlement and grant final
24 certification of the Classes.

25 3. Final Class Certification. The Court finds the Classes satisfies all applicable
26 requirements of Code of Civil Procedure section 382, California Rule of Court 3.769, and due
27 process. Accordingly, the Court certifies the following Classes:

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- 1 a. All United States unique job applicants on whom Defendant procured a
2 consumer report for employment purposes based upon the same disclosure form
3 provided to Plaintiff. Class membership begins on May 20, 2014 and continues
4 through August 16, 2021 (“FCRA Class”);
- 5 b. All unique job applicants on whom Defendant procured a consumer report for
6 employment purposes based upon the same disclosure form provided to Plaintiff
7 and who provided a California address as their address of residence. Class
8 membership begins on May 20, 2014 and continues through August 16, 2021
9 (“ICRAA Class”); and
- 10 c. All unique job applicants on whom Defendant procured a consumer report for
11 employment purposes containing consumer credit information based upon the
12 same disclosure form provided to Plaintiff and who provided a California
13 address as their address of residence. Class membership begins on May 20, 2014
14 and continues through August 16, 2021 (“CCRAA Class”).¹

15 4. Adequacy of Representation. As Class Counsel, Justice Law Corporation have
16 fully and adequately represented the Classes for purposes of entering and implementing the
17 Settlement and have satisfied the requirements of Code of Civil Procedure section 382.

18 5. Notice Packet. The Court finds the Notice of Class Action Settlement (“Class
19 Notice”) and Request for Exclusion (collectively, known as the “Notice Packet”) and its
20 distribution to Class Members have been implemented pursuant to the Settlement and the
21 Court’s Preliminary Approval Order. The Court finds the Notice Packet:

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27 ¹ The Settlement Administrator mailed 1,302 Notice Packets to Class Members and
28 received four (4) requests for exclusion. Consequently, there are 1,298 FCRA Settlement
Class Members, 320 ICRAA Settlement Class Members, and 320 CCRAA Settlement Class
Members.

- 1 a. constitutes notice reasonably calculated to apprise Class Members of: (i)
2 pendency of the lawsuit; (ii) material terms and provisions of the Settlement and
3 their rights; (iii) their right to object to any aspect of the Settlement; (iv) their
4 right to exclude themselves from the Settlement; (v) their right to receive
5 settlement payments; (vi) their right to appear at the Final Approval Hearing; and
6 (vii) binding effect of the orders and judgment in the lawsuit, whether favorable
7 or unfavorable, on all Class Members who do not file timely and valid opt-out
8 Requests for Exclusion (“Settlement Class Members”);
- 9 b. constitutes notice that fully satisfied the requirements of Code of Civil Procedure
10 section 382, California Rule of Court 3.769, and due process;
- 11 c. constitutes the best practicable notice to Class Member under the circumstances
12 of the lawsuit; and
- 13 d. constitutes notice reasonable, adequate, and sufficient to Class Members.

14 6. Enforcement of Settlement. Nothing in this Order and Judgment shall preclude
15 any action to enforce the terms and provisions of the Settlement Agreement.

16 7. Final Settlement Approval. The terms and provisions of the Settlement
17 Agreement have been entered into good faith and are the product of arm’s-length negotiations
18 by experienced counsel who have done a meaningful investigation of the claims. The Settlement
19 Agreement and all its terms and provisions are fully and finally approved as fair, reasonable,
20 adequate, and in the best interests of the Parties. The Parties are hereby directed to implement
21 the Settlement Agreement according to its terms and provisions.

22 8. Binding Effect. The terms and provisions of the Settlement and this Order and
23 Judgment are binding on Plaintiff and Settlement Class Members, as well as their spouses,
24 heirs, registered domestic partners, executors, administrators, successors, and assigns.
25 Moreover, those terms shall have res judicata and other preclusive effect in all pending and
26 future claims, lawsuits, or other proceedings maintained by or on behalf of any such persons to
27 the extent those claims, lawsuits, or other proceedings involve matters that were or could have
28 been raised in the lawsuit and are encompassed by the Released Claims. The Settlement will

1 have no binding effect upon, and provide no res judicata preclusion to, those Class Members
2 who have submitted timely requests for exclusion.

3 9. Release by Class Members. By operation of the entry of the Final Approval
4 Order and judgment, and except as to such rights or claims as may be created by the Agreement,
5 each Class Member, and each of their executors, administrators, representatives, agents, heirs,
6 successors, assigns, trustees, spouses, or guardians, will release each of the Released Parties of
7 and from any and all claims, rights, demands, charges, complaints, causes of action, obligations,
8 or liability of any and every kind during the Class Period and through the Effective Date of the
9 Agreement, for any and all claims asserted or that could have been asserted in the matter,
10 including those for: (a) all claims for alleged violations of the FCRA, 15 U.S.C. section 1681, *et*
11 *seq.*; (b) all claims for alleged violations of ICRAA, Cal. Civ. Code section 1786, *et seq.*; (c) all
12 claims for alleged violations of the CCRAA, Cal. Civ. Code section 1785, *et seq.*; (d) all claims
13 for Business & Professions Code section 17200, *et seq.*; and (e) all claims under other state laws
14 pertaining to the procurement and/or use of background or consumer reports.

15 a. Released Parties. The Released Parties include Defendant and its present,
16 former, and future affiliates, parents, subsidiaries, corporate family members,
17 officers, directors, partners, employees, agents, attorneys, heirs, vendors,
18 insurers, reinsurers, administrators, executors, members, member entities,
19 shareholders, predecessors, successors, representatives, trustees, principals, and
20 assigns, individually, jointly, and severally.

21 10. Class Representative Incentive Payment. The Court finds the Class
22 Representative Incentive Payment of \$3,000, to be paid by Defendant to Plaintiff out of the
23 Gross Settlement Amount, to be reasonable and appropriate. The Class Representative Incentive
24 Payment is to be paid pursuant to the terms and provisions set forth in the Agreement.

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- 1 a. The rationale for making enhancement payments is class representatives should
2 be compensated for the expense and risk incurred in conferring a benefit on the
3 Class. Criteria courts consider are: (1) risks in commencing the suit; (2) notoriety
4 and personal difficulties encountered; (3) amount of time and effort spent; (4)
5 duration of the litigation; and (5) personal benefit (or lack thereof) enjoyed.
- 6 b. The Court reviewed Plaintiff’s declaration outlining his involvement in the
7 lawsuit. Given the risks inherent in the services as the class representative,
8 duration of the case and time involved, and benefits created for the Classes, the
9 Court approves the payment of the Class Representative Incentive Payment of
10 \$3,000 to Plaintiff.

11 11. Attorneys’ Fees and Attorneys’ Costs. The Court finds the attorneys’ fees of
12 \$32,375, to be paid out of the Gross Settlement Amount by Defendant to Class Counsel, to be
13 reasonable and appropriate. The Court also finds the attorneys’ costs as reimbursement for
14 litigation costs incurred of \$4,454.20, to be paid by Defendant to Class Counsel out of the Gross
15 Settlement Amount, to be reasonable and appropriate. Such fees and costs are to be paid
16 pursuant to the terms and provisions set forth in the Settlement. Defendant shall not be required
17 to pay for any other attorneys’ fees and expenses, costs, or disbursements incurred by Class
18 Counsel or any other counsel representing Plaintiff and Class Members. Defendant shall also
19 not be required to pay for any other attorneys’ fees and expenses, costs, or disbursements
20 incurred by Plaintiff and Class Members in connection with or related to this lawsuit,
21 Settlement, administration, and/or Released Claims.

- 22 a. The Court has an independent right and responsibility to review the attorneys’
23 fees and only award so much as it determines reasonable. (See *Garabedian v.*
24 *Los Angeles Cellular Telephone Co.* (2004) 118 Cal.App.4th 123, 127-28.) The
25 attorneys’ fees of \$32,375 is thirty-five percent (35%) of the common fund
26 created for the benefit of the Classes and is supported by the percentage-fee
27 method. (See *Laffitte v. Robert Half International, Inc.* (2016) 1 Cal.5th 480,
28 504.) Considering the results achieved, financial risk undertaken, difficult nature

1 of this litigation, skills required, percentage fees award in previous and other
2 cases, and contingent fees charged in the marketplace, the Court finds the
3 attorneys' fees is consistent with the marketplace, is reasonable, and is approved.

4 b. The Court reviewed the declaration of Douglas Han regarding the costs
5 expended. Under the terms of the Settlement, Class Counsel may seek
6 reimbursement of up to \$5,000. The Court finds Class Counsel expended
7 \$4,454.20 in litigation costs, and such costs were reasonable. Thus, the Court
8 approves the payment of the attorneys' costs of \$4,454.20 from the common
9 fund for the reimbursement of litigation costs.

10 12. Settlement Administration Costs. The Court finds the Settlement Administration
11 Costs of \$13,750, to be paid by Defendant to the Settlement Administrator out of the Gross
12 Settlement Amount, to be reasonable and appropriate. The Settlement Administration Costs are
13 to be paid pursuant to terms and provisions set forth in the Settlement Agreement.

14 a. The Court reviewed the declaration of Kaylie O'Connor from CPT Group, Inc.,
15 the Court-approved Settlement Administrator. The Court finds notice was
16 provided to the Classes pursuant to the Preliminary Approval Order, constitutes
17 the best practicable notice to the Classes, and satisfied due process. Thus, the
18 Court approves the payment of the Settlement Administration Costs of \$13,750
19 for the Settlement Administrator's services.

20 13. Final Funding of the Gross Settlement Amount. Defendant shall deposit into an
21 escrow account with the Settlement Administrator the Gross Settlement Amount within fourteen
22 (14) calendar days after the Effective Date and Final Effective Date of the *McEatheron v. Ahern*
23 *Rentals, Inc.* settlement. The Settlement Administrator shall issue the settlement payments
24 within fourteen (14) calendar days of the funding of the Gross Settlement Amount.

25 14. Fairness of the Settlement. As noted in the Preliminary Approval Order, the
26 Settlement is entitled to a presumption of fairness. In the moving papers, Plaintiff contend the
27 Settlement was the product of arm's-length negotiations following litigation, discovery, and
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1 exchange of documentation relating to the claims. The negotiations were facilitated with the aid
2 of the mediators Mark Rudy, an experienced class action mediator.

- 3 a. The fairness of the Settlement is demonstrated by there being no objections to
4 and only four (4) requests for exclusion from the Settlement.

5 15. Uncashed Checks. The amount of any Individual Settlement Payments that
6 remain undeliverable or uncashed one hundred and eighty (180) calendar days after the
7 postmarked date of the initial mailing of the Individual Settlement Payments will be distributed
8 to the *cy pres* recipient Legal Aid At Work.

9 16. Modification of Settlement Agreement. The Settlement Class Members are
10 authorized, upon approval of the Court, to agree to and adopt amendments to or modifications
11 of the Settlement Agreement only if it is in writing and signed by or on behalf of all Parties.
12 Such amendments or modifications shall be consistent with this Order and Judgment and cannot
13 limit the rights of Settlement Class Members under the Settlement Agreement.

14 17. Retention of Jurisdiction. The Court has jurisdiction to enter this Order and
15 Judgment. This Court expressly retains jurisdiction for the administration, interpretation,
16 effectuation, and/or enforcement of the Settlement Agreement and of this Order and Judgment,
17 and for any other necessary purpose, including, without limitation:

- 18 a. enforcing the terms and provisions of the Settlement and resolving any disputes,
19 claims, or causes of action in the class action that, in whole or in part, are related
20 to or arise out of the Settlement or this Order and Judgment;
- 21 b. entering such additional orders as may be necessary or appropriate to protect or
22 effectuate this Order and Judgment approving the Settlement, and permanently
23 enjoining Plaintiff from initiating or pursuing related proceedings, or to ensure
24 the fair and orderly administration of the Settlement; and
- 25 c. entering any other necessary or appropriate orders to protect and effectuate this
26 Court's retention of continuing jurisdiction.

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1 The Motion for Final Approval of Class Action Settlement, Attorneys' Fees, Attorneys'
2 Costs, and Class Representative Incentive Payment is GRANTED. The Settlement
3 Administrator is directed to carry out the terms of the Settlement Agreement forthwith.

4 THE PARTIES ARE HEREBY ORDERED TO COMPLY WITH THE TERMS OF
5 THE SETTLEMENT AGREEMENT. PURSUANT TO CALIFORNIA RULES OF COURT
6 3.769, THE COURT HEREBY ENTERS FINAL JUDGMENT BASED UPON THE TERMS
7 OF THIS ORDER AND SETTLEMENT AGREEMENT AND, WITHOUT AFFECTING THE
8 FINALITY OF THIS MATTER, RETAINS EXCLUSIVE AND CONTINUING
9 JURISDICTION TO ENFORCE THIS ORDER, THE SETTLEMENT AGREEMENT, AND
10 THE JUDGMENT THEREON.

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12 **IT IS SO ORDERED.**

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14 DATED: October 20, 2023



HONORABLE BERNARD C. BARMANN, JR.
SUPERIOR COURT JUDGE

BCV-22-101454

Signed: 10/20/2023 09:04 AM