

1 DOUGLAS HAN (SBN 232858)  
2 SHUNT TATAVOS-GHARAJEH (SBN 272164)  
3 JOHN M. BICKFORD (SBN 280929)  
4 **JUSTICE LAW CORPORATION**  
5 751 N. Fair Oaks Avenue, Suite 101  
6 Pasadena, California 91103  
7 Telephone: (818) 230-7502  
8 Facsimile: (818) 230-7502

9 *Attorneys for Plaintiff*

10 Ryan H. Crosner (SBN 278418)  
11 **OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**  
12 400 South Hope Street, Suite 1200  
13 Los Angeles, CA 90071  
14 Telephone: (213) 239-9800  
15 Facsimile: (213) 239-9045

16 *Attorneys for Defendant*  
17 **AHERN RENTALS, INC.**

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
19 **FOR THE COUNTY OF KERN**

20 JUAN BAUTISTA, individually, and on behalf of  
21 other members of the general public similarly  
22 situated,

23 Plaintiff,

24 v.

25 AHERN RENTALS, INC., a Nevada corporation;  
26 and DOES 1 through 100, inclusive;

27 Defendants.

Case No. BCV-22-101454 BCB

*[Assigned to Hon. Bernard C. Barman, Jr.]*

**JOINT STIPULATION OF CLASS ACTION  
SETTLEMENT AND RELEASE OF CLAIMS**

Complaint Filed: June 13, 2022

Trial Date: None Set

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1 This Joint Stipulation of Class Action Settlement Agreement and Release of Claims  
2 (“Agreement”) is made and entered into between: (1) Plaintiff Juan Bautista (“Plaintiff”), individually  
3 and on behalf of all individuals in the FCRA Class, ICRAA Class, and CCRAA Class as defined herein  
4 (“Class”); and, (2) Defendant Ahern Rentals, Inc. (“Defendant”) (collectively, the “Parties”), subject to  
5 approval from the Court, as provided below.

6 This Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and  
7 settle the Action (as defined below) and the Released Claims (as defined below), upon and subject to the  
8 terms and conditions hereof, as follows:

9 **1. DEFINITIONS**

10 As used herein, for the purposes of this Agreement only, the following terms shall be defined as  
11 set forth below:

12 **1.1 “Action”** refers to the civil action entitled: *Juan Bautista v. Ahern Rentals, Inc.*,  
13 filed in the Kern County Superior Court as Case No. 5:19-cv-00620-JGB-KK. The Action was filed as a  
14 purported class action.

15 **1.2 “Agreement” or “Settlement Agreement”** refers to this Joint Stipulation of  
16 Class Action Settlement Agreement and Release of Claims, which includes all of the Recitals and the  
17 Exhibits attached hereto.

18 **1.3 “CCRAA”** refers to the California Consumer Credit Reporting Agencies Act,  
19 Cal. Civ. Code §§ 1785 *et seq.*

20 **1.4 “Class”** refers to all individuals in the FCRA Class, the ICRAA Class, and the  
21 CCRAA Class defined as follows:

22 **1.4.1 “FCRA Class”** All United States unique job applicants on whom Defendant  
23 procured a consumer report for employment purposes based upon the same disclosure  
24 form provided to Plaintiff. Class membership begins on May 20, 2014 and continues  
25 through August 16, 2021. Defendant estimates that the FCRA Class has 1,302 members.

26 **1.4.2 “ICRAA Class”** All unique job applicants on whom Defendant procured a  
27 consumer report for employment purposes based upon the same disclosure form provided  
28 to Plaintiff and who provided a California address as their address of residence. Class

1 membership begins on May 20, 2014 and continues through August 16, 2021. Defendant  
2 estimates that the ICRAA Class has 321 members.

3 **1.4.3 “CCRAA Class”** All unique job applicants on whom Defendant procured a  
4 consumer report for employment purposes containing consumer credit information based  
5 upon the same disclosure form provided to Plaintiff and who provided a California  
6 address as their address of residence. Class membership begins on May 20, 2014 and  
7 continues through August 16, 2021. Defendant estimates that the CCRAA class has 321  
8 members.

9 **1.5 “Class Counsel”** refers to Douglas Han, John M. Bickford and Shunt Tatavos-  
10 Gharajeh of the Justice Law Corporation. Class Counsel’s address of record is 751 North Fair Oaks  
11 Avenue Suite 101, Pasadena, California, 91103.

12 **1.6 “Class List”** refers to the list of names and last residential addresses provided by  
13 Class Members to Defendants in connection with their employment or prospective employment as set  
14 forth in Section 3.2. The Class List shall be taken from the information that exists at the time of entry of  
15 the Court’s Preliminary Approval Order.

16 **1.7 “Class Member(s)”** refers to any individual that is a member of the Class.

17 **1.8 “Class Period”** refers to the period of time between May 20, 2014 and August  
18 16, 2021.

19 **1.9 “Class Representative”** refers to the named Plaintiff in the Action, Juan Bautista.

20 **1.10 “Class Representative Incentive Payment”** refers to any payment, subject to  
21 Court approval, to the Class Representative from the Gross Settlement Amount in recognition of his  
22 efforts and work in prosecuting the Action on behalf of the Class Members.

23 **1.11 “Court”** refers to the Kern County Superior Court, where this Action currently is  
24 pending.

25 **1.12 “Complaint”** refers to the original Complaint filed on May 20, 2019 in this  
26 Action.

27 **1.13 “Defendant”** refers to Defendant Ahern Rentals, Inc.  
28



1                   **1.14 “Defendants’ Counsel”** refers to OGLETREE, DEAKINS, NASH, SMOAK &  
2 STEWART, P.C.. For purposes of providing any notices required under this Agreement, Defendant’s  
3 Counsel shall refer to Ryan H. Crosner 400 South Hope Street, Suite 1200 Los Angeles, CA 90071.

4                   **1.15 “Effective Date”** refers to the date the Final Approval Order is entered if there is  
5 no objector or plaintiff-in-intervention. If there is, the later of the following : (a) all conditions of  
6 Settlement have been satisfied; (b) the Court has entered and filed the Final Approval Order and  
7 Judgment; and (c) the time period for appeal of the Judgment has been exhausted without any appeals  
8 having been filed, and/or all such appeals have been voluntarily or involuntarily dismissed, and/or the  
9 appropriate appellate court or courts have entered a final judgment affirming the Final Approval Order  
10 and Judgment of the Court and the final judgment of such appellate court or courts is no longer subject  
11 to any further appellate challenge or procedure.

12                   The Parties acknowledge and agree that no payments under this Agreement shall be due prior to  
13 the Effective date and final approval of the settlement in the case *McEatheron v. Ahern Rentals, Inc.*,  
14 Alameda County Superior Court Case No. RG17867366.

15                   **1.16 “FCRA”** refers to the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.*

16                   **1.17 “Fee Motion”** refers to the petition for an award of attorney fees and costs  
17 submitted by Class Counsel.

18                   **1.18 “Final Approval Order”** refers to the final order by the Court approving the  
19 Settlement following the Final Fairness Hearing.

20                   **1.19 “Final Fairness Hearing”** refers to the hearing at which the Court will make a  
21 final determination whether the terms of the Agreement are fair, reasonable, and adequate for the Class  
22 and meet all applicable requirements for Final Approval.

23                   **1.20 “Gross Settlement Amount”** refers to the maximum settlement payment  
24 Defendant is obligated to make in connection with the Settlement or Agreement, which in this case is no  
25 more than \$92,500.00. This sum shall include all Individual Settlement Payments made to Class  
26 Members, all administration costs, the Class Representative Incentive Payment, and attorneys’ fees and  
27 costs as set forth below.  
28

1           The Gross Settlement Amount is a material term of this Agreement. To the extent  
2 Plaintiff or the Court seeks to require Defendant to pay more than the Gross Settlement Amount as part  
3 of this Settlement or Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to  
4 nullify the Settlement or Agreement.

5           **1.21 “ICRAA”** refers to the California Investigative Consumer Reporting Agencies  
6 Act, Cal. Civ. Code §§ 1786 *et seq.*

7           **1.22 “Individual Settlement Payment”** refers to the amount calculated by the  
8 Settlement Administrator to be distributed to each individual Class Member, based on the final number  
9 in the Settlement Class. The Individual Settlement Payment shall be paid from the Net Settlement  
10 Amount.

11           **1.23 “Judgment”** refers to the final judgment by the Court approving the Settlement.

12           **1.24 “Net Settlement Amount”** refers to the Gross Settlement Amount minus all  
13 administration costs, the Class Representative Incentive Payment, and attorneys’ fees and costs. The  
14 Net Settlement Amount shall include all Individual Settlement Payments due to Class Members. The  
15 Net Settlement Amount is the maximum amount that shall be available for distribution to Class  
16 Members.

17           The Net Settlement Amount is a material term of this Agreement. To the extent Plaintiff  
18 or the Court seeks to require Defendant to pay more than the Net Settlement as part of this Settlement or  
19 Agreement, Defendant shall retain the right, in the exercise of its sole discretion, to nullify the  
20 Settlement or Agreement.

21           **1.25 “Notice of Class Action Settlement” and “Class Notice”** refer to the Notice of  
22 Class Action Settlement, substantially in the form attached as Exhibit A.

23           **1.26 “Objection”** refers to a timely, written, signed objection by a Class Member who  
24 elects to object to the Settlement, substantially in the form detailed in the Notice of Class Action  
25 Settlement.

26           **1.27 “Opt Out / Objection Deadline”** refers to the date 45 days after the date of  
27 mailing of the Class Notice by which all objections or requests for exclusion must be submitted.  
28

1           **1.28 “Parties”** refer to (1) Plaintiff Juan Bautista, individually and on behalf of all  
2 Class Members; and (2) Defendant Ahern Rentals, Inc.

3           **1.29 “Plaintiff”** refers to Juan Bautista.

4           **1.30 “Preliminary Approval Order”** refers to the order issued and entered by the  
5 Court following a Motion for Preliminary Approval of the Settlement and this Agreement.

6           **1.31 “Released Claims”** refers to all claims, damages, losses, demands, penalties,  
7 liabilities, fees, interest, causes of action, complaints or suits that were or could have been brought in the  
8 Action relating to background checks including but not limited to claims under the Fair Credit Reporting  
9 Act, 15 U.S.C. §§ 1681 *et seq.*, the Investigative Consumer Reporting Agencies Act, Cal. Civ. Code §  
10 1786 *et seq.*, the Consumer Credit Reporting Agencies Act, Cal. Civ. Code § 1785 *et seq.*, California  
11 Business & Professions Code §§ 17200 *et seq.*, and similar claims under federal and state law which any  
12 Class Member has ever had, or hereafter may claim to have against the Released Parties as of the  
13 Effective Date. As to all other FCRA claims, past or present, the Class Members also waive and release  
14 their rights to be a class representative in a class action, or to seek punitive damages from Ahern  
15 Rentals, as of the Effective Date of the settlement.

16           **1.32 “Released Parties”** refers to Ahern Rentals, Inc. and its present, former and  
17 future affiliates, parents, subsidiaries, corporate family members, officers, directors, partners,  
18 employees, agents, attorneys, heirs, vendors, insurers, reinsurers, administrators, executors, members,  
19 member entities, shareholders, predecessors, successors, representatives, trustees, principals, and  
20 assigns, individually, jointly and severally.

21           **1.33 “Request for Exclusion”** refers to a timely, written, signed opt-out request by  
22 someone who otherwise would be a Class Member who elects to be excluded from the Class,  
23 substantially in the form attached as **Exhibit B** to this Agreement, and pursuant to the process set forth  
24 in this Agreement.

25           **1.34 “Settlement”** refers to terms of this Agreement, which includes the Recitals and  
26 the Exhibits attached hereto.

27           **1.35 “Settlement Administrator”** refers to the third party administrator, who has been  
28 mutually selected by the Parties, subject to Court approval, to perform the notice, claims administration,

1 and distribution of payment functions further described in this Agreement. The Settlement  
2 Administrator shall establish its own employer identification number and file an Internal Revenue  
3 Service Form W-9. The Settlement Administrator shall meet all of the requirements to establish a  
4 Qualified Settlement Fund (“QSF”) pursuant to U.S. Treasury Regulation Section 468B-1.

5 **1.36 “Settlement Class”** refers to all Class Members who do not file a timely and  
6 valid opt-out Request for Exclusion.

## 7 **2. PROCEDURAL HISTORY AND RECITALS**

8 **2.1 Class Action and Tolling Agreement.** On May 20, 2019, Plaintiff filed his  
9 Complaint against Defendant on behalf of the Class. Plaintiff asserted four causes of action against  
10 Defendant, alleging: (1) violation of the Fair Credit Reporting Act; (2) violation of the Investigative  
11 Consumer Reporting Agencies Act; (3) violation of the Consumer Credit Reporting Agencies Act; and  
12 (4) Violation of California Business & Professions Code Section 17200 *et seq.* The Complaint sought  
13 statutory damages, actual damages, punitive damages, special and general damages, injunctive relief,  
14 attorneys’ fees and costs, pre-judgment interest, and post-judgment interest. On June 24, 2019,  
15 Defendant removed the Action to the United State District Court, Central District Case No. 2:19-cv-  
16 05497-RGK-JEM.

17 On April 7, 2020, the Parties agreed to enter a tolling agreement and dismiss the Federal Court  
18 action without prejudice to allow the Parties the opportunity to mediate this case without the expense of  
19 formal discovery and trial.

20 On two separate occasions on October 22, 2020 and June 15, 2021, the Parties participated in an  
21 all-day mediation before Mark Rudy, a highly respected mediator with experience mediating class  
22 actions. While the case did not settle at mediation, the Parties eventually accepted the mediator’s  
23 proposal seeking a global settlement including the *McEatheron v. Ahern Rentals, Inc.* wage and hour  
24 class action pending in Alameda County.

25 **2.2 The Parties Engaged In All Relevant Discovery.** During the litigation of this  
26 Action, the Parties engaged in all discovery necessary for an evaluation of Plaintiff’s claims and the  
27 Action. Defendant produced relevant documents and information relating to Defendant’s background  
28 screening practices, Plaintiff’s background check disclosure form, and the relevant background check

1 disclosure forms used during the Class Period. Defendant also produced information relating to the  
2 number of individuals on whom it obtained consumer reports during the Class Period for persons in the  
3 United States and California residents.

4 **2.3 Class Counsel’s Investigation.** Class Counsel investigated the claims against  
5 Defendant in the Action and analyzed all applicable defenses raised by Defendant, including  
6 Defendant’s defenses relating to the applicable statute of limitations and standing. Class Counsel have  
7 balanced their evaluation of the validity and strength of the asserted claims against the problem of proof  
8 and the legal standards governing class certification of the claims alleged. The investigation included  
9 review of documents produced during discovery, several conferences between Class Counsel and  
10 Defendant’s Counsel, the Parties’ pre-mediation information exchanges, and the detailed and  
11 comprehensive information exchanged during the all-day mediations attended by the Parties on October  
12 22, 2020 and June 15, 2021.

13 **2.4 Defendant’s Denials.** Defendant denies and continue to deny: (a) all of the  
14 allegations made by the Class Representative or the Class in the Action; (b) that they violated the FCRA,  
15 the ICRAA, the CCRAA, or any other laws applicable to consumer disclosures and reports; (c) that it is  
16 liable or owes damages, penalties, or other compensation or remedies to anyone with respect to the  
17 alleged facts or claims asserted or threatened to be asserted in the Action; and (d) that class certification  
18 of the Action or any alleged claim is proper. Defendant emphasizes that the Court has not made any  
19 findings of liability as to Defendant and the Court has not determined that Class certification is  
20 warranted in this Action.

21 Nonetheless, without admitting or conceding any liability or wrongdoing whatsoever and  
22 without admitting or conceding that class certification is appropriate for any purpose other than  
23 settlement purposes alone, Defendant has agreed to settle the Action on the terms and conditions set  
24 forth in this Agreement, to avoid the burden, expense, and uncertainty of continuing the Action. Any  
25 stipulations or statements by Defendant contained in this Agreement are made for settlement purposes  
26 only.

27 **2.5 Class Counsel’s Evaluation.** Based on Class Counsel’s investigation and  
28 evaluation, Class Counsel is of the opinion that the terms set forth in this Agreement are fair, reasonable,

1 adequate, and in the best interest of the Class Members. Class Counsel diligently and effectively  
2 investigated Plaintiff's claims, drafted the Complaint and the Amended Complaint, opposed Defendant's  
3 motion to dismiss and motion to transfer venue, conducted a fact investigation, reviewed and analyzed  
4 documents and information produced by Defendant, prepared materials for mediation, and attended the  
5 day-long mediation before experienced mediator Mark Rudy on two separate occasions. Class Counsel  
6 concluded that the Settlement reflected in this Agreement is in the best interests of the Class, after  
7 reviewing prior briefing in this Action, Defendant's documents and information, and conferring with  
8 Defendant's Counsel before and during the parties' mediation. Class Counsel also evaluated the risk  
9 that further litigation might result in Plaintiff not recovering anything at all, which was a very significant  
10 factor in determining that this Agreement is fair, reasonable, and adequate.

11 **2.6 The Parties' Intent.** It is the desire of the Parties to fully, finally, and forever  
12 settle, compromise, and discharge any and all claims, rights, demands, charges, complaints, causes of  
13 action, obligations or liability of any and every kind that were or could have been asserted in the Action,  
14 to the extent that such claims arise out of the alleged facts, circumstances, and occurrences underlying  
15 the allegations as set forth in the claims filed in the Action.

16 **2.7 Certification of Settlement Class.** This Agreement is contingent upon approval  
17 of class certification under California Code of Civil Procedure section 382 by the Court of the  
18 Settlement Class for settlement purposes only. Defendant does not waive, and instead expressly  
19 reserves, its right to challenge the propriety of class certification, collective action certification, or  
20 representative treatment for any other purpose should the Court not approve the Settlement or this  
21 Agreement.

22 **2.8 The Parties' Agreement to Cooperate.** The Parties agree to cooperate and to  
23 take all steps necessary and appropriate to effectuate all aspects of this Agreement, to obtain a  
24 Preliminary Approval Order and Final Approval Order of this Settlement, and to dismiss the Action and  
25 claims of Class Members with prejudice upon final approval.

26 **NOW THEREFORE**, in consideration of the covenants and agreements set forth herein, and of  
27 the release and dismissal of all Released Claims, the Parties stipulate and agree to the terms and  
28 provisions of this Settlement and Agreement, subject to the approval of the Court.

1           **3.     NOTICE TO CLASS MEMBERS**

2           **3.1     Settlement Administrator.** The Parties request that the Court appoint CPT  
3 Group, Inc. as Settlement Administrator. The Parties agree that settlement administration costs shall not  
4 unreasonably exceed \$15,000, based on a written bid received from the Settlement Administrator. All  
5 disputes relating to the Settlement Administrator’s performance of its duties, after good-faith efforts by  
6 the Parties to first resolve such disputes, will be referred to the Court, if necessary, which will have  
7 continuing jurisdiction over this Agreement until all payments and obligations contemplated by this  
8 Agreement have been fully completed.

9           **3.2     Class List For Settlement Administrator.** Within fourteen (14) calendar days  
10 of the entry of a Preliminary Approval Order of this Agreement, Defendant shall provide to the  
11 Settlement Administrator the following information to the extent available: (1) name of each Class  
12 Member; and (2) the most current known address of each Class Member, as reflected in Defendant’s  
13 records at the time of entry of the Court’s Preliminary Approval Order. Defendant may additionally  
14 provide to the Settlement Administrator other personal identifying information, to the extent reasonably  
15 available, to assist with locating Class Members.

16           **3.3     Confidentiality Of Class Member Contact Information And Data.** The  
17 identifying information and contact information in the Class List is being provided confidentially  
18 between Defendant’s Counsel and the Settlement Administrator only, and the Settlement Administrator  
19 shall treat the information as private and confidential and take all necessary precautions to maintain the  
20 confidentiality of the identify and contact information of the Class Member. This information is to be  
21 used only to carry out the Settlement Administrator’s duties as specified in this Settlement Agreement.  
22 The Settlement Administrator shall return the Class List and all associated data to Defendant’s Counsel  
23 or confirm its destruction upon completion of the Settlement Administrator’s duties in administering the  
24 Settlement. In no event shall the Settlement Administrator provide any information from the Class List  
25 to Class Counsel without the express written authorization of Defendant’s Counsel.

26           **3.4     Mailing Of Notice Of Class Action Settlement And Request For Exclusion.**  
27 The Settlement Administrator shall mail the Notice of Class Action Settlement, and Request for  
28 Exclusion, to Class Members within twenty (21) calendar days of receiving the Class List from

1 Defendant. The Settlement Administrator shall send the Notice of Class Action Settlement, and Request  
2 for Exclusion to Class Members via First Class U.S. Mail, using the most current known address of each  
3 Class Member, as reflected in Defendant's records at the time of entry of the Court's Preliminary  
4 Approval Order. Upon receipt of this information from Defendant, the Settlement Administrator shall  
5 perform a search based on the National Change of Address Database maintained by the United States  
6 Postal Service to update and correct any known or identifiable address changes. It will be conclusively  
7 presumed that, if an envelope mailed as provided in Section 3.4, above has not been returned within  
8 thirty (30) days of the mailing, the Class Member received the Class Notice.

9 **3.4.1 Re-mailing Of Returned Notices.** In the event that a Class Notice is  
10 returned to the Settlement Administrator with a forwarding address, the Settlement Administrator will  
11 re-send the Class Notice to the forwarding address affixed thereto. If no forwarding address is provided,  
12 then the Settlement Administrator will promptly conduct a "standard search," sometimes called, "Skip  
13 Traces" or "Credit Header" searches, to locate a better address. If an alternate address is found, the  
14 Settlement Administrator will promptly re-send the Class Notice. If the standard search does not provide  
15 an alternate address or the Class Notice is returned a second time without a forwarding address, the  
16 Settlement Administrator shall perform a manual "in-depth search" to locate a better address. If another  
17 address is found, the Settlement Administrator will promptly re-send the Class Notice. If a Class Notice  
18 is re-mailed to another address within thirty (30) days of the Opt-Out/Objection Deadline, the Class  
19 Member will be provided up to thirty (30) days after the re-mailing to postmark or deliver a request for  
20 exclusion, an objection, subject to the time limits in Section 4.2 below. No third mailing shall occur.

21 **3.4.2 Content Of The Notice Of Class Action Settlement.** The Notice of  
22 Class Action Settlement shall be substantially in the form attached as Exhibit A to this Agreement.

23 **3.4.3 Content Of The Request For Exclusion.** The Request for Exclusion  
24 shall be substantially in the form attached as Exhibit B to this Agreement.

25 **3.5 Proof Of Mailing.** At least five (5) calendar days prior to the Final Fairness  
26 Hearing, the Settlement Administrator shall provide a declaration of due diligence and proof of mailing  
27 with regard to mailing of the Notice of Class Action Settlement to Class Counsel and Defendants'  
28 Counsel, which they shall in turn provide to the Court.



1           **4. CLASS MEMBERS' OPTIONS TO RESPOND**

2           **4.1 Class Members' Consideration Period.** Class Members shall be provided 45  
3 calendar days to exercise any rights with regard to the Settlement, following the postmark date of the  
4 initial mailing of the Notice of Class Action Settlement and the Request for Exclusion. Except as  
5 specifically provided herein, no Class Member responses of any kind that are postmarked more than  
6 forty-five (45) calendar days after the initial mailing of Class Notice shall be considered. Responses  
7 from Class Members must be postmarked for mail with the U.S. Postal Service. Responses sent by  
8 facsimile, email, or other forms of electronic transmission will not be considered.

9           **4.2 Request for Exclusion and Opt Out Rights.** Class Members shall be given the  
10 opportunity to opt out of the Settlement.

11           **4.2.1 Opt Out Procedures.** Class Members may opt out of the Settlement by  
12 mailing to the Settlement Administrator a Request for Exclusion, substantially in the form attached as  
13 **Exhibit B.** Any such Request for Exclusion must be postmarked not more than forty-five (45) calendar  
14 days after the postmark date of the initial mailing of the Notice of Class Action Settlement and the  
15 Request for Exclusion. To be a valid Request for Exclusion, a Class Member must provide his or her  
16 name (and former names, if any), current address, current telephone number, and last four digits of their  
17 Social Security Number. Any Request for Exclusion that does not include all of the required  
18 information or that is not submitted in a timely manner will be deemed null, void, and ineffective. The  
19 foregoing requirements shall be strictly construed, and substantial compliance shall not be sufficient.  
20 Any Class Member who does not satisfy all of the foregoing requirements will be conclusively deemed a  
21 Class Member fully bound by the terms of the Settlement to the extent permitted by law.

22           **4.2.2 Effect of Opt Out.** Any Class Member who opts out of the Settlement  
23 may not object to the Settlement, shall not receive any Individual Settlement Payment, and shall not be  
24 bound by the Released Claims provisions in this Agreement. If a Class Member submits both a Request  
25 for Exclusion and an Objection, the Class Member's Objection will be valid and be deemed to invalidate  
26 the Request for Exclusion. Each Class Member who does not opt out of the Settlement shall be bound  
27 by the applicable Released Claims provisions in this Agreement, including all of the Released Claims.  
28

1                   **4.2.3 Defendant’s Rights to Withdraw.** Defendant has the right, at its sole  
2 option, to withdraw from this Settlement or Agreement if the number of Class Members opting out  
3 exceeds ten percent (10%) of the total number of Class Members. This right to withdraw is a material  
4 term of the Agreement and Defendant have the right, at their sole option, to withdraw from this  
5 Agreement if these material terms are not approved by the Court. If Defendant exercises this right to  
6 withdraw, it will be responsible for all Settlement Administration Costs incurred by the Administrator.

7                   **4.3 Objection Rights.** Because the Settlement Class will be certified by the Court,  
8 only Class Members who do not opt out of the Settlement shall be entitled to object to the terms of the  
9 Settlement.

10                   **4.3.1 Objection Procedures.** Class Members’ objections to the Settlement or  
11 this Agreement must be made using the procedures set forth in the Notice of Class Action Settlement.  
12 Any Objection must be sent to the Settlement Administrator and postmarked no later than forty-five (45)  
13 days after the first postmark date of mailing the Notice of Class Action Settlement. An Objection shall  
14 be deemed to be submitted as of the postmarked date. The written Objection must contain: (1) the name  
15 and case number of this lawsuit, *Juan Bautista, et al v. Ahern Rentals, Inc.*, Kern County Superior Court,  
16 Case No. BCV-22-101454; (2) the full name, last four digits of their Social Security Number, and  
17 current address of the Class Member making the Objection; (3) the specific reason(s) for the Objection;  
18 and (4) any and all evidence and supporting papers (including, without limitation, all briefs, written  
19 evidence, and declarations) for the Court to consider. Class Members who submit an Objection remain  
20 bound by this Agreement. Objections from Class Members must be postmarked for mail with the U.S.  
21 Postal Service. Objections sent by facsimile, email, or other forms of electronic transmission will not be  
22 considered.

23                   **4.3.2 Obligations of Individuals Who Submit an Objection.** Class Members  
24 who timely submit an Objection must be available for deposition within 75 miles of the address of the  
25 Court if Plaintiff or Defendant choose to take their deposition. Any Class Member who timely submits  
26 an Objection and refuses to be available for deposition shall be deemed to have withdrawn his or her  
27 Objection. Class Members who timely submit an Objection shall have the right to appear at the Final  
28

1 Fairness Hearing either in person or through counsel, but must state their intent to do so at the time they  
2 submit their written Objection. Class Members may withdraw their Objections at any time.

3 **4.3.3 Waiver of Objection Rights.** Class Members who fail to make  
4 Objections in the manner specified in the Notice of Class Action Settlement shall be deemed to have  
5 waived any Objections and shall be foreclosed from making any Objection, whether by appeal or  
6 otherwise, to this Agreement.

7 **4.4 Proof of Class Members' Responses.** By not later than 60 calendar days after  
8 the initial mailing of the Notice of Class Action Settlement and Request for Exclusion, the Settlement  
9 Administrator will prepare and submit a declaration attesting to (by number of relevant individuals) its  
10 mailing of the Notice of Class Action Settlement, its inability to deliver any mailing due to invalid  
11 addresses, and its receipt of valid Requests for Exclusion. Seven (7) calendar days prior to the Final  
12 Fairness Hearing, the Settlement Administrator will prepare a supplemental declaration to submit to the  
13 Court, to indicate the number of valid timely claims, objections, and opt out Requests for Exclusion.

14 **4.5 Binding Effect of Settlement.** Although some Class Members might not receive  
15 or timely submit the Notice of Class Action Settlement or the Request for Exclusion, as provided under  
16 this Settlement and Agreement, due to inability to locate their current address following the procedures  
17 set forth in this Agreement, such individuals shall nonetheless be bound by all of the terms of this  
18 Settlement and Agreement and the Final Order and Dismissal with Prejudice.

## 19 **5. DISTRIBUTION OF SETTLEMENT PROCEEDS**

20 **5.1 Gross Settlement Amount.** Defendants agree to pay up to a maximum potential  
21 Settlement Amount of \$92,500.00. The \$92,500.00 Gross Settlement Amount refers to the maximum  
22 settlement payment Defendant may be obligated to make in connection with the Settlement or  
23 Agreement, and shall include all Individual Settlement Payments made to Class Members, all  
24 administration costs, the Class Representative Incentive Payment, and attorneys' fees and costs.

25 **5.2 Fee Motion.** Class Counsel intends to request—and Defendant agree not to  
26 oppose—that the Court approve an attorneys' fees and costs award for (a) attorneys' fees in an amount  
27 up to 35% of the Gross Settlement Amount (or, \$32,375.00); and (b) verified costs in the amount of up  
28

1 to \$5,000.00, supported by adequate documentation by Class Counsel. Except as provided in this  
2 Agreement, Defendant shall have no liability for any other attorneys' fees or costs.

3 **5.2.1 Approval of Attorneys' Fees and Costs Award Not Material.** The  
4 Court's approval of an attorneys' fees or costs award requested in the Fee Motion is not a material term  
5 of the Settlement or this Agreement. If the Court does not approve or approves only a lesser amount  
6 than that requested by Class Counsel in the Fee Motion, the other terms of the Settlement and this  
7 Agreement shall still apply. The Court's refusal to approve the attorneys' fees or costs award requested  
8 by Class Counsel does not give the Class Representative, the Class Members, or Class Counsel any basis  
9 to abrogate the Settlement or this Agreement. Any amount of an attorneys' fees and costs award  
10 requested by Class Counsel but unapproved by the Court shall be allocated to the Net Settlement  
11 Amount.

12 **5.2.2 Timing of Payment of Attorneys' Fees and Costs.** The Settlement  
13 Administrator shall pay to Class Counsel any approved attorneys' fees and costs award no later than  
14 fourteen (14) calendar days of the funding of the Gross Settlement Amount. The Settlement  
15 Administrator shall issue an Internal Revenue Service Form 1099 to Class Counsel for any attorneys'  
16 fees and costs award payment. Class Counsel shall be solely and legally responsible for paying all  
17 applicable taxes on any attorneys' fees and costs award payments and shall indemnify and hold harmless  
18 Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

19 **5.3 Class Representative Incentive Payment.** Class Counsel intends to request—  
20 and Defendant agrees not to oppose—that the Court approve a Class Representative Incentive Payment  
21 of up to \$3,000.00 for the Class Representative, for his service, involvement, and risk in connection with  
22 being a Class Representative. The Incentive Payment is in addition to the Individual Settlement  
23 Payment allocated to Class Representative under this Settlement. Class Representative agrees that he  
24 will not opt out of or object to the Settlement, and further agrees that he will not encourage any other  
25 Class Member to opt out of or object to the Settlement.

26 **5.3.1 Class Representative Incentive Payment Not Material.** The Court's  
27 approval of a Class Representative Incentive Payment is not a material term of the Settlement or this  
28 Agreement. If the Court does not approve or approves only a lesser amount than that requested by Class

1 Counsel for a Class Representative Incentive Payment, the other terms of the Settlement and this  
2 Agreement shall apply. The Court’s refusal to approve the Class Representative Incentive Payment  
3 requested by Class Counsel does not give the Class Representative or Class Counsel any basis to  
4 abrogate the Settlement or this Agreement. Any amount of a Class Representative Incentive Payment  
5 requested by Class Counsel, but unapproved by the Court shall be allocated to the Net Settlement  
6 Amount.

7 **5.3.2 Timing of Class Representative Incentive Payment.** The Settlement  
8 Administrator shall pay to the Class Representative any approved Class Representative Incentive  
9 Payments no later than fourteen (14) calendar days after the funding of the Gross Settlement Amount.  
10 Any Incentive Payment awarded by the Court will not be treated as wages. The Settlement  
11 Administrator shall issue an IRS Form 1099 to the Class Representative for any Class Representative  
12 Incentive Payments. The Class Representative shall be solely and legally responsible for paying all  
13 applicable taxes on any Class Representative Incentive Payments and shall indemnify and hold harmless  
14 Defendant from any claim or liability for taxes, penalties, or interest arising as a result of the payment.

15 **5.4 Settlement Administration Costs.** Class Counsel intends to request—and  
16 Defendant agrees not to oppose—that the Court approve Settlement Administration Costs of up to  
17 \$15,000. Upon completion of administration of the Settlement, the Settlement Administrator shall  
18 provide written certification of such completion to Class Counsel and Defendant’s Counsel. The Parties  
19 agree to cooperate in the settlement administration process and to make all reasonable efforts to control  
20 and to minimize settlement administration costs.

21 **5.5 Individual Settlement Payments From the Net Settlement Amount.** This  
22 Settlement shall be a non-reversionary Settlement. Each Class Member who does not opt out of the  
23 Settlement shall be entitled to an Individual Settlement Payment consisting of their share of the Net  
24 Settlement Amount, in accordance with the formula set forth below.

25 **5.5.1 Individual Settlement Calculations and Payments.** Each Class Member  
26 will be eligible to receive an equal *pro rata* portion of the Net Settlement Amount for each Class in  
27 which each Class Member qualifies for membership. Given that all Class Members would have, in  
28 theory, suffered the same alleged “injury” if Plaintiff prevailed on a class-wide basis, but some may

1 have different recourses under the ICRAA and CCRAA claims, the Net Settlement Amount shall be  
2 divided equally among all Class Members within each Class, with the Class Members eligible to recover  
3 a *pro rata* share for each Class in which they are a member.

4 **5.6 Distribution of Individual Settlement Payments.** Each Class Member's portion  
5 of the Net Settlement Amount shall be distributed as one single check.

6 **5.6.1 Settlement Check.** The settlement check shall be for the amount of each  
7 Class Member's Individual Settlement Payment. This check will include language indicating that  
8 endorsing and cashing the check will constitute a release of claims under the FCRA, the ICRAA, and the  
9 CCRAA and for any and all claims asserted or that could have been asserted based on the facts alleged  
10 in the Action. The language to be included will be substantially similar to the following:

11 My signature or cashing of this check constitutes a full and complete release  
12 of all Released Parties (as defined in the Settlement Agreement), for any  
13 and all claims asserted or that could have been asserted based on the facts  
14 alleged in the lawsuit entitled *Juan Bautista, et al v. Ahern Rentals, Inc.*,  
15 pending in the Kern County Superior Court, designated as Case No: BCV-  
22-101454, including the claims brought under the FCRA, the ICRAA, the  
CCRAA, the UCL, or any other state law regarding the procurement of a  
consumer report.

16 **5.7 Timing of Individual Settlement Payments.** The Settlement Administrator shall  
17 issue the checks constituting the Individual Settlement Payments no later than fourteen (14) calendar  
18 days after the funding of the Gross Settlement Amount.

19 **5.7.1 Undeliverable or Uncashed Checks.** Any settlement checks distributing  
20 Individual Settlement Payments returned to the Settlement Administrator as undeliverable shall be sent  
21 within five (5) calendar days via First Class U.S. Mail to the forwarding address affixed thereto. If no  
22 forwarding address is provided, the Settlement Administrator shall attempt to determine the correct  
23 address using the National Change of Address Database maintained by the United States Postal Service  
24 or using a single, skip-trace search, and it shall then perform a re-mailing within five (5) calendar days.  
25 The amount of any Individual Settlement Payments that remain undeliverable or uncashed one hundred  
26 and eighty (180) calendar days after the postmarked date of the initial mailing of the Individual  
27 Settlement Payments will be distributed to the Parties' mutually agreed upon *cy pres* recipient. The  
28

1 Settlement Administrator shall notify Class Counsel and Defendant’s Counsel of any undeliverable  
2 checks.

3 **5.8 Final Funding of Gross Settlement Amount.** Defendant shall deposit into an  
4 escrow account with the Settlement Administrator the Gross Settlement Amount, within fourteen (14)  
5 calendar days after the Effective Date and the Final Effective Date of the *McEatheron v. Ahern Rentals,*  
6 *Inc.* settlement.

7 **5.9 Tax Payment Considerations.** Class Counsel, Defendant’s Counsel, Defendant,  
8 and the Settlement Administrator are not giving any tax advice in connection with the Settlement or any  
9 payments to be made pursuant to this Agreement.

10 **5.10 No Tax Advice or Liability.** Each Class Member agrees to indemnify, and to  
11 hold harmless, Defendant and Class Counsel from any liability for taxes, fees, costs, or assessments  
12 resulting from his or her failure to timely pay taxes, interest, fees, or penalties owed.

13 **5.11 No Impact On Contributions To Employee Benefit Plans.** None of the  
14 payments made pursuant to the Settlement and this Agreement shall be considered to alter the terms or  
15 to grant any rights to additional payments under any employee benefit plans. None of the payments  
16 made pursuant to the Settlement and this Agreement shall be considered for purposes of determining  
17 eligibility for, vesting or participation in, or contributions to any benefit plan, including, without  
18 limitation, all plans subject to the Employee Retirement and Income Security Act of 1974 (“ERISA”).  
19 Any distribution of payments to Plaintiff or Class Members shall not be considered as a payment of  
20 wages or compensation under the terms of any applicable benefit plan and shall not affect participation  
21 in, eligibility for, vesting in, the amount of any past or future contribution to, or level of benefits under  
22 any applicable benefit plan.

23 Any amounts paid will not impact or modify any previously credited hours of service or  
24 compensation taken into account under any bonus or incentive plan, benefit plan sponsored or  
25 contributed to by Defendants or any jointly-trusted benefit plan, or for purposes of calculating the  
26 regular rate of pay. For purposes of this Agreement, “benefit plan” means each and every “employee  
27 benefit plan,” as defined in 29 U.S.C. Section 1002(3), and, even if not thereby included, any 401(k)  
28 plan, bonus, pension, stock option, stock purchase, stock appreciation, welfare, profit sharing,

1 retirement, disability, vacation, severance, hospitalization, insurance, incentive, deferred compensation,  
2 or any other similar benefit plan, practice, program, or policy.

## 3 **6. RELEASES**

4 **6.1 Release by Class Members.** By operation of the entry of the Final Approval  
5 Order and judgment, and except as to such rights or claims as may be created by this Agreement, each  
6 Class Member, and each of their respective executors, administrators, representatives, agents, heirs,  
7 successors, assigns, trustees, spouses, or guardians, will release each of the Released Parties of and from  
8 any and all claims, rights, demands, charges, complaints, causes of action, obligations, or liability of any  
9 and every kind during the Class Period and through the Effective Date of this Agreement, for any and  
10 all claims asserted or that could have been asserted in the Action, including those for: (1) all claims for  
11 alleged violations of the FCRA, 15 U.S.C. §§ 1681, *et seq.*; (2) all claims for alleged violations of  
12 ICRAA, Cal. Civ. Code §§ 1786, *et seq.*; (3) all claims for alleged violations of the CCRAA, Cal. Civ.  
13 Code §§ 1785 *et seq.*; (4) all claims for California Business & Professions Code §§ 17200 *et seq.*; and  
14 (5) all claims under other state laws pertaining to the procurement and/or use of background or  
15 consumer reports.

16 **6.2 Class Representative Acknowledgements.** The Class Representative  
17 acknowledges that he has read this Agreement in its entirety and that he fully understands this  
18 Agreement.

19 **6.3 Acknowledgement of Binding Terms of the Settlement, Despite Other**  
20 **Potential Claims.** Class Counsel, the Class Representative, and the Settlement Class acknowledge that  
21 they may hereafter discover facts or law different from, or in addition to, the facts or law they know or  
22 believe to exist with respect to the Released Claims. The Settlement Class nonetheless agrees that this  
23 Agreement and the Released Claims contained in it shall be and remain effective in all respects  
24 notwithstanding such different or additional facts or law regarding such Released Claims. These  
25 releases do not include any claims that cannot be waived as a matter of law, but the Settlement Class  
26 agrees that they will not accept any monetary recovery or benefit from any proceedings relating to any  
27 such claims.  
28



1                   **6.4 No Admission of Liability.** By entering into this Agreement, Defendant in no  
2 way admits any violation of law or any liability whatsoever to Class Members, individually or  
3 collectively, and expressly denies all such liability. Neither this Agreement, nor any other Settlement  
4 documents, shall be offered in any case or proceeding as evidence of any admission by Defendant of any  
5 liability on any claim for damages, penalties, restitution, or any other relief. Likewise, by entering into  
6 this Agreement, Defendant in no way admits to the suitability of this case for class action, collective  
7 action, or representative action litigation, other than for purposes of Settlement. Rather, Defendant  
8 enters into this Agreement to avoid further protracted litigation and to resolve and to settle all disputes  
9 with the Settlement Class.

10                   The Parties understand and agree that this Agreement and all exhibits thereto are settlement  
11 documents and shall be inadmissible for any purpose in any proceeding, except an action or proceeding  
12 to approve, interpret, or enforce the terms of this Agreement. The Parties agree that, to the extent  
13 permitted by law, this Agreement may be pleaded as a full and complete defense to, and may be used as  
14 the basis for an injunction against any action, suit, or other proceeding that may be instituted,  
15 prosecuted, or attempted in breach of this Agreement.

16                   **7. SETTLEMENT APPROVAL PROCEDURE**

17                   **7.1 Preliminary Approval.** Plaintiff shall submit to the Court a Motion for  
18 Preliminary Approval of class action settlement. This motion shall seek an order to preliminarily  
19 approve the proposed Settlement according to the terms in this Agreement and provide for the Notice of  
20 Class Action Settlement and the Request for Exclusion, to be sent to Class Members as specified in this  
21 Agreement. This motion shall include the bases for the Gross Settlement Amount and why the amount  
22 is reasonable in light of the facts and controlling authorities pertaining to the claims alleged in the  
23 Complaint. The motion shall also be accompanied by signed declarations by Class Counsel, discussing  
24 the risks of continued litigation and the decision that the best interests of Plaintiff and the Class  
25 Members are served by the terms of this Agreement.

26                   **7.2 Effect of Failure to Obtain Preliminary Approval.** If this Settlement or  
27 Agreement or a substantially similar settlement mutually agreed to by the Parties is not preliminarily  
28 approved, the Parties shall attempt to mutually agree on terms that will be satisfactory for the Court for

1 preliminary approval. If the Parties are unable to mutually agree on satisfactory terms, the Parties will  
2 reengage the services of the mediator, Mark Rudy. Any additional mediator's fees will be split equally  
3 by the Parties. If the Parties are unable to resolve the case through a subsequent mediation, the Action  
4 shall proceed as if no settlement had been attempted and revert back to its prior procedural posture.  
5 Defendants retain the right to contest whether any aspect of the Action should be maintained as a class  
6 action, or to contest the merits of the claims being asserted by the Class Representative or Class  
7 Members in the Action.

8 **7.3 Final Approval.** Plaintiff shall submit to the Court a Motion for a Final  
9 Approval Order. The motion shall request the entry of a Final Approval Order, which shall include  
10 findings and orders: (a) approving the Settlement and the Agreement; (b) adjudging the terms to be fair,  
11 reasonable, and adequate; (c) reciting the release terms in full; (d) directing that the Settlement terms  
12 and provisions be carried out; and (e) retaining jurisdiction to oversee administration and enforcement of  
13 the terms of this Agreement and the Court's orders.

14 **7.4 Entry of Judgment.** At the final approval hearing, the Parties shall request that  
15 the Court, among other things: (a) enter final judgment in accordance with this Agreement and without  
16 further fees or costs to any party except as expressly set forth in this Agreement; (b) approve this  
17 Agreement as fair, reasonable, adequate, and binding on all members of the Settlement Class; (c) enter  
18 an order as to Class Counsel's request for an attorneys' fees and costs award; (d) enter an order as to the  
19 request for a Class Representative Incentive Payment; and, (e) enter an order permanently enjoining all  
20 members of the Settlement Class from pursuing or seeking to reopen claims that have been released by  
21 this Agreement.

22 **7.5 Effect of Failure to Obtain Final Judgment.** In the event the Court fails to  
23 enter final judgment in accordance with this Agreement, or such final judgment is vacated or reversed,  
24 the Parties shall attempt to mutually agree on terms that will be satisfactory for the Court for final  
25 approval. If the Parties are unable to mutually agree on satisfactory terms, the Parties will reengage the  
26 services of the mediator, Mark Rudy. Any additional mediator's fees will be split equally by the Parties.  
27 If the Parties are unable to resolve the case through a subsequent mediation, the Action shall proceed as  
28 if no settlement had been attempted and revert back to its prior procedural posture. Defendant retains

1 the right to contest whether any aspect of the Action should be maintained as a class action, or to contest  
2 the merits of the claims being asserted by the Class Representative or Class Members in the Action.

3           **7.6 Waiver of Appeal Rights.** By accepting this Settlement, authorizing the  
4 dismissal of the Action with prejudice, and upon final approval of the settlement being granted, the  
5 Class Representative and Class Counsel hereby waive any and all rights they may have to appeal any  
6 judgment, ruling, or order made by the Court in this Action, including, without limitation, any order  
7 granting final approval of this Settlement or dismissing the Action with prejudice. This includes all  
8 rights to any post-judgment proceeding and appellate proceeding, such as, but not limited to, a motion to  
9 vacate judgment, a motion for new trial, a motion for relief, and any extraordinary writ, and the  
10 Judgment therefore will become non-appealable at the time it is entered. The waiver of appeal does not  
11 include any waiver of the right to oppose any appeal, appellate proceedings, or post-judgment  
12 proceedings. If an appeal is taken from the Judgment, the time for consummation of the Settlement  
13 (including making payments under the Settlement) will be suspended until such time as their appeal is  
14 finally resolved and the Judgment becomes final.

15           **8. MISCELLANEOUS**

16           **8.1 Interim Stay of Proceedings.** The Parties agree to refrain from further litigation,  
17 except such proceedings necessary to implement and to obtain a Preliminary Approval Order and Final  
18 Approval Order of the terms of the Agreement. If the Settlement is not finally approved, the Parties  
19 agree that they will revert to their positions in the lawsuit prior to the time the Settlement was reached,  
20 and no agreements set forth in this Agreement or any documents generated or orders issued related to  
21 the Settlement will be admissible in any future proceeding in this or any other action.

22           **8.2 Parties' Authority.** The signatories hereto represent that they are fully  
23 authorized to enter into this Agreement and are fully authorized to bind the Parties to all terms stated  
24 herein. It is agreed that Class Members are so numerous that it is impossible or impractical to have each  
25 Class Member execute this Agreement. It is agreed that this Agreement may be executed on behalf of  
26 Class Members by Class Representative and Class Counsel.

27           **8.3 Entire Agreement.** This Agreement, which includes the Definitions, Recitals,  
28 and all Exhibits attached hereto, constitutes the entire agreement between the Parties with regard to the

1 subject matter contained herein, and all prior and contemporaneous negotiations and understandings  
2 between the Parties shall be deemed merged into this Agreement.

3 **8.4 Materiality of Terms.** The Parties have arrived at this Agreement as a result of  
4 arm's-length negotiations. Where stated in this Agreement, certain terms are material and revision of  
5 these material terms will allow Defendants the option to void this Agreement.

6 **8.5 Counterparts.** This Agreement may be executed in counterparts, and when each  
7 party has signed and delivered at least one such counterpart, each counterpart shall be deemed an  
8 original, and when taken together with other signed counterparts, shall constitute one signed Agreement,  
9 which shall be binding upon and effective as to all Parties.

10 **8.6 Facsimile, DocuSign, or Scanned Signatures For This Agreement.** Any party  
11 may sign and deliver this Agreement by signing on the designated signature block and transmitting that  
12 signature page via facsimile, DocuSign or an equivalent e-signature plan, or as an attachment to an e-  
13 mail to counsel for the other party. Any signature made and transmitted by facsimile, DocuSign or an  
14 equivalent e-signature plan, or as an attachment to an e-mail for the purpose of executing this  
15 Agreement shall be deemed an original signature for purposes of this Agreement and shall be binding  
16 upon the party who transmits the signature page. However, if any party signs this Agreement via  
17 DocuSign or an equivalent e-signature plan, counsel for that party shall also provide a "wet" signature,  
18 as a supplement to the electronic signature, within 14 calendar days of the date of the electronic  
19 signature.

20 **8.7 Binding Effect.** This Agreement shall be binding upon the Parties and, with  
21 respect to the Class Representative, Class Members, their spouses, children, representatives, heirs,  
22 administrators, executors, beneficiaries, conservators, attorneys, and assigns.

23 **8.8 Waivers and Modifications to Be in Writing.** No waiver, modification, or  
24 amendment of the terms of this Agreement, whether purportedly made before or after the Court's  
25 approval of this Agreement, shall be valid or binding, unless in writing, signed by or on behalf of all  
26 Parties and then only to the extent set forth in such written waiver, modification, or amendment, subject  
27 to any required Court approval. Any failure by any Party to insist upon the strict performance by the  
28 other Party of any of the provisions of this Agreement shall not be deemed a waiver of future

1 performance of the same provisions or of any of the other provisions of this Agreement, and such Party,  
2 notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of  
3 any and all of the provisions of this Agreement. The time periods and dates provided in this Agreement  
4 with respect to giving of notices and hearings are subject to Court approval and modification by the  
5 Court or by written stipulation of Class Counsel and Defendants' Counsel.

6 Any notice to be given pursuant to this Agreement shall be made by email and  
7 overnight delivery to Class Counsel or Defendant's Counsel. If Class Members have questions about  
8 this Agreement or their Individual Settlement Payments, they must contact Class Counsel, rather than  
9 Defendants. Defendants shall have no obligation to respond to communications by Class Members.

10 **8.9 Construction.** The determination of the terms and conditions of this Agreement  
11 has been by mutual agreement of the Parties. Each party participated jointly in the drafting of this  
12 Agreement, and the terms and conditions of this Agreement are not intended to be, and shall not be,  
13 construed against any party by virtue of draftsmanship.

14 **8.9.1 Exhibits Incorporated by Reference.** The terms of this Agreement  
15 include the terms set forth in any attached exhibit, which are incorporated by this reference as though  
16 fully set forth herein. Any exhibit to this Agreement is an integral part of the Settlement.

17 **8.9.2 Captions.** The captions or headings of the sections and paragraphs of this  
18 Agreement have been inserted for convenience of reference only and shall have no effect upon the  
19 construction or interpretation of any part of this Agreement.

20 **8.9.3 Invalidity of Any Provision.** Before declaring any provision of this  
21 Agreement invalid, the Court shall first attempt to construe the provisions valid to the fullest extent  
22 possible consistent with applicable precedents so as to render all provisions of this Agreement valid and  
23 enforceable.

24 **8.10 Further Acts and Cooperation Between the Parties.** The Parties shall  
25 cooperate fully with each other and shall use their reasonable commercial efforts to obtain the Court's  
26 approval of this Agreement and all of its terms. Each of the Parties, upon the request of another, agrees  
27 to perform such further acts and to execute and to deliver such other documents as are reasonably  
28 necessary to carry out the provisions of this Agreement.

1                   **8.11 No Prior Assignments or Undisclosed Liens.** The Class Representative and  
2 Class Counsel represent and warrant that they have not assigned, transferred, conveyed, or otherwise  
3 disposed of, or purported to assign, transfer, convey, or otherwise dispose of, any Released Claims or  
4 the attorneys' fees and costs award to be paid pursuant to this Agreement. Class Representative and  
5 Class Counsel further represent and warrant that there are no liens or claims against any of the amounts  
6 to be paid by Defendants pursuant to this Agreement. The Class Representative and Class Counsel  
7 agree to defend, to indemnify, and to hold Defendant harmless from any liability, losses, claims,  
8 damages, costs, or expenses, including reasonable attorneys' fees, resulting from a breach of these  
9 representations or from any lien or assignment.

10                   **8.12 Waiver of Right to Object by the Class Representative.** The Class  
11 Representative agrees to sign this Agreement, and by signing this Agreement, the Class Representative  
12 is thereby bound by the terms of this Agreement. The Class Representative further agrees that he shall  
13 not object to any of the terms of this Agreement.

14                   **8.13 No Solicitation of Objections.** The Parties further represent and warrant that  
15 they have not and will not solicit, encourage, or assist in any fashion any effort by any entity or person  
16 to object to or to seek exclusion from the Settlement set forth in this Agreement.

17                   **8.14 Discovery of Confidential Documents and Information.** Class Counsel agree  
18 that they will destroy all confidential documents and information provided to them by Defendant within  
19 sixty (60) calendar days after the completion of the administration of the Settlement. Class Counsel  
20 further agrees that none of the documents and information provided to them by Defendants shall be used  
21 for any purpose other than prosecution of this Action or the defense or prosecution of a malpractice  
22 action.

23                   **8.15 No Tax Advice.** Neither Class Counsel, Defendant's Counsel, or Defendant  
24 intend anything contained in this Settlement or Agreement to constitute advice regarding taxes or  
25 taxability, nor shall anything in this Settlement or Agreement be relied upon as such within the meaning  
26 of United States Treasury Department Circular 230 (31 C.F.R. Part 10, as amended) or otherwise.

27                   **8.16 No Media Announcements.** Neither side shall make any public statements to the  
28 news, print, electronic, or Internet media concerning the Settlement, and both sides shall decline to

1 respond to media inquiries concerning the Settlement. Class Counsel shall not publicize the settlement  
2 in their marketing materials, website, or other advertising media.

3 **8.17 Continuing Jurisdiction.** The Court shall retain jurisdiction over the  
4 implementation of this Agreement as well as any and all matters arising out of, or related to, the  
5 implementation of this Agreement and Settlement. The Court shall not have jurisdiction to modify the  
6 terms of the Agreement without the consent of all of the Parties.

7 **8.18 Disputes.** If the Parties have a dispute with regard to the language of this  
8 Agreement, they agree to first attempt to resolve the dispute informally through good-faith negotiations,  
9 but if those efforts are unsuccessful, they agree to mediate any such dispute. The Parties will split the  
10 costs of the mediator, and all parties will bear their own fees and costs.

11 **8.19 Governing Law.** This Settlement and Agreement was made and entered into in  
12 the State of California. All terms of this Agreement shall be governed by and interpreted according to  
13 the substantive laws of the State of California and the procedural laws of the United States of America.

14 **SO AGREED AND STIPULATED:**

15 02/01/2023  
DATED: February \_\_, 2023

PLAINTIFF JUAN BAUTISTA

16 By: Juan Jose Bautista III  
17 Juan Bautista

18 DATED: February \_\_, 2023  
19 03/20/2023

DEFENDANT AHERN RENTALS, INC.

20 By: [Signature]  
21 Print Name: M. Sami Bakdash

22 Title: General Counsel

23  
24 DATED: February 1, 2023

THE JUSTICE LAW CORPORATION

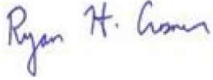
25 By: [Signature]  
26 Douglas Han  
27 Shunt Tatavos-Gharajeh  
28 John M. Bickford

Attorneys for Plaintiff and the Class

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DATED: March 20, 2023

OGLETREE, DEAKINS, NASH, SMOAK &  
STEWART, P.C.

By:   
Ryan H. Crosner  
Attorneys for Defendant