

## SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Plaintiffs Andrew McEathron and Juan Bautista (“Plaintiffs”) and Defendant Ahern Rentals, Inc. (“Ahern Rentals”). Plaintiffs and Ahern Rentals collectively are referred to in this Agreement as the “Parties.”

### I. DEFINITIONS

The terms below have the following meaning in this Agreement:

A. “Action” means Case No. RG17867366 in the Superior Court for the State of California, County of Alameda.

B. “Amended Complaint” means the First Amended Class Action Complaint Plaintiffs filed in this matter in December 12, 2021.

C. “Class” means all current and former hourly-paid or non-exempt Ahern Rentals employees who have worked in California at any time between July 12, 2013 and August 27, 2021 (“Class Period”). At the time of the Parties’ mediation in June 2021, Ahern Rentals estimated that the Class Members had worked 103,271 workweeks since July 12, 2013.

1. Escalator Clause. If there is a ten percent (10%) increase in the number of workweeks in the Class Period from 103,271, it would trigger an escalator provision whereby the Net Settlement Amount would increase by 1% for every 1% increase in workweeks over the 10% threshold. For example, if the workweeks reported to the Settlement Administrator are 115,664 (a 12% increase) , Defendant will increase the Gross Settlement in a sum derived by the following formula:  $2\% \times \text{Net Settlement Amount}$ . Alternatively, Defendant may select a new end date for the Class Period that limits the number of workweeks to no more than 113,598 (110% of 103,271).

D. “Class Counsel” means Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song, of the Justice Law Corporation.

E. “Class Counsel Fees and Costs Payment” means the amount awarded to Class Counsel by the Court as compensation for attorneys’ fees and litigation expenses incurred in connection with the Action, including pre-filing investigation, filing of the Action and all related litigation activities, mediating the Action, class outreach and damages analysis, negotiating this Settlement, and all post-Settlement compliance procedures and monitoring same.

F. “Class Data” means, for each Class Member, his or her name, last-known mailing address and telephone number, social security number, the number of workweeks the Class Member was employed by Defendant in a non-exempt position in California during the Class Period, and the number of workweeks (if any) the Class Member was employed by Defendant in a non-exempt position in California during the PAGA Period. When calculating workweeks, Defendant shall round to the nearest whole number.

G. “Class Member” is a member of the Class.

H. “Class Notice” refers to the Notice of Class Action Settlement attached and incorporated as Exhibit A.

I. “Class Period” means any time between July 12, 2013 and August 27, 2021.

J. “Class Representative” means the named Plaintiffs, Andrew McEathron and Juan Bautista.

K. “Class Representative Enhancement Payment” means the payments to be approved by the Court to Plaintiffs in their capacity as Class Representative to compensate them for initiating the Action, performing work in support of the Action, and undertaking the risk of liability for attorneys’ fees and expenses in the event they were unsuccessful in the prosecution of the Action.

L. “Court” means the Superior Court for the State of California, County of Alameda.

M. “Effective Date” means the date the Judgment becomes Final.

N. “Eligible Aggrieved Employees” means the aggrieved employees eligible to recover their portion of the PAGA Payment shall consist of current and former hourly-paid or non-exempt Ahern Rentals employees who have worked in California at any time between May 2, 2017 and August 27, 2021.

O. “Final” means the latest of: (i) if there is an appeal of the Court’s Judgment, the date the Judgment is affirmed on appeal, the date of dismissal of such appeal, or the expiration of the time to file a petition for review with the California Supreme Court, or, (ii) if a petition for review filed, the date of denial of the petition, or the date the Judgment is affirmed pursuant to such petition; or (iii) if no appeal is filed, the expiration date of the time for filing or noticing any appeal of the Judgment; or (iv) if the California Labor & Workforce Development Agency (“LWDA”) has commenced an investigation or issued a Citation prior to the date that the Judgment approving the Settlement is no longer appealable, the date the LWDA concludes its investigation or resolves the Citation (whichever is later); or (v) if the LWDA objects to the Settlement, the date when the LWDA’s objection to the Settlement is resolved and no longer appealable.

P. “Final Approval Hearing” means the hearing to be conducted by the Court to determine whether to finally approve the terms of this Agreement.

Q. “Gross Settlement Amount” means the amount of One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000) which, subject to the Escalator Clause described in Section I.C.1, represents the maximum amount that Ahern Rentals will pay under this Agreement, and includes payment for all claims of Class Members, attorneys’ fees and costs, enhancement awards, penalties (including PAGA penalties), interest and settlement administration expenses. This amount is inclusive of all payments required under the Settlement. However, all employer-side payroll taxes will be a separate obligation of Ahern Rentals.

R. “Judgment” means the Order Granting Final Approval of Class Action Settlement and Entering Final Judgment entered by the Court.

S. “Non-Participating Class Member” means a Class Member who submits a valid and timely Request Not to Participate in Class Settlement.

T. “PAGA Payment” means payment of \$100,000 in settlement of the PAGA cause of action in the Action, of which 75% (\$75,000) will be paid to the Labor Workforce Development Agency (“LWDA”) and 25% (\$25,000) will be paid to the Eligible Aggrieved Employees.

U. “PAGA Period” means period of time applicable to Eligible Aggrieved Employees which is any time between May 2, 2017 and August 27, 2021.

V. “Participating Class Member” means a Class Member who does not submit a valid and timely Request Not to Participate in Class Settlement.

W. “Parties” means, collectively: (1) The named Plaintiffs, Andrew McEathron and Juan Bautista; and (2) Defendant Ahern Rentals.

X. “Plaintiffs” means the named plaintiffs, Andrew McEathron and Juan Bautista.

Y. “Ahern Rentals’ Counsel” means Marlene Muraco of Littler Mendelson P.C.

Z. “Preliminary Approval of the Settlement” means the Court’s preliminary approval of the Settlement without material change.

AA. “Released Parties” refers to Defendant Ahern Rentals and each of its respective past, present, and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, and any entity which controls, is controlled by, or is under common control with Ahern Rentals; the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and any individual or entity which could be jointly liable with any of the foregoing.

BB. “Request Not to Participate in Class Settlement” means a written and signed request for exclusion, or opt-out of, the Class Settlement, which is submitted to the Settlement Administrator according to the terms set forth in Section III.D.4.b.

CC. “Settlement” means the resolution of the Action and all related claims effectuated by this Agreement.

DD. “Settlement Administrator” means the administrator appointed by the Court to administer the Settlement. The “Settlement Administrator Payment” shall be the amount of the payment to the Settlement Administrator as approved by the Court.

EE. “Net Settlement Fund” means the Gross Settlement Amount minus the Class Counsel Fees and Costs Payment, the Class Representative Enhancement Payments, the PAGA Payment, and the Settlement Administrator Payment.

FF. “Settlement Share” means each Participating Class Member’s share of the Net Settlement Fund as provided by this Agreement.

GG. “Total Work Weeks” means the sum total of all Individual Work Weeks (as defined herein) for all Participating Class Members in the Class during the Class Period.

## II. RECITALS

A. On July 12, 2017, Andrew McEathron filed his wage-and-hour class action lawsuit alleging: (1) Violation of Labor Code Sections 510 and 1198; (2) Violation of Labor Code Sections 226.7 and 512(a); (3) Violation of Labor Code Sections 226.7; (4) Violation of Labor Code Sections 1194, 1197, and 1197.1; (5) Violation of Labor Code Sections 201 and 202; (6) Violation of Labor Code Section 226(a); and (7) Unfair Competition (Business & Professions Code §17200) (the “McEathron Action”).

B. On May 2, 2018, Juan Bautista submitted a letter to the Labor & Workforce Development Agency intending to seek civil penalties based on the factual allegations in McEathron Action.

C. On January 9, 2020, Plaintiff Bautista filed a class action law alleging: (1) Violation of Labor Code Sections 2800 and 2802 (Unreimbursed Business Expenses); and (2) Unfair Competition (Business & Professions Code §17200) in Los Angeles County Superior Court, Case No. 20STCV00978 (the “2802 Action”).

D. On June 15, 2021, the parties participated in a mediation with by Mark S. Rudy, Esq. The mediation was conducted at arms-length. During the mediation, each side, represented by its respective counsel, agreed to settle the Action and all other matters covered by this Agreement pursuant to the terms and conditions of this Agreement.

E. Since the mediation, the 2802 Action has been dismissed and Mr. Bautista has been added as a Plaintiff to this action, along with his claims for unpaid expenses.

F. This Agreement represents a compromise and settlement of disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Ahern Rentals that the claims in the Action have merit or that Ahern Rentals bears any liability to Plaintiffs or the Class on those claims or any other claims.

G. The Parties agree that sufficient investigation and discovery has been conducted to sufficiently evaluate the strengths and weaknesses of their respective claims and defenses and to recommend this Settlement to the Class and to the Court.

Based on these Recitals, the Parties agree as follows:

## III. SETTLEMENT TERMS AND CONDITIONS

A. **Gross Settlement Amount.** Subject to the terms and conditions of this Agreement, the Gross Settlement Amount that Ahern Rentals will pay under this Settlement is One Million Seven Hundred Fifty Thousand Dollars (\$1,750,000). All of the Gross Settlement Amount will be disbursed pursuant to this Agreement, and none of it will revert to Ahern Rentals.

B. **Settlement Payments.** Subject to the terms and conditions of this Agreement, and except as set forth below, the Gross Settlement Amount shall be apportioned as follows:

1. **Class Representative Enhancement Payments:** Subject to the Class Representatives' execution (before preliminary approval of the Settlement) of this Agreement, Class Counsel will request, and Ahern Rentals will not oppose that the Court approve Class Representative Enhancement Payments of up to Ten Thousand Dollars (\$10,000) to each Class Representative. Any Class Representative Enhancement Payment is in addition to the class Representatives' individual settlement payments. The Class Representative Enhancement Payments are part of and to be deducted from, the Gross Settlement Amount and will be paid by the Settlement Administrator. If the Court approves a Class Representative Enhancement Payment of less than the amounts requested, the difference will be placed in the Net Settlement Fund for distribution to Participating Class Members. The Class Representative Enhancement Payments approved by the Court shall be paid by the Settlement Administrator from the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Representative Payment, but an IRS Form 1099 will be issued to the Class Representatives with respect to these payments.

2. **Class Counsel Fees and Costs Payment:** Class Counsel will apply to the Court for an award of attorneys' fees not to exceed thirty-five percent (35%) of the Gross Settlement Amount, or Six Hundred Twelve Thousand Five Hundred Dollars (\$612,500) plus actual costs not in excess of Fifty-Five Thousand Dollars (\$55,000). Ahern Rentals will not oppose this request. If the Court approves a Class Counsel Fees and Costs Payment less than the amount requested by Class Counsel, the difference will be placed in the Net Settlement Fund for distribution to Participating Class Members. The Class Counsel Fees and Costs Payment approved by the Court shall be paid by the Settlement Administrator from the Gross Settlement Amount. Payroll tax withholdings and deductions will not be taken from the Class Counsel Fees and Costs Payment, but an IRS Form 1099 will be issued to Class Counsel. As a condition of payment, Class Counsel will be required to furnish the Settlement Administrator its tax identification number.

3. **PAGA Payment.** From the Gross Settlement Amount, the Settlement Administrator shall pay 75% of the PAGA Payment approved by the Court to the LWDA and 25% to the PAGA Aggrieved Employees in proportion to the number of weeks they worked during the PAGA Period.

4. **Settlement Administrator Payment.** From the Gross Settlement Amount, the Settlement Administrator will pay itself its reasonable fees and expenses, as approved by the Court, in an amount currently estimated to be approximately \$20,000.

5. **Settlement Share To Each Participating Class Member.**

a. **Settlement.** The Settlement Administrator will pay out of the Net Settlement Fund each Participating Class Member's Settlement Share. The amount to be paid per workweek to Class Members will be calculated by the Settlement Administrator by dividing the Net Settlement Amount by the total number of workweeks all Class Members were employed in a non-exempt position by Defendant in California during the Class Period, as reported by Defendant. Ahern Rentals' workweek data will be presumed to be correct, unless a particular Participating Class Member proves otherwise to the Settlement Administrator by credible, written evidence. All workweek disputes will be resolved and decided by the Settlement Administrator, and the Settlement Administrator's decision on all workweek disputes will be final and non-appealable.

**b. Allocation and Withholding for Settlement.** One-third (33.33%) of each Participating Class Member's Settlement Share shall be considered to be in settlement of wage claims (the "Wage Portion") and shall be subject to wage tax withholdings and reported on a Form W-2. One-third (33.33%) of each Participating Class Member's Settlement Share shall be considered to be in settlement of claims for interest and shall not be subject to wage tax withholdings but shall be reported on IRS Form 1099. One-third (33.33%) of each Participating Class Member's Settlement Share shall be considered to be in settlement of claims for penalties and shall not be subject to wage tax withholdings but shall be reported on IRS Form 1099.

**c. Effect of Non-Participating Class Members.** Non-Participating Class Members will receive no Settlement Share, and their request not to participate will not reduce the Gross Settlement Amount or the Net Settlement Fund; *provided* that any Non-Participating Class Member will nonetheless receive a PAGA Payment if he or she was employed in a non-exempt position in California during the PAGA Period. Their respective Settlement Shares will be retained in the Net Settlement Fund for distribution to Participating Class Members.

#### **6. PAGA Payment To Each Eligible Aggrieved Employee.**

**a.** The Settlement Administrator shall pay each Eligible Aggrieved Employee according to their proportional share, which will be based upon the total number of workweeks he or she was employed in California in a non-exempt position for Ahern Rentals during the PAGA Period. The individual share will be calculated by determining the total number of workweeks the Eligible Aggrieved Employees were employed in California as non-exempt employees of Ahern Rentals during the PAGA Period (i.e., the sum of all non-exempt workweeks for each eligible aggrieved employee) and dividing that number into the \$25,000 amount allocated to Eligible Aggrieved Employees to determine the monetary value assigned to each relevant workweek. That number will then be multiplied by the individual Eligible Aggrieved Employee's total number of workweeks in a non-exempt position for Ahern Rentals position during the PAGA Period to determine that individual's proportional share. The PAGA Payment shall be characterized as penalties for which an IRS Form 1099 will issue if it is \$600 or more.

**b.** An Eligible Aggrieved Employee's entitlement to a PAGA Payment is not dependent upon whether or not the individual is a Participating Class Member. Thus, Eligible Aggrieved Employees are entitled to receive a PAGA Payment even if they timely exclude themselves from the class settlement.

**C. Appointment of Settlement Administrator.** Class Counsel will ask the Court to appoint Phoenix Class Action Settlement Administrators, a qualified administrator, to serve as the Settlement Administrator, which, as a condition of appointment, will agree to be bound by this Agreement with respect to the performance of its duties and its compensation. The Settlement Administrator's duties will include preparing, translating, printing, and mailing the Class Notice to all Class Members; conducting a National Change of Address search on all Class Members, as needed, whose names and contact information are submitted before the initial Class Notice mailing; conducting skip tracing on any Class Notice returned by the U.S. Postal Service as non-deliverable, as needed, and re-mailing the Class Notice to the Class Member's new address; providing the Parties with weekly status reports about the delivery of Class Notices and receipt of objections to and Requests Not to Participate in the Settlement; calculating Settlement Shares; estimating amounts of Settlement Shares for inclusion in the Class Notice; addressing any disputes

by the Participating Class Members relating to their estimated Settlement Shares; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; submitting the PAGA Payment to the LWDA; and otherwise administering the Settlement pursuant to this Agreement. After consultation with Class Counsel and Ahern Rentals' Counsel, the Settlement Administrator will have the final authority to resolve all disputes concerning the calculation of a Participating Class Member's Settlement Share, subject to the dollar limitations set forth in this Agreement. The Settlement Administrator's reasonable fees and expenses, including the cost of printing and mailing the Class Notice, will be paid out of the Gross Settlement Amount in an amount currently estimated to be approximately \$20,000. The Settlement Administrator shall set up a Qualified Settlement Fund and have its own employer taxpayer ID number.

**D. Procedure for Approving Settlement.**

**1. Motion for Conditional Certification of Class and Preliminary Approval of Settlement by the Court.**

a. The Parties agree to stipulate to class certification for purposes of settlement only as to the Participating Class Members and for the Released Claims.

b. Plaintiffs will file a Motion for an Order conditionally certifying the Class, giving Preliminary Approval of the Settlement, setting a date for the Final Approval Hearing, and approving the Class Notice (the "Motion for Preliminary Approval") as specified in this Settlement Agreement.

c. At the hearing on the Motion for Preliminary Approval, the Parties' counsel will appear and support the granting of the motion, and Class Counsel will submit an Order, approved by Ahern Rentals Granting Conditional Certification of Class and Preliminary Approval of Settlement; Approving Class Notice and Related Materials; Appointing Settlement Administrator; and Scheduling Final Approval Hearing.

d. Should the Court decline to certify the Class or to preliminarily approve all material aspects of the Settlement without granting leave to correct any material or non-material aspects, this Agreement will be null and void and the Parties will have no further obligation hereunder.

e. Within 14 calendar days after the Court enters its Order granting Preliminary Approval of the Settlement, Ahern Rentals will provide the Settlement Administrator the Class Data necessary to calculate each Class Member's individual Settlement Share and PAGA Payment. All information provided the Settlement Administrator will remain confidential and will not be disclosed to anyone, except as required to applicable taxing authorities, or pursuant to Ahern Rentals' express written authorization, or by Order of the Court or to effectuate the terms of this Settlement.

**2. Notice to Class Members.** Within thirty (30) calendar days after the Court enters its Order granting Preliminary Approval of the Settlement, the Settlement Administrator will mail Notices of Settlement to the Class Members, as follows:

a. All Class Members will receive a Notice in the form evidenced by Exhibit A (other than formatting changes to facilitate printing by the Settlement Administrator). The Class Notice will be tailored for each individual and have pre-printed information regarding that individual's name, contact information, the number of workweeks during the Class Period from which the Settlement Share of the individual Class Member will be calculated and the number of weeks during the PAGA Period from which the Class Member's PAGA Payment will be calculated.

b. Upon receiving the Class Data, the Settlement Administrator will, as needed, conduct a National Change of Address search on all Class Members whose names and contact information are included in the Class Data. Thereafter, the Settlement Administrator shall no later than 14 calendar days after receiving the Class Data, mail the Class Notices to all Class Members via first-class regular U.S. Mail.

c. If a Class Notice is returned because of an incorrect address, then the Settlement Administrator will promptly, and not longer than five days from receipt of the returned packet, conduct a search for a more current address for the Class Member and re-mail the Class Notice to the Class Member. In doing so, the Settlement Administrator shall be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, Court Orders, and fee, as agreed to with Class Counsel and according to the following deadlines, to trace the mailing address of any Class Member for whom a Class Notice is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include, as needed, the tracking of all undelivered mail; performing skip trace address searches for all returned mail; and promptly re-mailing the Class Notice to Class Members for whom new addresses are found. If the Class Notice is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and Ahern Rentals' Counsel of the date and address of each such re-mailing as part of its weekly status report provided to the Parties. Class Counsel and Ahern Rentals' Counsel will be entitled to receive from the Settlement Administrator any updated address information about a Class Member as the Settlement Administrator obtains such information.

d. As part of its weekly status report, the Settlement Administrator will inform Class Counsel and Ahern Rentals' Counsel of objections and Requests Not to Participate in Settlement that it receives.

e. Not later than ten (10) Court days before the date by which the Parties file a motion for final approval of the Settlement, the Settlement Administrator will serve on the Parties and Class Counsel will file with the Court a declaration of due diligence setting forth its compliance with its obligations under this Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its declaration of due diligence if any material changes occur from the date of the filing of its prior declaration.

### **3. Disputing Information in Class Notice.**

a. Class Members will have the opportunity to challenge the Class Data pre-printed on their individualized Class Notice by submitting via first class mail, postmarked no later than 45 days after the date on which the Settlement Administrator mails the Class Notices, a written challenge along with supporting documentation to the Settlement Administrator. If Class Notice is re-mailed to a Class Member pursuant to Section III.D.2.c herein, any written challenge



of that Class Member to the Class Data shall be submitted to the Settlement Administrator via first class mail, postmarked no later than 45 days after the Class Notice was re-mailed to the Class Member. Any challenges to the information pre-printed on the Class Notice must be supported by documentary evidence; the Settlement Administrator will reject any challenge not supported by such evidence. In the event of such a dispute, Ahern Rentals will review its records to verify the correct information. Ahern Rentals' records will have a rebuttable presumption of correctness. After consultation with Class Counsel, the Class Member and Ahern Rentals' Counsel, the Settlement Administrator will make a determination regarding the disputed information and that determination will be final, binding on the Parties and the Class Member, and non-appealable.

b. In the event a challenge to the Class Data is timely submitted, but is deficient in one or more respects, the Settlement Administrator will notify the Class Member within seven calendar days of receipt explaining any deficiency and stating that the Class Member will have ten calendar days from the date of the deficiency notice to correct the deficiency and resubmit the challenge. The envelope containing the resubmitted challenge must be postmarked within fifteen (15) calendar days of the date of the deficiency notice to be considered timely, absent a showing of good cause. If necessary, the Class Member will be sent a second deficiency notice to correct any deficiency concerning a challenge, which will be governed by the same timeliness requirements as the first deficiency notice.

4. **Objections to Settlement; Requests Not to Participate in Settlement.**

Class Members may submit objections to the Settlement or alternatively, Requests Not to Participate in Settlement pursuant to the following procedures:

a. **Objections to Class Settlement.** The Class Notice will provide that Class Members who wish to object to the Class Settlement must submit to the Settlement Administrator, by First Class Mail postmarked no later than 45 days after the Settlement Administrator mails the Class Notices, a written objection to the Settlement setting forth all factual and legal grounds for the objection with supporting documents, if any. If Class Notice is re-mailed to a Class Member pursuant to Section III.D.2.c herein, any written objection of that Class Member to the Settlement shall be submitted to the Settlement Administrator by first class mail, postmarked no later than 45 days after the Settlement Administrator re-mailed the Class Notice to that Class Member. The Settlement Administrator will email Class Counsel and Ahern Rentals' counsel a copy of any objections it receives forthwith. Class Counsel will lodge a copy of any objection with the Court. Only those Class Members who do not submit a Request Not to Participate in Class Settlement may object to the Settlement. A Class Member who does not submit a written objection in the manner and by the deadline specified above will be deemed to have waived any objections and will be foreclosed from making any objections (whether by appeal or otherwise) to the Class Settlement. A Class Member may hire an attorney to appear on his/her behalf at the Final Approval Hearing, at his or her own expense.

b. **Request Not to Participate in Class Settlement.** The Class Notice will provide that Class Members may exclude themselves from the Class Settlement by mailing to the Settlement Administrator a signed Request Not to Participate in Class Settlement, postmarked no later than 45 days after the Settlement Administrator mails the Class Notices. If Class Notice is re-mailed to a Class Member pursuant to Section III.D.2.c herein, any written Request Not to Participate in Class Settlement by that Class Member shall be submitted to the Settlement Administrator by first class mail, postmarked no later than 10 days after the Settlement

Administrator re-mailed the Class Notice to that Class Member. To be effective, any Request Not to Participate in Class Settlement must contain: the Class Member's name, last four digits of his or her social security number, address, telephone number, and dated signature along with a written statement that the Class Member wants to be excluded from the Class Settlement. If a question is raised about the authenticity of a signed Request Not to Participate in Class Settlement, the Settlement Administrator will have the right to demand additional proof of the Class Member's identity. A Non-Participating Class Member will not participate in or be bound by the Class Settlement and the Judgment. A Class Member who does not complete and mail a valid Request Not to Participate in Class Settlement in the manner and by the deadline specified above will automatically become a Participating Class Member and be bound by all terms and conditions of the Settlement, including its release of claims, if the Settlement is approved by the Court, and by the Judgment. Eligible Aggrieved Employees will not have the option to exclude themselves from the PAGA Payment or the corresponding release of PAGA claims.

c. **Report.** Settlement Administrator will provide Class Counsel and Ahern Rentals' Counsel a weekly report with information setting forth the number of Participating Class Members, the number of objections, and the number of Non-Participating Class Members.

5. **Ahern Rentals' Right to Void Agreement.** If Class Members representing 3% or more of the workweeks in the Class Period submit Requests Not to Participate in Settlement, Ahern Rentals may at its option void this Agreement and the Parties then will have no further obligation hereunder, including any obligation by Ahern Rentals to pay the Gross Settlement Amount or any amount that otherwise would have been owed under this Agreement, except that Ahern Rentals then would pay the Settlement Administrator's reasonable fees and expenses incurred as of the date that Ahern Rentals voids this Agreement. Ahern Rentals will notify Class Counsel and the Court whether it is exercising its right to void this Agreement not later than 10 calendar days after the Settlement Administrator notifies the Parties regarding the number of valid Requests Not to Participate in Class Settlement that it has received and the total number of workweeks attributable to those individuals within the Class Period.

6. **No Solicitation of Objection or Request Not to Participate.** Neither the Parties nor their respective counsel will solicit or otherwise encourage directly or indirectly any Class Member to object to the Settlement, appeal from the Judgment, or elect not to participate in the Settlement. This provision does not foreclose Class Counsel from providing information about the Settlement to any inquiring Class Members, including advice related to their participation in the Settlement.

7. **Additional Briefing and Final Approval.**

a. Not later than 16 Court days before the Final Approval Hearing, or another date to be set by the Court, Plaintiff will file a motion for final approval of the Settlement, award of the Class Representative Payment, award of the Class Counsel Fees and Costs Payment, award of the PAGA Payment, and payment of the Settlement Administrator's reasonable fees and expenses. Ahern Rentals will not oppose the motion. As part of the motion, Class Counsel will file the Settlement Administrator's Report provided for in Section III.D.4.c.

b. If the Court does not grant final approval of the Settlement or grants final approval conditioned on any material change to the Settlement (including, but not limited to,

the scope of release to be granted by Participating Class Members), the Parties will meet and confer in good faith in an attempt to address the Court's concerns. If they cannot reach agreement, this Agreement will be null and void and the Parties will have no further obligation hereunder, including any obligation by Ahern Rentals to pay the Gross Settlement Amount or any amount that otherwise would have been owed under this Agreement. If such an event occurs, Plaintiffs and Ahern Rentals shall each pay 50% of the Settlement Administrator's reasonable fees and expenses incurred as of the date that the Agreement becomes void under this paragraph. An award by the Court of a lesser amount than that sought for the Class Representative Payment or the Class Counsel Fees and Costs Payment – or an increase in the amount of the Gross Settlement allocated to the PAGA Payment – will not constitute a material change to the Settlement within the meaning of this paragraph.

c. Upon final approval of the Settlement by the Court at or after the Final Approval Hearing, the Parties will present for the Court's approval and entry the Judgment. After entry of the Judgment, the Court will have continuing jurisdiction over the Action and the Settlement solely for purposes of: (i) enforcing this Agreement; (ii) addressing settlement administration matters; and (iii) addressing such post-Judgment matters as may be appropriate under Court rules or applicable law.

8. **Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms and conditions of this Agreement, Class Representatives and Participating Class Members who did not timely submit an objection to the Settlement, Ahern Rentals, and their respective counsel hereby waive any and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a motion for new trial, a motion under California Code of Civil Procedure section 473, and any extraordinary writ, and the Judgment therefore will become final and nonappealable as to such individuals at the time it is entered. The waiver does not include any waiver of the right to oppose any appeal, appellate proceedings or post-judgment proceedings.

9. **Vacating, Reversal, or Material Modification of Judgment on Appeal or Review.** If, after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), and the reviewing Court's decision is not completely reversed and the Judgment is not fully affirmed on review by a higher Court, then either Class Counsel or Ahern Rentals will have the right to void the Settlement, which the Party must do by giving written notice to the other Party, the reviewing Court, and the Court no later than fourteen calendar days after the reviewing Court's decision vacating, reversing, or materially modifying the Judgment becomes Final. A vacation, reversal, or modification of the Court's award of the Class Representative Enhancement Payments, the Class Counsel Fees and Costs Payment, or the portion of the Gross Settlement attributable to the PAGA Payment will not constitute a vacation, reversal, or material modification of the Judgment within the meaning of this paragraph, provided that Ahern Rentals' total payment obligation under the Settlement does not exceed the Gross Settlement Amount.

10. **Funding of Settlement.** Within ten business days after the Effective Date, Ahern Rentals will provide the Settlement Administrator with a payment equal to forty percent (40%) of the Gross Settlement Amount. The remaining sixty percent (60%) of the Gross

Settlement Amount shall be deposited with the Settlement Administrator over the course of the following year – i.e., 15% three months after the initial payment, 15% six months after the initial payment, 15% nine months after the initial payment and the final 15% one year after the initial payment. All funds provided by Defendant shall be deposited into a Qualified Settlement Fund to be managed by the Settlement Administrator. If after a notice of appeal, a petition for review, or a petition for *certiorari*, or any other motion, petition, or application, the reviewing Court vacates, reverses, or modifies the Judgment such that there is a material modification to the Settlement (including, but not limited to, the scope of release to be granted by Participating Class Members), then all amounts in the Qualified Settlement Fund – including any accrued interest – will be returned to Ahern Rentals.

**11. Timing of Provision of Settlement Shares.** Within twenty calendar days after the receipt of the second payment by Defendant (*i.e.*, once 55% of the Gross Settlement Amount has been paid), the Settlement Administrator will pay 55% of the following payments (the “First Distribution”): Settlement Shares to Participating Class Members, the Class Representative Enhancement Payment to Plaintiffs, the PAGA Payments to the LWDA and Eligible Aggrieved Employees, and the Class Counsel Fees and Costs Payment to Class Counsel. Within twenty calendar days after the receipt of the final payment by Defendant (*i.e.*, once 100% of the Gross Settlement Amount has been paid), the Settlement Administrator will pay the remaining 45% of the foregoing payments (the “Second Distribution”). Any individual who could not be located for the First Distribution or who failed to timely cash the payment sent in the First Distribution will not receive a payment in the Second Distribution. Furthermore, any funds from uncashed Settlement Shares or PAGA Payments to Eligible Aggrieved Employees from the First Distribution will be re-allocated in the Second Distribution to those who did timely cash the payments from the First Distribution.

**12. Uncashed Settlement Share Checks.**

a. A Participating Class Member must cash his or her Settlement Share check within 180 days after it is mailed to him or her. If a check is returned to the Settlement Administrator, then the Settlement Administrator will make all reasonable efforts to re-mail it to the Participating Class Member at his or her correct address. If a Participating Class Member’s Settlement Share check is not cashed within 150 days after its last mailing to the Participating Class Member, the Settlement Administrator will send the Participating Class Member a postcard informing him or her that unless the check is cashed in the next 30 days, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.

b. If any settlement checks are not cashed within 180 days after the First Distribution mailing, the funds from those checks shall be included in the Second Distribution as set forth in Section III. D.11, above. If any settlement checks are not cashed within 180 days after the Second Distribution mailing, the remaining residual shall thereafter be paid to a mutually selected cy pres organization consistent with CCP section 384. If the Parties cannot agree upon a cy pres recipient, each shall submit a proposal to the Court, which shall make the final selection.

**13. Final Report by Settlement Administrator to Court.** Within ten days after final disbursement of all funds from the Gross Settlement Amount or a date specified by the Court, the Settlement Administrator will serve on the Parties and Class Counsel will file with the Court a declaration providing a final report on the disbursements of all funds.

**E. Release of Claims.**

1. **Participating Class Members for Class.** Upon final approval of the Settlement by the Court, and except as to such rights as may be created by this Agreement, Class Representatives and each Participating Class Member fully release and discharge Released Parties from all claims that were raised or could have been raised based on the factual allegations made in the Amended Complaint. This includes but is not limited to all claims for: (1) failure to pay straight time, overtime, or double time wages, failure to pay wages for off-the-clock work, and failure to pay other wages of any kind during employment including wages under the California Labor Code; (2) failure to provide meal periods or pay meal period premiums; (3) failure to authorize and permit rest periods or pay rest period premiums; (4) failure to pay minimum wages; (5) failure to pay final wages due at separation; (6) failure to provide accurate and itemized wage statements; (7) failure to reimburse necessary and reasonable business expenses; (8) violation of Business & Professions Code section 17200 et seq. including, but not limited to, all claims for unfair, unlawful and harmful conduct to class members, the general public and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (9) PAGA claims for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the complaint including, but not limited to, Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1197.1, and 1198 and 2802; (10) penalties of any nature; (11) interest; and (12) attorneys' fees and costs. This release covers the Class Period.

2. **Release of PAGA Claims.** Upon final approval of the Settlement by the Court, and except as to such rights as may be created by this Agreement, the LWDA and each Eligible Aggrieved Employee, including Plaintiffs, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns hereby voluntarily and knowingly is barred from bringing any and all claims seeking civil penalties against any Released Party under the California Labor Code predicated on the PAGA Claims asserted in the Amended Complaint and/or the May 2, 2018 LWDA letter. The release of the PAGA Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid Request for Exclusion. This Release covers the PAGA Period.

3. **Class Counsel.** Upon final approval of the Settlement by the Court, and except as otherwise provided by this Agreement, Class Counsel waives any claim to attorneys' fees and costs against Ahern Rentals arising from or related to the Action. Except with respect to the Class Counsel Fees and Costs Payment approved by the Court to be paid out of the Gross Settlement Amount, Ahern Rentals shall not pay any of Class Counsel's attorneys' fees or costs.

4. **Class Representatives.** In addition to the above release applicable to the Participating Class Members, Class Representatives also generally release any and all known and unknown claims against the Released Parties. This general release includes any and all claims arising from the employment relationship with Ahern Rentals or the termination thereof including, without limitation, other claims for violations of the California Labor Code, claims for discrimination, harassment or retaliation pursuant to Title VII of the Civil Rights Act of 1964, 421 U.S.C. Section 2000 et seq. or the California Fair Employment and Housing Act, Cal. Gov't Code Section 12900 et seq. This general release by the Class Representatives also includes a waiver of the provisions, rights and benefits of section 1542 of the California Civil Code, which states:

A general release does not extend to the claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

The Class Representatives acknowledge that they have read this Agreement in its entirety, including the above language from the California Civil Code, and that they fully understand both this Settlement Agreement and the California Civil Code section. By executing this Agreement, Class Representatives expressly waive any benefits and rights granted pursuant to California Civil Code Section 1542 or any statute, rule, or principle of common law or equity, in any jurisdiction, that is similar, comparable, or equivalent, in whole or in part, to California Civil Code Section 1542. The Class Representatives acknowledge and agree that this knowing and voluntary waiver is an essential and material term of this Agreement, and the Agreement would not have been entered into without such a waiver.

**5. Injunction from Pursuing Released Claims.** As part of the preliminary approval of the Settlement, Class members who do not submit a valid Request Not to Participate as provided herein shall be enjoined from filing, initiating, or continuing to prosecute any actions, claims, complaints, or proceedings in any court, or with the DLSE, or with the California Labor and Workforce Development Agency (“LWDA”), or the United States Department of Labor (“DOL”) or with any other entity regarding the Released Claims, unless otherwise provided by law.

**F. No Effect on Other Benefits.** This Agreement shall not be construed to require Ahern Rentals to make any deduction or payment to any insurance, retirement, 401(k), profit-sharing or any other employee benefit plan or union relating to its payment of monies under this Settlement. Class Representatives and Participating Class Members will be deemed to have waived all such claims, whether known or unknown by them, as part of their release of claims under this Agreement.

**G. Miscellaneous Terms.**

**1. No Admission of Liability or Class Certification for Other Purposes.**

a. Ahern Rentals denies that it has engaged in any unlawful activity, has failed to comply with the law in any respect, has any liability to anyone under the claims asserted in the Action, or that but for the Settlement a class should be certified in the Action. This Agreement is entered into solely for the purpose of compromising disputed claims. Nothing in this Agreement is intended or will be construed as an admission of liability or wrongdoing by Ahern Rentals. Since this is a settlement of bona fide disputed claims, Labor Code Section 206.5 is not applicable.

b. Whether or not the Judgment becomes Final, neither the Settlement, this Agreement, any document, statement, proceeding or conduct related to the Settlement or the Agreement, nor any reports or accounting of those matters, will be: (i) construed as, offered or admitted in evidence for any purpose adverse to Ahern Rentals or any of the Released Parties, including but not limited to evidence of a presumption, concession, indication or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession or damage; or (ii)

disclosed, referred to or offered in evidence in any civil, criminal or administrative action or proceeding, except for purposes of effectuating the Settlement pursuant to this Agreement.

c. This section and all other provisions of this Agreement notwithstanding, any and all provisions of this Agreement may be admitted in evidence and otherwise used in any and all proceedings to enforce any or all terms of this Agreement, or in defense of any claims released or barred by this Agreement.

2. **No Publicity.** Plaintiffs and Class Counsel will not make any public disclosure of this Settlement, except for the filing of pleadings and declarations with the Court in support of preliminary and final approval of the Settlement.

3. **Integrated Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the Settlement, and no oral representations, warranties, covenants, or inducements have been made to any Party concerning this Agreement or the Settlement other than the representations, warranties, covenants, and inducements expressly set forth in this Agreement.

4. **Attorney Authorization.** Class Counsel and Ahern Rentals' Counsel warrant and represent that they are authorized by Plaintiffs and Ahern Rentals, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to affect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of mediator Mark Rudy and/or the Court.

5. **Modification of Agreement.** This Agreement, and any and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties.

6. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties and Participating Class Members.

7. **Applicable Law.** All terms and conditions of this Agreement and its Exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

8. **Cooperation in Drafting.** The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.

9. **Fair Settlement.** The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors.

10. **Headings.** The descriptive heading of any section or paragraph of this Agreement is inserted for reference only and does not constitute a part of this Agreement.

11. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

*To Plaintiffs and the Class:*

Douglas Han  
Shunt Tatavos-Gharajeh  
Phillip Song  
JUSTICE LAW CORPORATION  
751 N. Fair Oaks Avenue, Suite 101  
Pasadena, California 91103

*To Ahern Rentals, Inc.:*

Marlene Muraco  
LITTER MENDELSON P.C.  
50 West San Fernando Street, 7th Floor  
San Jose, California 95113

12. **Execution in Counterparts.** This Agreement may be executed in one or more counterparts by facsimile or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts will be deemed to be one and the same instrument.

12. **Enforcement Actions.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

#### IV. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: 04/19/2022 \_\_\_\_\_

By:  \_\_\_\_\_  
Andrew McEathron

Dated: 04/19/2022 \_\_\_\_\_

By:  \_\_\_\_\_  
Juan Bautista

AHERN RENTALS, INC.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
[INSERT NAME]  
[INSERT TITLE]



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11. **Notice.** All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

*To Plaintiffs and the Class:*

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Phillip Song  
JUSTICE LAW CORPORATION  
751 N. Fair Oaks Avenue, Suite 101  
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*To Ahern Rentals, Inc.:*

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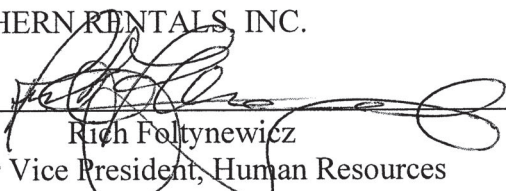
Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Andrew McEathron

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Juan Bautista


Dated: 5-10-2022

AHERN RENTALS, INC.  
By:   
Rich Foltyniewicz  
Senior Vice President, Human Resources

APPROVED AS TO FORM:

JUSTICE LAW CORPORATION

Dated: 4/19/22

By: 

Douglas Han  
Attorneys for Plaintiffs

LITTLER MENDELSON P.C.

Dated: 5/11/22

By: 

Marlene Muraco  
Attorneys for Defendant  
AHERN RENTALS, INC.

**EXHIBIT A**

**CLASS NOTICE FOR MAILING**

**NOTICE OF CLASS AND REPRESENTATIVE ACTION SETTLEMENT**

This is a Court-authorized Notice of Settlement for the Class and Representative Action Titled:  
*McEathron, et. al. v. Ahern Rentals, Inc.*  
Superior Court of California, Alameda County  
Case No. RG17867366

**Please Read This Entire Notice Carefully as it Involves Your Legal Rights. How you choose to exercise those rights is entirely up to you. Ahern Rentals will neither reward nor penalize you in any way based upon whether you decide to participate in the Settlement described below, object to it or exclude yourself from it.**

- A settlement has been reached in a class action lawsuit against Ahern Rentals, Inc. (“Ahern Rentals” or the “Company”), in which Andrew McEathron and Juan Bautista (“Plaintiffs”) allege that Ahern Rentals failed to pay wages owing, including minimum and overtime wages, failed to provide employees meal and rest periods, failed to pay all wages at termination, failed to reimburse expenses, failed to maintain records, and failed to provide accurate wage statements (“Settlement”). Ahern Rentals vigorously disputes Plaintiffs’ allegations, maintains that it is not liable for any of the damages or penalties sought in the action, and that the action cannot be maintained as a class or representative action.

YOU ARE ELIGIBLE TO PARTICIPATE IN THE SETTLEMENT FOR THE CHECKED GROUP(S)

- Class: all current and former hourly-paid or non-exempt Ahern Rentals employees who have worked in California at any time between July 12, 2013 and August 27, 2021.**
- Eligible Aggrieved Employees (PAGA): all current and former hourly-paid or non-exempt Ahern Rentals employees who have worked in California at any time between May 2, 2017 and August 27, 2021.**
- The Court has not ruled on the merits of Plaintiffs’ claims. However, to avoid the additional time and expense of litigation, the Parties have mutually concluded that it is in their best interests and the interests of the Class to settle the action on the terms summarized in this Class Notice. The settlement was reached after mediation and arm’s-length negotiations between the parties.
- The Court has preliminarily approved this settlement, subject to a further hearing to consider any objections by those settlement class members who do not opt out of the settlement. This Notice describes your rights and potential benefits under the settlement.

YOUR RIGHTS AND OPTIONS REGARDING THE SETTLEMENT	
<b>DO NOTHING AND RECEIVE YOUR SHARE</b>	Do nothing. Automatically receive your settlement award. Release the claims referenced herein against Ahern Rentals. See Section 24 below

<b>OF THE SETTLEMENT AWARD</b>	for more information about your settlement award. See Section 25 below for more information about the release.
<b>REQUEST TO BE EXCLUDED FROM THE SETTLEMENT</b>	Ask to be excluded. Receive no payment other than a PAGA Payment if you are an Aggrieved Employee under PAGA. See Section 11 below.
<b>OBJECT TO THE TERMS OF THE SETTLEMENT</b>	Serve an objection that the settlement is unfair or inadequate. See Section 12 below.

### **BASIC INFORMATION**

#### **1. Why did I receive this Notice?**

Ahern Rentals’ employment records show that you are eligible to participate in the settlement as a member of one or more of the Classes described (checked box) on page 1 of this notice. A settlement has been reached in a class action lawsuit against Ahern Rentals that affects your rights. The Superior Court of California, County of Alameda, which is overseeing this class action, ordered that you be sent this Notice.

#### **2. What is this class action about?**

This class action, known as *Andrew McEathron, et al. v. Ahern Rentals, Inc.*, Case No. RG17867366, alleges that that Ahern Rentals failed to pay wages owing, including minimum and overtime wages, failed to provide employees meal and rest periods, failed to pay all wages at termination, failed to reimburse expenses, failed to maintain records, and failed to provide accurate wage statements (“Lawsuit”).

#### **3. What does Ahern Rentals contend?**

Ahern Rentals denies all of the allegations in the lawsuit. Ahern Rentals contends that it has complied with its legal obligations. Ahern Rentals also contends that the lawsuit could not be maintained as a class or representative action if it was litigated.

#### **4. What is a class action and who is involved?**

In a class action lawsuit, one or more people called “Class Representatives” sue on behalf of other people who have similar claims. The Class Representatives in this lawsuit are Andrew McEathron and Juan Bautista. The employees they represent are the “Class” or “Class Members.” The Class Representatives are called the “Plaintiffs.” Ahern Rentals is called the “Defendant.” One Court resolves the issues for everyone in the Class, except for those people who request to exclude themselves from the Class.

## 5. Why is this lawsuit being settled?

After settlement negotiations and the exchange of information and documents, the Class Representatives and Ahern Rentals have agreed to settle this case. The settlement represents a compromise of disputed claims and is not an admission that Ahern Rentals violated the law. The Class Representatives and their attorneys believe the settlement is in the best interests of the Class given the risks and expense.

## 6. Has the Court decided who is right?

No. The Court has not decided anything yet, only that you should get a copy of this Notice so that you can review the settlement and determine whether you want to participate in the settlement, object to it, or exclude yourself from the settlement.

## 7. Who is the Settlement Administrator?

The Settlement Administrator is a third party appointed by the Court to send this Notice, process and issue settlement checks, and otherwise administer the settlement. You may contact the Settlement Administrator to provide updated contact information, make corrections regarding your employment information at Ahern Rentals, or ask questions regarding the processing of settlement awards. You may contact the Settlement Administrator at:

Phoenix Class Action Settlement Administrators  
Attn: McEathron v. Ahern Rentals, Inc. Class Settlement  
[INSERT ADDRESS and TELEPHONE NUMBER]

## YOUR RIGHTS AND OPTIONS

## 8. Am I part of this Class?

In preliminarily approving the settlement, the Court has defined the groups entitled to participate:

- Class: all current and former non-exempt Ahern Rentals employees who have worked in California at any time between July 12, 2013 and August 27, 2021 (the “Class Period”).
- Eligible Aggrieved Employees (PAGA): all current and former non-exempt Ahern Rentals employees who have worked in California at any time between May 2, 2017 and August 27, 2021 (the “PAGA Period”).

Records indicate that you are a Class member [and an Aggrieved Employee]. (If you do not want to participate in the Class Settlement, read Section 11 below).

## 9. What does the settlement provide?

The parties have agreed to create a settlement fund to be divided among all Class Members, as discussed below. In return, Class Members who do not timely request to be excluded from the Class will release claims and they might have against Ahern Rentals that were or could have been raised based on the allegations in the lawsuit. For more information about your estimated payment out of the settlement fund and the way it was calculated, see Sections 24 below. For more information about the claims being released as part of the settlement, see Section 25 below.

## 10. How do I participate in the settlement?

**You do not need to do anything to participate.** You will automatically receive a settlement payment and release claims against Ahern Rentals unless you request to be excluded from the settlement.

## 11. How do I request to be excluded from the settlement?

If you wish to be excluded from the Class settlement, you must write the Settlement Administrator at the address specified above in Section 7 and request to be excluded. Your request must include: (1) your name, (2) the last four digits of your social security number, (3) your address, (4) your telephone number, (5) your written statement that you request to be excluded from the Class Settlement, and (6) your dated signature. **To be effective, your request must be postmarked no later than <<date>>.**

If you do not complete and timely mail a valid request to be excluded from the settlement, you will be bound by all terms and conditions of the settlement, including its release of claims. If you do submit a timely and valid request to be excluded, you will not receive any money from the Class settlement and will not be bound by its release of claims.

If you are an Aggrieved Employee (PAGA), you cannot exclude yourself from this portion of the Settlement. Even if you exclude yourself from the Class you will be subject to the PAGA release and be paid your portion of the PAGA Payment.

## 12. May I object to the settlement?

If you believe the Class settlement is unfair or inadequate, you may object, personally or through an attorney, at your own expense, or in writing by mailing a copy of your objection to the Settlement Administrator at the address set forth above in Section 7. You cannot object to the settlement **and** exclude yourself from the settlement.

Your written objection must include: (1) your name, (2) all factual and legal reasons why you object to the settlement, (3) a list of any documents or witnesses you contend support your objection, and (4) your dated signature. **To be effective, your objection must be postmarked no later than <<date>>. Do not telephone the Court or Ahern Rentals' counsel.**

You may also object in person by appearing at the final approval hearing personally or through an attorney.

If the Court rejects your objection, you will be bound by the terms of the settlement and you will not be able to exclude yourself from the settlement.

### **13. When is the final approval hearing?**

A final approval hearing on the fairness and adequacy of the proposed settlement will be held on \_\_\_\_\_, 2022 at \_\_\_:00 \_\_.m. in Department \_\_\_\_\_ of the Superior Court of California for the County of Alameda, located at 1221 Oak St Oakland, California 94612. The final approval hearing may be continued without further notice. If the settlement is not approved, the lawsuit will continue.

### **14. When will I receive my payment?**

Payments will be sent approximately after the Court gives the settlement its final approval, unless an appeal is filed. If an appeal is filed that takes more than a year to resolve, payments will be delayed until all appeals are finally resolved in favor of the settlement. In order to ensure you receive any payment(s) to which you are entitled, it is important that you advise the Settlement Administrator if and when your contact information changes.

## **THE LAWYERS REPRESENTING YOU**

### **15. Do I have a lawyer in this case?**

The Court has determined that Douglas Han, Shunt Tatavos-Gharajeh, and Phillip Song of Justice Law Corporation are qualified to represent you and all Class Members. Lawyers for this firm are called “Class Counsel.” They are experienced in handling similar cases. Their contact information is at the end of this Notice.

### **16. May I get my own lawyer?**

You do not need to hire your own lawyer because Class Counsel is working on your behalf. Nonetheless, you may hire your own lawyer if you wish. If you hire your own lawyer, however, you are responsible for paying that lawyer.

### **17. How will Class Counsel be paid?**

You do not have to pay Class Counsel’s fees and costs. The fees and costs that the Court approves will be paid by Ahern Rentals. More information about the attorneys’ fees and costs is contained in Section 20 below.



## TERMS OF THE SETTLEMENT

### **18. What has Ahern Rentals agreed to do?**

Ahern Rentals has agreed to pay a total of \$1,750,000 (the “Gross Settlement Amount”), which includes the payments to the Class Members, the Class Representative Enhancement Payment to be paid to the Class Representatives, Class Counsel’s Attorney’s Fees and Costs, the PAGA Payment, and the Settlement Administrator’s fees and costs incurred in administering the Settlement. The “Net Settlement Fund” that will be distributed to the Class Members is the amount of the Gross Settlement Amount, minus the Class Representative Payment, the Class Counsel’s Fees and Costs Payment, the PAGA Payment, and the Settlement Administrator’s Payment.

### **19. What is a “Class Representative Enhancement Payment”?**

In class actions such as this one, a Court may provide the class representative a “Class Representative Enhancement Payment” in recognition of the time, effort, and risks the class representative took to prosecute the class action. In the present case, the Settlement provides that the Plaintiffs will request the Court approve a Class Representative Enhancement Payment to Andrew McEathron and Juan Bautista of \$10,000 each.

### **20. How much will the attorneys get?**

Class Counsel will ask the Court to award them \$612,500 or 35% of the Gross Settlement Amount to pay for their attorneys’ fees incurred in connection with their work in this case, together with reasonable costs incurred (not to exceed \$55,000). Class Members are not personally liable for any fees and costs.

### **21. How much will it cost to administer the Settlement?**

It is estimated that it will cost approximately \$20,000 to fully administer the settlement.

### **22. How will the Settlement Fund be distributed to Class Members?**

The Net Settlement Fund will be distributed to Class Members as follows:

- The Net Settlement Fund will be distributed to all Participating Class Members “pro rata” in proportion to the number of workweeks each Class Member worked in California as a non-exempt employee of Ahern Rentals from July 12, 2013 through August 27, 2021 in relation to the total number of work weeks of all Class Members during that period.

The PAGA Payment will be distributed to the Eligible Aggrieved Employees as follows:

- The Eligible Aggrieved Employees’ portion of the PAGA Payment (\$25,000) will be distributed to all Eligible Aggrieved Employees “pro rata” in proportion to the number of workweeks each Eligible Aggrieved Employee worked in California as a non-exempt employee of Ahern Rentals from May 2, 2017 through August 27, 2021 in relation to the total number of work weeks of all Eligible Aggrieved Employees during that period.

If any settlement checks are not cashed within 180 calendar days after mailing, that money will be paid to a non-profit organization that is agreed upon by the Parties and approved by the Court.

**23. Will I have to pay taxes on my award?**

One-third (33.33%) of your award from the Settlement will be considered to be wages and will be reported on IRS Form W-2 with all appropriate taxes withheld. The rest of your award will be reported on IRS Form 1099 as payment of interest and penalties.

100% of any PAGA Payment will be treated as penalties and will be reported on IRS Form 1099 if it is greater than \$600.

You should consult a tax professional for more information about your own specific situation.

**24. How will my share of the settlement be calculated?**

Your share of the settlement will be calculated pro-rata based on the number of workweeks you worked between July 12, 2013 and August 27, 2021. See Section 22 above.

According to Ahern Rentals’ records:

- You worked \_\_\_ workweeks as a non-exempt employee in California between July 12, 2013 and August 27, 2021. Your estimated settlement is \_\_\_\_\_.
- You worked \_\_\_ workweeks as a non-exempt employee in California between May 2, 2017 and August 27, 2021. Your estimated settlement is \_\_\_\_\_.

If the information above is incorrect and you wish to correct it, you must submit a signed, written statement explaining why you dispute this information. Attach copies (not originals) of any relevant documents supporting your dispute. You must mail the signed and completed statement to the Settlement Administrator at the address set forth above in Section 7 no later than <<date>>. **If your signed and completed statement is not postmarked by this date, you will not be able to dispute the calculation of your settlement share(s).** After consultation with you, Class Counsel, and Ahern Rentals, the Settlement Administrator will make a final determination that you will not be able to appeal.

## RELEASE OF CLAIMS

### 25. What claims are being released as part of the settlement?

Upon final approval of the settlement by the Court, and except as to such rights as may be created by the Settlement Agreement, Plaintiffs and each Participating Class Member fully release and discharge (i) Defendant Ahern Rentals; (ii) each of Defendant's respective past, present and future parents, subsidiaries, and affiliates including, without limitation, any corporation, limited liability company, partnership, trust, foundation, and non-profit entity which controls, is controlled by, or is under common control with Ahern Rentals; (iii) the past, present and future shareholders, directors, officers, agents, employees, attorneys, insurers, members, partners, managers, contractors, agents, consultants, representatives, administrators, fiduciaries, benefit plans, transferees, predecessors, successors, and assigns of any of the foregoing; and (iv) any individual or entity which could be jointly liable with any of the foregoing.

The claims to be released by the Settlement Class ("the Released Claims") include all claims that were raised or could have been raised based on the factual allegations made in the First Amended Complaint. This includes but is not limited to all claims for: (1) failure to pay straight time, overtime, or double time wages, failure to pay wages for off-the-clock work, and failure to pay other wages of any kind during employment including wages under the California Labor Code; (2) failure to provide meal periods or pay meal period premiums; (3) failure to authorize and permit rest periods or pay rest period premiums; (4) failure to pay minimum wages; (5) failure to pay final wages due at separation; (6) failure to provide accurate and itemized wage statements; (7) failure to reimburse necessary and reasonable business expenses; (8) violation of Business & Professions Code section 17200 et seq. including, but not limited to, all claims for unfair, unlawful and harmful conduct to class members, the general public and Defendants' competitors and claims of unlawfully gaining an unfair advantage over other businesses; (9) PAGA claims for civil penalties due to any Labor Code violations by Defendants arising out of or related to events alleged in the complaint including, but not limited to, Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1197.1, and 1198 and 2802; (10) penalties of any nature; (11) interest; and (12) attorneys' fees and costs. This release covers the Class Period.

Release of PAGA Claims. Upon final approval of the Settlement by the Court, and except as to such rights as may be created by this Agreement, the LWDA and each Eligible Aggrieved Employee, including Plaintiffs, individually and on behalf of their heirs, executors, administrators, representatives, attorneys, successors and assigns hereby voluntarily and knowingly is barred from bringing any and all claims seeking civil penalties against any Released Party under the California Labor Code predicated on the PAGA Claims asserted in Plaintiffs' First Amended Complaint and/or the May 2, 2018 LWDA letter. The release of the PAGA Claims is effective, regardless of whether the Eligible Aggrieved Employee submits a timely and valid Request for Exclusion. This release covers the PAGA Period.

## FINAL SETTLEMENT APPROVAL HEARING

### 26. When will the Court consider whether to finally approve the settlement?

The Court will hold a hearing in Department \_\_\_ of the Superior Court of California for the County of Alameda, located at located at 1221 Oak St Oakland, California 94612, on \_\_\_\_\_, 2022 at \_:00 \_m., to decide whether to finally approve the Settlement. At that time, the Court will also decide whether to approve Class Counsel's request for attorneys' fees and reimbursement of costs, the Class Representative Enhancement Payment, the PAGA payment, and the Settlement Administrator's payment.

**It is not necessary for you to appear at this hearing.** You may appear and speak at the hearing if you want to do so. You may also hire an attorney to appear at the hearing. You will be solely responsible for the fees and costs of your own attorney.

The Final Settlement Approval hearing may be postponed without further notice to the Class. If the settlement is not approved, the lawsuit will continue.

## FURTHER INFORMATION

### 27. How do I get more information?

The lawsuit was filed in the Superior Court of California, Alameda County (*McEathron, et. al. v. Ahern Rentals Inc.*, Alameda County Superior Court Case No. RG17867366).

This Notice only summarizes the proposed Settlement. For the precise terms and conditions of the Settlement, you can review the entire settlement agreement and other documents related to the settlement by visiting the Settlement Administrator's website at [INSERT]. If you want more information, you can also contact Class Counsel:

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Shunt Tatavos-Gharajeh  
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Email: info@justicelawcorp.com

Finally, for a small fee, all of the pleadings and other records in this litigation, including the Settlement Agreement, may be examined online on the Alameda County Superior Court's website, known as 'eCourt,' at <http://eportal.alameda.courts.ca.gov/>. After arriving at the website, click the 'Searches' link, then click the 'Case Number Search' link, then enter RG17867366 as the case number, enter the answer to the simple math question and click 'SEARCH.' Images of every

document filed in the case may be viewed (for a charge) through the ‘Summary’ tab once you have created an account with the service. You can create a public user account at <https://eportal.alameda.courts.ca.gov/?q=user/register>.

You may also view images of every document filed in the case free of charge by using one of the computer terminal kiosks available at each court location that has a facility for civil filings.

**PLEASE DO NOT TELEPHONE OR WRITE THE COURT, THE OFFICE OF THE CLERK, AHERN RENTALS, INC. OR COUNSEL FOR AHERN RENTALS, INC. FOR INFORMATION REGARDING THIS SETTLEMENT**