

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SUSAN DOHERTY and DWIGHT SIMONSON,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

THE HERTZ CORPORATION,
AMERICAN TRAFFIC SOLUTIONS, INC.,
and PLATEPASS LLC

Defendants.

Civil Action No. 1:10-cv-00359-NLH-KMW

PRELIMINARY APPROVAL ORDER

This matter having been opened to the Court on the unopposed motion for Preliminary Approval of a proposed Class Action Settlement by Plaintiffs Susan Doherty and Dwight Simonson (together "Plaintiffs") acting through their counsel, Cohen, Placitella & Roth, P.C., Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., and Emanuel & Dunn, PLLC (the Cohen, Farmer, and Emanuel firms, along with counsel of record from those firms, together "Class Counsel"). Plaintiffs, acting through Class Counsel, and American Traffic Solutions and PlatePass LLC (collectively "ATS"), The Hertz Corporation ("Hertz") (Hertz and ATS together herein referred to as "Defendants") (collectively, the "Parties") have entered into a Settlement Agreement dated May 29, 2013 (the "Settlement" or "Settlement Agreement"), to settle the above-captioned lawsuit ("Action"). The Parties' Settlement Agreement sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of the Action. All capitalized terms and phrases used in this Preliminary Approval Order that are otherwise not defined shall have the same meaning as in the Parties' Settlement Agreement.

The Court finds that it has jurisdiction over this action and each of the parties under 28 U.S.C. § 1332, as amended by the Class Action Fairness Act, and that venue is proper in this district.

The Court has carefully considered the Motion for Preliminary Approval and supporting Memorandum of Law, the Settlement Agreement (including all exhibits), and the record in this case, and is otherwise advised in the premises, and for good cause shown finds that the Settlement Agreement is sufficiently fair, reasonable, and adequate to allow dissemination of notice of the proposed class settlement to Class Members and to hold a Final Approval Hearing. The Court further finds that the Settlement Agreement was entered into at arm's length by experienced counsel after extensive discovery and after mediation negotiations over the period of several months. Accordingly, the Court directs that notice be sent to Class Members in accordance with the Settlement Agreement and this Order and further schedules a Final Approval Hearing to make a final determination as to whether the settlement is fair, reasonable, and adequate.

THEREFORE, IT IS on this 15th day of July, 2013 **HEREBY**

ORDERED as follows that:

1. **Class.** The Court finds on a preliminary basis and for settlement purposes only, that all requirements of Fed. R. Civ. P 23(a) and (b)(3) have been satisfied. The Court conditionally certifies a settlement class (hereinafter, the "Class") as follows:

all natural persons in the United States who: (a) rented a car from Hertz with the first day of the rental between July 1, 2006 and March 31, 2010; (b) used PlatePass during that rental; and (c) paid PlatePass-related charges incurred during that rental, but not including those who file a Request for Exclusion, governmental entities, Defendants, their parents, subsidiaries, affiliates, directors, officers, attorneys, and members of their immediate families and the Court and person within the third degree of relationship to the Court.

2. **Conditional Certification.** The Court finds, for purposes of preliminary approval and for settlement purposes only, that (a) Pursuant to Fed. R. Civ. P. 23(a) (1), that Class Members are so numerous as to make joinder of all members impracticable; (b) Pursuant to Fed. R. Civ. P. 23(a)(2) and 23(c)(1)(B) there are questions of law or fact common to members of the proposed Class; (c) Pursuant to Fed. R. Civ. P. 23 (a)(3) the claims of the Plaintiffs are typical of the claims of the Class Members they seek to represent; (d) Pursuant to Fed. R. Civ. P. 23(a)(4), Plaintiffs and Class Counsel will fairly and adequately protect the interests of all members of the Class Members they seek to represent and the interests of Plaintiffs are not antagonistic to those of the Class. Plaintiffs are represented by counsel who are experienced and competent in the prosecution of complex class action litigation; (e) Pursuant to Fed. R. Civ. P. 23(b)(3) questions of law or fact common to the proposed settlement Class Members predominate over any questions affecting only individual members; and (f) Pursuant to Fed. R. Civ. P. 23(b)(3), a class action is superior to other available methods for the fair and efficient adjudication of the Action. Certification is conditional for settlement purposes only, and in the event the Settlement Agreement does not become effective or is terminated in accordance with the provisions of the Settlement Agreement, the Class defined in this Preliminary Approval Order will be vacated and the Parties have reserved all rights to seek or oppose certification.

3. The Court finds on a preliminary basis that the Settlement Agreement is fair, reasonable, and adequate, warranting a Final Approval Hearing and issuance of notice to the Class in the manner and forms set forth in the Settlement Agreement, including notice via US first class mail, via publication, via a press release, and via a settlement website. Further, to the extent permitted by law, the Common Fund established pursuant to the Settlement Agreement may be treated as a qualified fund pursuant to applicable Treasury Regulations.

4. **Class Representatives.** The Court preliminarily appoints Plaintiffs Dwight Simonson and Susan Doherty as representatives for the Class. The Court preliminarily finds that Christopher M. Placitella and Michael Coren and the law firm of Cohen Placitella & Roth, P.C., and Steven R. Jaffe and Mark Fistos and the law firm of Famer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., and Stephen A. Dunn and the law firm of Emanuel & Dunn, PLLC, fairly and adequately represent the interests of Plaintiffs and the Class and hereby appoints them as Class Counsel to represent the Class pursuant to Fed. R. Civ. P. 23(g).

5. **Settlement Administrator.** The Court appoints Jeff Dahl of Dahl Administration, Minneapolis, MN as Settlement Administrator to implement, perform, and oversee notice of the Settlement Agreement to Class Members; to process and pay claims made by Claimants; and to otherwise carry out the settlement administration responsibilities under the Settlement Agreement, including but not limited to:

- a. Formatting the Notice, Publication Notice, and Summary Notice;
- b. Mailing or arranging for the mailing of the Summary Notice;
- c. Establishing and maintaining the settlement website;
- d. Publishing the Publication Notice (i) two times on different weekdays (Monday-Thursday) in the USA Today during the Claims Period in a manner that allows for the Publication Notice to be shown in full and, in no event, using less than one-eighth of a page and (ii) on the Settlement Website;
- e. Handling returned mail sent to Class Members that was not delivered and making any additional mailings required under the terms of the Settlement Agreement;
- f. Responding, as necessary, to inquiries from Class Members, potential Class Members, and Claimants telephonically, via the Internet, and US mail;

- g. Maintaining accurate records and information on those Class Members who submit claims; are paid refunds; and dispute their refund amounts;
 - h. Updating addresses of Class Members;
 - i. Preparing a declaration and submitting it to the Court before the Final Approval Hearing that incorporates a list of all persons who timely submitted Requests for Exclusion from the Settlement—the Opt-Out List—and details the Class Notice program that the Settlement Administrator implemented under the Settlement Agreement;
 - j. Promptly responding to Class Counsel’s or Defense Counsel’s requests for information and providing them information and documents, and communicating with Class Counsel and Defense Counsel regarding the same;
 - k. Processing Claim Forms submitted electronically and by mail;
 - l. Evaluating Claim Forms submitted by prospective Claimants to determine their eligibility for refund payments from the Common Fund;
 - m. Making and accounting for payments to Claimants from the Common Fund;
 - n. Collecting and organizing Class Member-related data provided under the Settlement Agreement by one or more of the Defendants;
 - o. As necessary, preparing and filing tax returns and related forms and paying from the Common Fund any taxes due for income earned by the Common Fund; and
 - p. Providing any other task necessary and proper to effectuate the payment of Claimants pursuant to the terms of the Settlement Agreement and administering this Settlement.
6. **Notice Plan.** The Court finds that the form, content, and methods of dissemination

of the proposed Notice, Summary Notice, Press Release and Publication Notice to be provided to Class Members: (a) is the best practicable notice; (b) is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Action and of their right to object or to exclude themselves from the Settlement; (c) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (d) meets all applicable requirements of Rule 23, *Fed. R. Civ. P.*, and due process. The Court therefore approves the Notice, Publication Notice, Press Release, and Summary Notice and orders that they be disseminated in the manner called for in the Settlement Agreement but also directs the Parties to carry out their subsequent agreement to undertake one additional Publication Notice -- so that the Publication Notice shall be published twice during the course of the Claims Period in the USA Today, with the timing to be determined by the Parties, with the cost to be borne by Defendants, and all other aspects of the publication to follow the terms of Section 3.4 of the Settlement Agreement. The Parties and Settlement Administrator are directed to forthwith implement the notice program.

7. **Requests for Exclusion.** A Request for Exclusion (or “opt-out”) must (a) be signed by the individual submitting the request; (b) be submitted to and received by the Settlement Administrator no later than 21 days prior to the Final Approval Hearing; (c) contain the submitter’s name and address and signature; and (d) express that he or she does not want to be a Class Member; and (e) otherwise comply with the instructions set forth in the Notice. So-called “mass” or “class” opt-outs shall not be allowed. Requests for Exclusion must be exercised individually, not as or on behalf of a group, class, or subclass, except that an authorized legal representative of an individual acting on behalf of the individual may submit a Request for Exclusion. Any individual who timely requests exclusion from the Class and in accordance with the Settlement Agreement shall not be bound by any orders or judgments entered in this Action and shall not be entitled to

receive any benefits provided by the settlement in the event it is finally approved by the Court.

8. Any Class Member who does not submit a timely, written Request for Exclusion from the settlement will be bound by all proceedings, orders, and judgments in the Action, even if the Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Class Released Claims, and even if such Class Member never received actual notice of the Action or this proposed settlement. Any individual that files a Request for Exclusion will have no right or opportunity to object to the Settlement.

9. **Objections.** Each Class Member and any governmental entity that wishes to object to the fairness, reasonableness, or adequacy of the Agreement or any term or aspect of the proposed settlement must file with the Court and serve on Class Counsel and Defendants' Counsel no later than 21 days prior to the Final Approval Hearing a statement of the objection. The statement of objection must set forth the specific legal and factual reasons, if any, for each objection, including any support the Class Member or the governmental entity wishes to bring to the Court's attention and all evidence the Class Member or governmental entity wishes to introduce in support of his or her objection, or be forever barred from objection, as follows: (a) a caption or heading that refers to the Consolidated Action by case name; (b) a statement whether the objecting settlement Class Member or governmental entity intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number; (c) a statement of the specific legal and factual basis for each objection; and (d) a description of any and all evidence the objecting Class Member or governmental entity may offer at the Final Approval Hearing, including but not limited to, the names, addresses, and expected testimony of any witnesses. All objectors shall make themselves available to be deposed by Class Counsel and Defendants' Counsel in the County of

the objector's residence within seven days of service of his or her timely written objection.

10. Any attorney hired by a Class Member or governmental entity for the purpose of objecting to any term or aspect of the Settlement Agreement must file with the Clerk of the Court and serve on Class Counsel and Defendants' Counsel a notice of appearance no later than 21 days prior to the Final Approval Hearing, or as the Court may otherwise direct. Any objector who does not properly and timely object, will not be permitted to appear at the Final Approval Hearing or to object.

11. The right to object to the settlement must be exercised individually by a Class Member or his or her attorney, and not as a member of a group, class, or subclass, except that objections may be submitted by a Class Member's authorized legal representative acting for an individual Class Member. No Class Member represented by an attorney shall be deemed to have objected to the Settlement Agreement unless an objection signed by that Class Member also is filed with the Court and served upon Class Counsel and counsel for all the Defendants as required herein.

12. **No Admission.** Neither this Order nor the Settlement Agreement nor any other settlement-related document nor anything contained herein or therein or contemplated hereby or thereby nor any proceedings undertaken in accordance with the terms set forth in the Settlement Agreement or herein or in any other settlement-related document, shall constitute, be construed as or be deemed to be evidence of, or an admission or concession by the Defendants as to the validity of any claim that has been or could have been asserted against any or all of them or as to any liability of any or all of them as to any matter set forth in this Order, or as to the propriety of class certification for any purposes other than for purposes of the current proposed settlement.

13. **Disapproval.** The Court finds that preliminary certification and approval, and all

actions associated with them, are undertaken on the condition that they shall be vacated if the Settlement Agreement is terminated or disapproved in whole or in material part by the Court, or any appellate court and/or other court of review, or if any of the parties invokes the right to terminate the Settlement Agreement as provided by its terms, in which case the Settlement Agreement and the fact that it was entered into shall not be offered, received, or construed as evidence for any purpose, including but not limited to, an admission by any party of liability or non-liability or of any misrepresentation or omission in any statement or written document approved or made by Defendants, or of the certifiability or non-certifiability of any class.

Moreover, if the Settlement Agreement is terminated or disapproved in whole or in material part by the Court, or any appellate court and/or other court of review, or if any of the Parties invokes the right to withdraw from the settlement as provided in the Settlement Agreement, all proceedings that have taken place with regard to the Settlement Agreement shall be without prejudice to the rights and contentions of the Parties; all orders entered in connection with the Settlement, including the certification of a settlement Class shall be vacated and without prejudice to any party's position on the issue of class certification or any other issue, in this Action or any other action; and the Parties and the Action shall be restored to their status existing October 1, 2012. In such event the Court shall reestablish a schedule for further proceedings with the Parties.

14. **Claim Form.** The Court approves the Claim Form as shown at Exhibit A to the Settlement Agreement for distribution to Class Members in accordance with the Settlement Agreement. The size, format, and/or layout of the Claim Form may be modified by mutual agreement of the Parties without the need for Court approval, provided that any such modifications are consistent with the general intent of the Settlement Agreement.

15. All proceedings in the Action are stayed until further order of the Court except as

may be necessary to implement the settlement; to comply with this Preliminary Approval Order; or to comply with the terms of the Settlement Agreement. Further, all Class Members, and anyone who acts or purports to act on their behalf, are hereby enjoined until further order of the Court from instituting, continuing, commencing or prosecuting any action against any of the Defendants which asserts claims that are to be settled in this Settlement Agreement, including, without limiting the generality of the foregoing, claims in the Soper/Avis-Budget Action relating to Hertz rental transactions.

16. **Final Approval.** A Final Approval Hearing is hereby scheduled before this Court on October 15, 2013, at 11:00 A.M. for the following purposes: (a) to consider whether to finally certify the Class; (b) to determine finally whether the Settlement Agreement is fair, reasonable, and adequate; (c) to consider any objections to the Settlement Agreement; (d) to determine whether the Final Approval Order as provided for under the terms of the Settlement Agreement should be entered; (e) to consider any application(s) which Class Counsel may file for an award of attorneys' fees and costs and for an award of Class Representative service fees; and, (f) to rule upon such other matters as the Court may deem appropriate. The Court may continue or adjourn the Final Approval Hearing from time to time, by oral announcement at the hearing or at any adjournment thereof, without further notice to Class Members. At the Final Approval Hearing, Class Members may be heard orally in support of, or, if they have timely submitted written objections, in opposition to the settlement. If a Class Member hires an attorney to represent him or her at the Final Approval Hearing, he or she must do so at his or her own expense. This hearing will be held at the Mitchell H. Cohen Building & U.S. Courthouse, 4th & Cooper Streets, Camden, NJ 08101, in Courtroom 3A.

17. The Parties' submissions in support of final approval of the settlement shall be filed

on or before Oct. 4, 2013. Class Counsel shall file their application for award of attorneys' fees and costs and for an award of Class Representative service fees on or before September 9, 2013.

A copy of the application(s) shall be posted on the settlement website.

18. The Court may, for good cause, extend, but not reduce in time, any of the deadlines set forth in this Preliminary Approval Order without further notice to Class Members.

BY THE COURT



Hon. Noel L. Hillman
United States District Judge