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

EDWARD SCHWARTZ, On Behalf of
Himself and All Others Similarly Situated,

Plaintiff,

v.

AVIS RENT A CAR SYSTEM, LLC and
AVIS BUDGET GROUP, INC.,

Defendants.

11 Civ. 4052 (JLL) (JAD)

DANIEL KLEIN and STEPHANIE
KLEIN, on behalf of themselves and
others similarly situated,

Plaintiffs,

v.

BUDGET RENT A CAR SYSTEM, INC.
and AVIS BUDGET GROUP, INC.,

Defendants.

12 Civ. 7300 (JLL) (JAD)

**ORDER GRANTING MOTION FOR PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT AND DIRECTING DISSEMINATION OF CLASS NOTICE**

THIS MATTER having been brought before the Court upon the motion of Lite DePalma Greenberg, LLC, counsel for Plaintiff Edward Schwartz (“Schwartz”) and the class in *Schwartz v. Avis Rent A Car Sys., LLC*, 11 Civ. 4032 (D.N.J.) (the “Schwartz Action”), and counsel for

Plaintiffs Daniel Klein and Stephanie Klein (together, the “Kleins” and collectively with Schwartz, “Plaintiffs”) in *Klein v. Budget Rent A Car Sys., Inc.*, 12 Civ. 7300 (D.N.J.) (the “Klein Action”), for an order pursuant to Federal Rule of Civil Procedure 23(e), seeking preliminary approval of a class action settlement, and directing the dissemination of class notice (the “Motion”); and

WHEREAS Defendants Avis Budget Group, Inc., Avis Rent A Car System, LLC (“Avis”) and Budget Rent A Car System, Inc. (“Budget”) (collectively, “Avis Budget”) sought the same relief;

WHEREAS the Court reviewed the submissions of the parties, ~~held a hearing on~~ *and decides this matter on the unopposed papers pursuant to Federal Rule of Civil Procedure 7*, 2016 (the “Preliminary Approval Hearing”), and found that *as requested by Plaintiffs (ECF No. 60 Oct 7)*

the parties are entitled to the relief they seek; and

The Court having considered the pleadings and other papers on file, the argument of counsel, and for good cause shown;

IT IS on this 16th day of February 2016, ORDERED that the Motion is GRANTED, subject to the following terms and conditions:

1. The proposed Class Settlement Agreement and Release dated January 22, 2016 (the “Settlement Agreement”), submitted with the Motion, is preliminarily approved as being within the range of potential final approval.

2. Based upon the submissions of the parties, and for purposes of this settlement only, the Court conditionally makes the following findings:

a. The members of the Settlement Classes (as defined in the Settlement Agreement) are so numerous as to make joinder impracticable.

b. There are questions of law and fact common to the Settlement Classes, and such questions predominate over any questions affecting only individual Settlement Class Members for purposes of the Settlement.

c. Plaintiffs' claims and the defenses to such claims are typical of the claims of the Settlement Class Members and the defenses to such claims for purposes of the Settlement.

d. Plaintiffs and their counsel can fairly and adequately protect, and have fairly and adequately protected, the interests of the Settlement Class Members in this action with respect to the Settlement.

e. The proposed class action Settlement is superior to all other available methods for fairly and efficiently resolving these actions.

f. To effectuate the Settlement, the class definition provided in this Court's August 28, 2014 Order (DE 158) in the *Schwartz* Action is hereby modified to consist of all Persons who, at any time from July 14, 2005 through June 14, 2012, were members of the Avis Preferred Service Program, rented a vehicle in the United States through www.avis.com, and paid an Frequent Traveler Program Surcharge (an "FTP Surcharge") for receiving frequent-flyer miles from any of Avis's travel partners, and to exclude (i) the Released Parties (as defined in the Settlement Agreement), and their respective officers, directors, employees, and counsel, (ii) Plaintiffs' counsel, and (iii) any federal judges or members of their families within the first degree of consanguinity. Schwartz shall remain as the representative of this class.

g. For settlement purposes only, the Court preliminarily approves the Kleins as representatives of the Budget Settlement Class (as defined in the Settlement Agreement), and conditionally certifies the Budget Settlement Class to consist of all Persons who, at any time from November 27, 2006 through February 17, 2013, were members of the Budget Rapid Rez

With Fastbreak Program, rented a vehicle in the United States through www.budget.com, and paid an FTP Surcharge for receiving frequent-flyer miles from any of Budget's travel partners, and to exclude (i) the Released Parties, and their respective officers, directors, employees, and counsel, (ii) Plaintiffs' counsel, and (iii) any federal judges or members of their families within the first degree of consanguinity.

3. The *Klein* Action is preliminarily certified as a class action for settlement purposes only, pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3). If the Court does not finally approve the settlement, Avis Budget retains the right to assert that the *Klein* Action may not be certified as a class action for liability purposes, and no party shall rely on this preliminary approval as support for the certification of a class in the *Klein* Action or any other action.

4. Lite DePalma Greenberg, LLC and Karon LLC are appointed as Class Counsel in the *Klein* Action, and will jointly serve in the role of Plaintiffs' Lead Counsel in both the *Schwartz* Action and the *Klein* Action.

5. A final hearing (the "Fairness Hearing") shall be held before this Court on May 25, 2016 at 10:00 a.m./p.m., in Courtroom 5D of the United States District Court for the District of New Jersey, Martin Luther King Building & U.S. Courthouse, 50 Walnut Street, Newark, New Jersey to determine whether (a) the *Klein* Action meets each of the prerequisites for class certification set forth in Federal Rule of Civil Procedure 23(a), and may properly be maintained as a class action on behalf of the Budget Settlement Class under Federal Rule of Civil Procedure 23(b)(3); (b) the Settlement Agreement should receive final approval as fair, reasonable, adequate, and in the best interests of the Settlement Classes; (c) orders granting final approval of the Settlement Agreement, entering final judgment and dismissing the Third Amended Complaint in the *Schwartz* Action and the First Amended

Complaint in the *Klein* Action with prejudice, as provided in the Settlement Agreement, should be entered; and (d) the applications of Plaintiffs' counsel for the payment of attorneys' fees and expenses for, and incentive awards to, Plaintiffs are reasonable and should be approved. The Fairness Hearing may be postponed, adjourned or continued by further order of this Court, without further notice to the parties or the members of the Settlement Classes.

6. At the Fairness Hearing the Court will consider and determine whether the Settlement Agreement should be finally approved as fair, adequate and reasonable in light of any objections presented by Settlement Class Members and the parties' responses to any such objections.

7. Any Settlement Class Member who has not timely filed a written request for exclusion from one or both of the Settlement Classes pursuant to paragraph 8 of this Order may object to the fairness, reasonableness or adequacy of the Settlement. Any member of either Settlement Class who so objects may appear at the Fairness Hearing, in person or through counsel, to show cause why the Settlement should not be approved as fair, adequate and reasonable.

a. Each Settlement Class Member who wishes to object to any term of the Settlement Agreement must do so in writing by filing a written objection with the Clerk of the Court and mailing it to counsel for the parties at the addresses set forth in the Settlement Agreement. Any such objection must be filed with the Clerk of the Court and received by counsel for the parties no later than 30 days after the date of the Settlement Notice set forth in Exhibit B to the Settlement Agreement.

b. The objection must:

- i. Identify the Settlement Class Member by name;
- ii. Indicate whether the Settlement Class Member is a member of the Avis Settlement Class, the Budget Settlement Class or both Settlement Classes;
- iii. Identify the Settlement Class Member's current street address and current electronic mail address, if any;
- iv. Identify the Settlement Class Member's Avis Preferred Service Program and/or Budget Rapid Rez With Fastbreak Program;
- v. Attach copies of any materials that will be submitted by or on behalf of the objecting Settlement Class Member to the Court or presented at the fairness hearing;
- vi. Be personally signed by the Settlement Class Member; and
- vii. Clearly state in detail the legal and factual grounds for the objection, and if represented by counsel, such counsel's name, address and telephone number.

c. Any objection that fails to satisfy the requirements of this paragraph, or that is not properly and timely submitted, shall not be effective, will not be considered by this Court, and will be deemed waived, and those Settlement Class Members shall be bound by the final determination of this Court.

8. Any Person included within either of the Settlement Classes who wishes to be excluded, or to "opt out," from membership in one or both of the Settlement Classes must do so in writing by mailing a request for exclusion from the Settlement to Garden City Group, Inc., as Claims Administrator, P.O. Box 10263, Dublin, Ohio 43017, Attn: Avis Budget Frequent Traveler Program Surcharge Class Settlement, so that such request is postmarked no later than

30 days from the date of the Settlement Notice set forth in Exhibit B to the Settlement Agreement.

a. Such a request must (i) be personally signed by the Settlement Class Member, (ii) indicate whether the Settlement Class Member is a member of the Avis Settlement Class, the Budget Settlement Class, or both Settlement Classes, (iii) clearly express the Settlement Class Member's desire to be excluded (or to "opt out") from one or both of the Settlement Classes, and (iv) include the Settlement Class Member's name, address and telephone number, and, if represented by counsel, counsel's name, address and telephone number.

b. Any Person within either Settlement Class who wishes to be excluded from that Settlement Class can only opt out for himself or herself and, except for minors, cannot opt out for any other Person. No Person within either Settlement Class may authorize another Person to opt out on his or her behalf.

c. Any Settlement Class Member who has filed an objection to the fairness, reasonableness or adequacy of the Settlement pursuant to paragraph 7 of this Order shall be deemed not to have opted out of either Settlement Class pursuant to this paragraph. In the event and to the extent that the Parties advise the Court that a Settlement Class Member has made a submission to the Court and the Parties which appears to assert both an objection to the fairness, reasonableness or adequacy of the proposed Settlement, and a statement of intent to opt out of one or both of the Settlement Classes, such Settlement Class Member shall be deemed to have objected to the Settlement.

d. Any request for exclusion that fails to satisfy the requirements of this paragraph, or is not properly or timely submitted, shall not be effective, and the Person making

such a request shall be deemed to have waived all rights to opt out of the Settlement, and to be a Settlement Class Member for all purposes pursuant this Order.

9. Except for good cause shown, no person (other than the parties and their respective representatives and counsel) may appear or be heard at the Fairness Hearing, or file papers, briefs or other submissions regarding the Fairness Hearing, unless no later than 20 days before the date of the Fairness Hearing, such person or their counsel files with the Clerk of this Court and simultaneously serves on counsel for all parties at the addresses set forth in the Settlement Agreement a timely, written notice of request to appear at the Fairness Hearing.

a. Such notice must state the name, address and telephone number of the Settlement Class Member, as well as the name, address and telephone number of any counsel who wishes to appear on behalf of the Settlement Class Member. The notice must also indicate that the Settlement Class Member has previously or contemporaneously objected to the Settlement in compliance with paragraph 7 of this Order.

b. Any request to appear that fails to satisfy the above requirements, or that is not properly and timely submitted, shall not be effective and will not be considered by this Court, and the Person who made such a request shall not be permitted to appear or be heard at the Fairness Hearing, or otherwise comment further on the settlement.

10. The Court finds that the manner and content of (a) the Settlement Notice set forth in Exhibit B to the Settlement Agreement, (b) the Summary Notice set forth in Exhibit C to the Settlement Agreement, and (c) the proposed claim form attached to this Order, will provide the best notice practicable to the Settlement Classes under the circumstances. All costs incurred in connection with the preparation and dissemination of any notices to the Settlement Classes shall be borne by Avis Budget Group.

11. If the Settlement Agreement is finally approved, the Court shall enter a separate order finally approving the Settlement Agreement, entering judgment and dismissing the Third Amended Complaint in the *Schwartz* Action and the First Amended Complaint in the *Klein* Action. Such order and judgment shall be fully binding with respect to all members of both Settlement Classes.

12. In the event that the proposed Settlement is not finally approved by this Court, or in the event that the Settlement Agreement becomes null and void pursuant to its terms or is otherwise not consummated, this Order and all related Orders shall likewise become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in these actions or in any other case or controversy. In such event, the Settlement Agreement and all negotiations and proceedings directly related to the Settlement Agreement shall be deemed to be without prejudice to the rights of all of the Parties, who or which shall be restored to their respective positions preceding the execution of the Settlement Agreement.

13. The parties shall abide by the following scheduled dates:

a. The Settlement Notice shall be made available through publication of a settlement website within 20 days of entry of this Order.

b. Within 20 days of entry of this Order, the Settlement Notice and a claim form shall be mailed by either Avis Budget or the Claims Administrator to all members of the Settlement Classes for whom Avis Budget has records of such Persons' mailing or e-mail addresses, as follows.

i. To the extent that Avis Budget has an operative e-mail address for a Settlement Class Member, Avis Budget will send e-mail notification to that Settlement Class Member solely by means of providing, within the body of the e-mail, direct links to the specific

web pages on the settlement website referenced in subparagraph (a) which contain copies of the Settlement Notice and the proposed claim form attached to this Order.

ii. Otherwise, the Claims Administrator will send direct mail notice to those Settlement Class Members for whom it has a mailing address by first class mail, postage prepaid, enclosing a hard copy of the Settlement Notice.

c. The Summary Notice shall be published once in a 1/6 page advertisement in the Marketplace section of USA Today, within 20 days of entry of this Order, or as soon thereafter as possible in light of any submission deadlines imposed by these publications.

d. The parties shall file and serve papers in support of final approval of the settlement, including any responses to proper and timely objections filed thereto, by

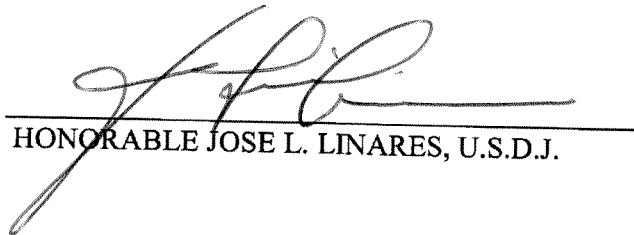
May 1, 2016.

e. Plaintiffs' counsel shall file any applications for an award of attorneys' fees, costs and litigation expenses, or incentive awards to Plaintiffs, by

May 20, 2016.

14. Neither the Settlement Agreement, any of its terms or provisions, nor any of the related negotiations or proceedings connected with it shall be construed as an admission or concession by Avis Budget of the truth of any of the allegations made by Plaintiffs in these actions, or of any liability, fault or wrongdoing of any kind. Neither the Settlement Agreement nor any submission by any Party in connection with Plaintiffs' motions for preliminary or final approval of the Settlement or Plaintiffs' application for an award of attorneys' fees, expenses and incentive awards, any appeal from such motions or application, or any related motions or proceedings may be used in these actions or in any other proceeding for any purpose other than specified in the Settlement Agreement.

15. This Court hereby enters a Preliminary Injunction barring and enjoining Plaintiffs and all Settlement Class Members, to the extent permissible by existing law, from bringing, filing, commencing, prosecuting (or further prosecuting), maintaining, intervening in, participating in, or receiving any benefits from any other lawsuit, arbitration, or administrative, regulatory, or other proceeding in law or equity that asserts, arises from, concerns, or is in any way related to the Released Claims identified in the Settlement Agreement, until such time as this Court has ruled on the fairness of the settlement terms following the Fairness Hearing.



HONORABLE JOSE L. LINARES, U.S.D.J.