

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

CLAUDIO HERNANDEZ, an individual, and JACQUELINE HERNANDEZ, an individual, on behalf of themselves and all others similarly situated,

Plaintiff,

v.

JP DEVELOPMENT, INC., an Idaho corporation d/b/a “Acctcorp International,” and CHARLES C. CRAFTS, an individual,

Defendant.

Case No. 1:21-cv-00410-BLW

ORDER

**PRELIMINARY APPROVAL ORDER OF THE
CLASS ACTION SETTLEMENT AGREEMENT**

This matter comes before the Court on the Motion (“Motion”) of Claudio Hernandez and Jacqueline Hernandez (“Class Representatives”), and a class of persons similarly situated, and JP Development, Inc. d/b/a Acctcorp. International, and Charles C. Crafts, an individual, dba The Boise Law Firm, PLLC (collectively “Defendants”) for preliminary approval of the Class Action Settlement Agreement

(the “Agreement”), dated October 13, 2022. The Court has reviewed the Agreement and the exhibits attached to the Motion, and, good cause appearing,

IT IS HEREBY ORDERED AS FOLLOWS:

1. **Definitions.** For the purposes of this Order, the Court adopts by reference the definitions set forth in the Agreement (Dkt. 19-1). For purposes of settlement only, pursuant to Federal Rule of Civil Procedure 23, the parties have defined the proposed class as follows:

All persons with addresses in the District of Idaho from whom Defendants sought to collect late fees, liquidated damages, or alleged impermissible interest under a Promissory Note sold to JP Development as part of the Beneficial Bail Bonds Portfolio through debt collection communication or litigation initiated within the Applicable Limitations Period. (“Settlement Class”)

Defendants represent and warrant that the Settlement Class consists of 82 members.

2. **Conditional Certification of Class.** Based on the Court’s review of the Motion and supporting materials, the Court conditionally finds that, for the purpose of this Settlement only, the proposed Settlement Class (as described above) satisfies Rule 23 of the Federal Rules of Civil Procedure in that:

a. The Settlement Class, which consists of 29 Pending Litigation Class Members and 53 Judgment Class Members, is so numerous that joinder of all persons who fall within the Settlement Class definition is impracticable;

b. The commonality requirement is satisfied where members of the Settlement Class share at least one common legal or factual issue. Here, there are questions of law and fact common to the Settlement Classes, including allegations related to the ability of Defendants to collect late fees as a form of liquidated damages under Idaho law and whether such collection activity violates the Fair Debt Collection Practices Act;

c. The claims of the Class Representatives are typical of the claims of the Settlement Class;

d. The Class Representatives will fairly and adequately protect the interests of the Settlement Class and are represented by qualified counsel who are competent to represent the Settlement Class; and

e. The Court further conditionally finds, for the purpose of this Settlement only, that the proposed Settlement Classes satisfy Rule 23(b)(3) of the Federal Rules of Civil Procedure, which requires that common issues predominate and that a class action is superior to other available methods for the fair and efficient resolution of this controversy. The Court notes that because the litigation is being settled, rather than litigated, it need not consider the manageability issues that would be presented by this litigation. *Amchem Prods. Inc. v. Windsor*, 117 S. Ct. 2231, 2240 (1997).

3. **Preliminary Approval.** Class action settlements are permitted “only with the court's approval ... on a finding that [the settlement] is fair, reasonable, and adequate.” See Fed. R. Civ. P. 23(e); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th Cir. 1998), overruled on other grounds by *Wal-Mart Stores v. Dukes*, 564 U.S. 338 (2011). The principal purpose of court supervision of a class action settlement is to ensure “the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties” *Id.* at 1027. This “ensure[s] that class representatives and their counsel do not secure a disproportionate benefit at the expense of the unnamed plaintiffs who class counsel had a duty to represent.” *Lane v. Facebook, Inc.*, 696 F.3d 811, 819 (9th Cir. 2012). The Court preliminarily approves the Settlement of the Action set forth in the Agreement as being fair, reasonable, and adequate.

4. **Settlement Benefits.** Pursuant to the Agreement, Defendants have agreed:

- To permanently cease collection on the Beneficial Bail Bonds Portfolio.
- To refund all monies recovered from Class Members for collected Late Fees, Liquidated Damages and Alleged Impermissible Interest (“Collected Funds”) estimated to be approximately \$36,320.
- To dismiss with prejudice all collection actions as to Pending Litigation Class Members.

- To permanently cease collecting on any judgment against Judgment Class Members and which would have the effect of vacating any judgment against Judgment Class Members.

- To pay to Class Counsel attorneys' fees, litigation expense and costs in the sum of Twenty-Five Thousand Dollars (\$25,000.00), with the Class Representatives being designated as the prevailing parties.

- To pay each Class Representative the sum of One Thousand Dollars (\$1,000.00) as an incentive award, in addition to all other benefits to Class Members.

5. **Administration Expense.** The Court approves the Parties' proposal that American Legal Claims Services, LLC administer the Settlement as set forth in the Agreement. Defendants shall contract directly with American Legal Claim Services for the purpose of administering, distributing class notices, and issuing settlement checks. The Settlement Administration Expense shall be paid by Defendants in accordance with the Agreement.

6. **Cy Pres Award.** To the extent that there are any funds from un-cashed or expired settlement checks from the Settlement Deposit, within thirty days from the end of the Settlement Check Limitation Period, the Settlement Administrator shall refund 50% of the residual funds to Defendants. The remaining 50% of the residual funds shall be paid by the Settlement Administrator as a *cy pres* award to

the National Consumer Law Center for the purpose of providing financial resources for continuing legal education in consumer law issues.

If the Settlement is not given final approval for any reason or in any way, or the Effective Date does not occur, or the Agreement is rescinded and terminated, the Parties shall be restored to their respective positions in the Action as of the approximate date prior to which the agreement-in-principle to settle the Action was reached. In such event, the terms and provisions of the Agreement shall have no further force and effect with respect to the Parties, shall be deemed to be without prejudice in any way to the position of the Parties with respect to this Action or any other action, and shall not be used in the Action or in any other proceeding for any purpose, except as provided in the Agreement or herein.

7. **Approval Hearing**: An Approval Hearing shall take place before the undersigned, the Honorable B. Lynn Winmill, U.S. District Court Judge on August 8, 2023, at 4:00 pm MDT, via Zoom, to determine:

a. whether the Court should finally certify the Settlement Classes and whether the Class Representatives and Class Counsel have adequately represented the Settlement Classes;

b. whether the proposed Settlement, on the terms and conditions provided for in the Agreement, should be finally approved by the Court as fair, reasonable, and adequate;

c. whether the Released Claims of the Settlement Class Members in this lawsuit should be dismissed on the merits and with prejudice;

d. whether the application for attorneys' fees, costs, expenses, and class representatives' incentive award submitted by Class Counsel should be approved; and

e. such other matters as the Court may deem necessary or appropriate.

8. **Approval with Modifications:** The Court may finally approve the proposed Agreement at or after the Approval Hearing with any modifications agreed to by Defendants and the Class Representatives and without further notice to the Settlement Class.

9. **Right to Appear and Object:** Any member of the conditionally certified Settlement Classes who has not timely and properly provided notice of an election to opt out of the applicable Settlement Class and the proposed Settlement in the manner set forth below may appear at the Approval Hearing in person or by counsel and be heard, to the extent allowed by the Court, either in support of or in opposition to the matter to be considered at the hearing. However, no member of the conditionally certified Settlement Classes who has elected to opt out from the Settlement shall be entitled to object. Further, no person shall be heard, and no papers, briefs, or other submissions shall be considered by the Court in connection with its consideration of those matters, unless such person complies with the

following:

a. Any objection must be filed with the Court, with a copy delivered to Class Counsel and Counsel for each of the Defendants at the addresses set out in the Notice, no later than twenty (20) days before the Approval Hearing. Settlement Class Members may object either on their own or through an attorney hired at their own expense.

b. If a member of a Settlement Class hires an attorney to represent him or her at the Approval Hearing, he or she must do so at his or her own expense and the attorney must file a written notice of appearance with the Clerk of Court no later than twenty (20) days before the Approval Hearing, identifying by name and current residential address the member(s) of the Settlement Class on whose behalf he or she will appear. No member of a Settlement Class represented by an attorney shall be deemed to have objected to the Settlement unless an objection signed by the member of the Settlement Class is also filed and served at least twenty (20) days before the Approval Hearing.

c. Any objection regarding or related to the Settlement shall contain a caption or title that identifies it as “Objection to Class Settlement in *Hernandez v. JP Development Inc., et. al.* (1:21-cv-00410-BLW)” and shall also contain the following information: (a) the objecting party’s full name, address, and telephone number and the original signature; (b) if the objecting party chooses to appear at the

hearing, then a notice of intention to appear, either in person or through an attorney, along with the name, address, and telephone number of the attorney, if any, who will appear; (c) a certification that the objecting party is a member of the Settlement Class; (d) a statement of each objection asserted; (e) a detailed description of the facts underlying each such objection; (f) a detailed description of the legal authorities, if any, supporting each such objection; (g) any exhibits and/or affidavits the objecting party may wish to offer in support of any objection or in opposition to the proposed settlement; (h) a list of other cases in which the member of the Settlement Class has appeared as a settlement objector (and, if represented by any attorneys in connection with such objection, a list of other cases in which those attorneys have appeared as counsel for objectors) in the preceding ten (10) years; and (i) if the objecting party is being represented by an attorney or attorneys in connection with the objection, the signature of each of the objecting party's attorneys below a statement that "No other attorney has a financial interest, either directly or indirectly, in the representation of this objecting party."

d. No member of the Settlement Class shall be heard, no papers, briefs, pleadings submitted by any such member of the Settlement Class shall be received and considered by the Court, and no testimony of witnesses offered by the member of the Settlement Class shall be allowed at the Approval Hearing, unless the Court, Robert W. Murphy and Barkley B. Smith (as counsel for Plaintiffs), Mark E.

Ellis (as counsel for JP Development Inc.), and Jeffrey A. Thomson (as counsel for Charles C. Crafts) receive the member of the Settlement Class's written and signed objection at least twenty (20) days before the Approval Hearing. Members of the Settlement Class who fail to submit objections in strict compliance with the foregoing procedures and by the established deadline shall be deemed to have waived all objections to the Agreement, shall be deemed to have consented to the exercise of jurisdiction by the Court over all aspects of this Agreement, and shall forever be barred from making any objections in this Lawsuit or in any other action or proceeding to the Agreement, Notice and the means of distribution thereof, and the settlement process established by this Agreement.

10. **Notice.** Notice of Class Action Settlement, Settlement Hearing and Right to Appear ("Notice"), attached to the Settlement Agreement as Exhibit "B" is hereby approved. The costs of providing notice shall be paid as set forth in the Agreement, and the Notice shall be sent no later than thirty (30) days after the entry of this Order, as set forth in the Agreement. The Court finds that the form and method of providing notice is the best practicable under the circumstances and, if carried out, shall constitute due and sufficient notice of the Agreement under Federal Rule of Civil Procedure 23 and the Due Process Clause of the United States Constitution.

11. **Ability of Class Members to Opt-Out.** All members of the conditionally certified Settlement Class who wish to opt out of the Settlement Class must do so by filing a written request with the Court and sending a copy to Class Counsel and Counsel each of the Defendants by first-class mail or e-mail as outlined in the Notice, signed by the member of the Settlement Class, and providing all required information. To be considered timely, and thereby effectively exclude a person from the Settlement Class, the envelope delivering a completed opt out request must be received no later than 20 days before the Approval Hearing (the “Opt-Out Deadline”), except that active duty military personnel who are currently deployed may opt out if a completed request is received by Class Counsel and Counsel for Defendants at least three days before the Approval Hearing.

Any putative member of the Settlement Class who does not properly and timely request exclusion from the Settlement Class shall be included in such Settlement Class and, if the proposed Settlement is approved and becomes effective, shall be bound by all the terms and provisions of the Agreement, including but not limited to the releases, waivers, and covenants not to sue described therein, whether or not such person shall have objected to the Settlement.

12. **Appearance by Member of the Settlement Class.** Any member of the Settlement Class may enter an appearance in this litigation, at his, her, or its own expense, individually or through counsel of his, her, or its own choice. Any member

of the Settlement Class who does not enter an appearance will be represented by Class Counsel.

13. **No discovery of settlement materials.** No discovery with regard to the Settlement or the Agreement shall be permitted as to any of the settling parties other than as may be directed by the Court upon a proper showing by the party seeking such discovery.

14. **Discovery and Other Litigation Activity.** All discovery and other litigation activity in this Action is hereby stayed pending a decision on Final Approval of the Agreement.

15. **No Admission.** Neither the Settlement nor the Agreement shall constitute an admission, concession, or indication of the validity of any claims or defenses in the Action, or of any wrongdoing, liability or violation by Defendants, which vigorously deny all of the claims and allegations raised in the Action.

16. **Extension of Deadlines.** The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

It is so ORDERED.



DATED: February 28, 2023

A handwritten signature in black ink that reads "B. Lynn Winmill". The signature is written in a cursive style and is positioned above a horizontal line.

B. Lynn Winmill
U.S. District Court Judge