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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **COUNTY OF SAN DIEGO**

18 JEFFREY GARVIN, an individual, on behalf of
19 himself and all others similarly situated,

20 Plaintiff,

21 vs.

22 SAN DIEGO UNIFIED PORT DISTRICT; and
23 DOES 1-100 inclusive,

24 Defendants.

Case No.: 37-2020-00015054-CU-MC-CTL

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

25 Plaintiff Jeffrey Garvin (“Plaintiff”) brings this action, on behalf of himself and all others
26 similarly situated against the SAN DIEGO UNIFIED PORT DISTRICT (“San Diego Port” or
27 “Defendant”) and DOES 1-100 (collectively “Defendants”) seeking a refund of monies illegally
28 assessed and collected by Defendant from Plaintiff and all others similarly situated through various
car rental agencies. Plaintiff alleges the following based upon information and belief, the investigation
of counsel, and personal knowledge as to the allegations pertaining to himself.

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I. NATURE OF THE CASE

1. This is an action by Plaintiff on behalf of himself and a putative class, seeking refunds for Defendant’s improper assessment of an illegal tax on car rentals originating on Port Tidelands in San Diego, California.

2. Defendant improperly and illegally ordered car rental agencies to assess each car rental a \$3.50 fee which is not authorized by law. Defendant knew when it began imposing this fee that it was illegal and improper.

3. Plaintiff seeks a refund of this illegal fee on behalf of himself and all others similarly situated as well as injunctive relief prohibiting Defendant from continuing to collect these fees.

II. JURISDICTION AND VENUE

4. This Court has personal jurisdiction over Defendant because Defendant conducted and continues to conduct business in the State of California, and because Defendant has committed the acts and omissions complained of herein in the State of California.

5. Venue is proper in this Court because a substantial part of the events or omissions giving rise to Plaintiff’s claims occurred here, a substantial part of the property that is the subject of this action is situated here, and Defendant is subject to personal jurisdiction in San Diego County.

6. Venue is also proper in this Court under Code of Civil Procedure section 394, which provides that an action against a local agency may be brought in the county in which the local agency is situated.

III. PRESENTMENT

7. Plaintiff has complied with all administrative and substantive requirements for filing suit against public entities, under Government Code §§910, et seq. Plaintiff filed a claim with the San Diego Port prior to filing this lawsuit.

8. Plaintiff filed a claim on his behalf, and on behalf of all others similarly situated, with the San Diego Port on or about February 13, 2020 by sending them a letter via certified mail. The San Diego Port rejected the claim on March 5, 2020.

1 **IV. PARTIES**

2 9. Plaintiff Garvin is, and at all times mentioned herein was, an individual citizen of
3 Albuquerque, New Mexico. Plaintiff traveled by plane to San Diego, California, several times during
4 the Class Period and rented vehicles from various car rental companies located at San Diego
5 International Airport or the adjacent Rental Car Center. Plaintiff was assessed and forced to pay the
6 illegal and improper \$3.50 fee for each rental.

7 10. Defendant San Diego Port is, and at all times mentioned herein was, a public
8 corporation created by the Legislature in 1962 pursuant to the Harbors and Navigation Code

9 11. Plaintiff is presently unaware of the true identities and capacities of fictitiously named
10 Defendants designated as DOES 1 through 100, but will amend this complaint or any subsequent
11 pleading when their identities and capacities have been ascertained according to proof. On
12 information and belief, each and every DOE defendant is in some manner responsible for the acts
13 and conduct of the other Defendants herein, and each DOE was, and is, responsible for the injuries,
14 damages, and harm incurred by Plaintiff. Each reference in this complaint to “Defendant,”
15 “Defendants,” or a specifically named Defendant, refers also to those unknown parties sued under
16 fictitious names.

17 **V. FACTUAL ALLEGATIONS**

18 **A. THE ILLEGAL TAX**

19 12. On April 10, 2018, the Board of Port Commissioners of the San Diego Unified Port
20 District adopted Resolution 2018-065, which purported to re-enact San Diego Port Ordinance 2030
21 and imposed a special tax, disguised as a “user fee,” on car renters. The special tax is a charge of
22 \$3.50 that renters are assessed for each rental car transaction that takes place on San Diego Port
23 tidelands, which includes San Diego International Airport and the adjacent Rental Car Center.

24 13. Ordinance 2030 was enacted approximately twenty years ago to fund a parking
25 structure near the San Diego Convention Center and Airport. Collection of fees under Ordinance
26 2030 was suspended over a decade ago.

27 14. Resolution 2018-065 and Ordinance 2030 call this tax a “user fee” to be collected
28 from renters by rental car companies, for the benefit of the San Diego Port so that the San Diego Port

1 can use the funds to pay for the construction of a parking structure adjacent to the planned Chula
2 Vista Bayfront Convention Center on Port Property in South San Diego County. The tax, however,
3 is not a legal “user fee” but rather an illegal special tax that has been imposed in violation of
4 Propositions 13 and 218, which require that any special tax be approved by two-thirds of the voters.
5 Because the tax was not approved by local voters, it is an unconstitutional tax and thus unlawful and
6 invalid.

7 15. The tax is also unlawful and invalid for violation of the Dormant Commerce Clause
8 of the United States Constitution because it does not fairly approximate the use of the facilities for
9 whose benefit they are imposed -- only a tiny percentage of the rental car customers who pay the fee
10 will benefit from the parking garage that will be funded and built. Rental car customers who are
11 traveling from out-of-state bear disproportionate costs in comparison to the negligible level of
12 “quantifiable services” they receive.

13 16. In summary, the \$3.50 fee is an unlawful and unconstitutional tax to finance the
14 construction of the proposed Chula Vista parking garage, not a legal “user fee” for either the use of
15 the proposed Chula Vista parking garage or any other property of the San Diego Port.

16 17. On June 8, 2018, Enterprise Rent-A-Car Co. of Los Angeles, LLC and the Hertz
17 Corporation filed a Complaint commencing a reverse validation proceeding against the San Diego
18 Port and seeking to declare the Resolution unlawful and invalid, including because it imposes an
19 unconstitutional special tax in violation of Proposition 218 and the Dormant Commerce Clause of
20 the United States Constitution. That action, *Enterprise Rent-A-Car Co. of Los Angeles, LLC, et al. v.*
21 *San Diego Unified Port District*, is pending in San Diego County Superior Court before the
22 Honorable Katherine A. Bacal, Department C-69, as Case No. 37-2018-00028276-CU-MC-CTL.

23 18. After a bench trial in October 2019, Judge Bacal found that the special tax was
24 unlawful.

25 **B. PLAINTIFF’S ALLEGATIONS**

26 19. Plaintiff traveled from New Mexico to San Diego, California, several times between
27 April 10, 2018 and the present. During those visits, he rented vehicles from various car rental
28 companies at the San Diego Airport facility

1 20. On each occasion that he rented a vehicle, he was assessed and paid the above-
2 mentioned \$3.50 fee to the car rental companies.

3 21. Upon information and belief, the \$3.50 fee was then remitted by the car rental
4 companies to the San Diego Port.

5 **C. CLASS ACTION ALLEGATIONS**

6 22. Plaintiff bring this action on behalf of himself and all others similarly situated,
7 pursuant to California Code of Civil Procedure (“CCP”) §382.

8 23. The proposed class is defined as follows:

9 All United States citizens who rented vehicles from car rental companies, with
10 the rentals originating at locations in San Diego, California on San Diego Port
11 tidelands, from the period of April 10, 2018 to the present, and who were
12 assessed a \$3.50 fee by the car rental companies that was then remitted to the
13 San Diego Port. Excluded from the Class are any of Defendant’s officers,
14 directors, or employees; officers, directors, or employees of any entity in which
15 Defendant currently has or had a controlling interest; and Defendant’s legal
16 representatives, heirs, successors, and assigns.

17 24. At this time, Plaintiff does not know the exact number of Class members; however,
18 given the nature of the claims and the number of individuals who rented vehicles at the San Diego
19 Airport during the Class period, Plaintiff believes that the Class members are so numerous that joinder
20 of all members is impracticable.

21 25. The proposed class is ascertainable and there is a well-defined community of interest
22 in the questions of law or fact alleged herein since the rights of each proposed class member were
23 infringed or violated in the same fashion;

24 26. There is a well-defined community of interest in the questions of law and fact involved
25 in this case. The following questions of law and fact are common to the Class members and
26 predominate over questions that may affect individual Class members:

- 27 1. Whether Defendant assessed the \$3.50 fee on all rentals originating on San
28 Diego Port tidelands as a policy during the Class Period;

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JURY TRIAL DEMANDED

Plaintiff demands a trial by jury for all claims so triable.

Dated: March 20, 2020

Respectfully submitted,

**SCHONBRUN SEPLOW HARRIS
HOFFMAN & ZELDES, LLP**

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