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Superior Court of California,
County of San Diego
06/24/2020 at 10:19:00 PM
Clerk of the Superior Court
By Carolina Miranda, Deputy Clerk

11 *Attorneys for Plaintiff and the Proposed Class.*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

14 JEFFREY GARVIN, an individual, on
15 behalf of himself and all others similarly
16 situated,

17 Plaintiff,

18 vs.

19 SAN DIEGO UNIFIED PORT DISTRICT;
20 and DOES 1-100 inclusive,

21 Defendants.

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

CLASS ACTION

**NOTICE OF MOTION AND UNOPPOSED
MOTION FOR PRELIMINARY
APPROVAL OF CLASS ACTION
SETTLEMENT AND CONDITIONAL
CERTIFICATION OF CLASS;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT THEREOF**

Date: July 17, 2020

Time: 1:30 PM

Department: C-69

Judge: Katherine A. Bacal

Complaint Filed: May 26, 2020

1 **TO DEFENDANT SAN DIEGO UNIFIED PORT DISTRICT; ITS ATTORNEYS OF**
2 **RECORD; AND ALL INTERESTED PARTIES:**

3 **PLEASE TAKE NOTICE** that on **July 17, 2020, at 1:30 p.m.**, or as soon thereafter as the
4 matter may be heard in Department C-69 of the above-entitled Court, Plaintiff Jeffrey Garvin
5 (“Plaintiff”), individually and on behalf of all similarly situated individuals, as proposed
6 representative of the Class that Plaintiff requests be provisionally certified for settlement purposes,
7 will and hereby does move this Court for the following:

8 1. Preliminary and conditional certification of the Class described in the proposed
9 Settlement Agreement (“Settlement Agreement” or “SA”) (attached as Exhibit 1 to the Declaration
10 of Helen I. Zeldes filed concurrently herewith) between Plaintiff and Defendant for purposes of
11 settlement.

12 2. Preliminary approval of Jeffrey Garvin as Class Representative.

13 3. Preliminary approval of Helen I. Zeldes and Ben Travis of Schonbrun Seplow Harris
14 Hoffman & Zeldes, LLP as Class Counsel.

15 4. Preliminary approval of a settlement of claims as set forth in the Settlement
16 Agreement in which Defendant San Diego Unified Port District (“Port” or “Defendant”) has agreed
17 to a gross non-reversionary amount of all Fees remitted to the Port by any rental car company
18 pursuant to Resolution 2018-065 and Ordinance 2030 and accrued interest, less the “Settled
19 Attorneys’ Fees and Costs” to be paid pursuant to the Settlement Agreement and Mutual Release
20 of All Claims in the Enterprise Actions. (the “Gross Settlement Amount”).

21 5. Approval as to the form and content of the proposed Notices to Class Members as
22 well as the method of Notice.

23 6. Approval of the appointment of Epiq as Class Administrator, with costs estimated
24 to be approximately \$1,115,215.

25 7. Preliminary approval of the payment of a service award in the amount of \$5,000 to
26 Jeffrey Garvin coming from the Gross Settlement Amount.

27 8. Preliminary approval of the application for payment to Class Counsel of reasonable
28 attorneys’ fees of no more than 20 percent of the Settlement Fund and costs and expenses not to

1 exceed \$10,000, with payment coming out of the Settlement Fund after Cash Awards are paid to
2 Class Members.

3 9. Issuance of a schedule for implementation of the terms of the Settlement Agreement,
4 including a date for a hearing for Final Approval of the Settlement.

5 This notice and motion is made pursuant to California Rules of Court, rule 3.769 and on the
6 grounds that the proposed Settlement is fair, reasonable and adequate and in the best interests of
7 the proposed class. The motion is unopposed by Defendant, who is a party to the proposed
8 Settlement.

9 This motion is based upon this notice and motion; the Memorandum of Points and
10 Authorities submitted herewith; the Zeldes Declaration and exhibits filed concurrently herewith;
11 the other records and pleadings filed in this action; and upon such other documentary and oral
12 evidence or argument as may be presented to the Court at the hearing of this motion.

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DATED: June 24, 2020

SCHONBRUN SEPLOW HARRIS
HOFFMAN & ZELDES LLP



By: _____
HELEN I. ZELDES
Attorneys for Plaintiff

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1 **I. INTRODUCTION**

2 Plaintiff Jeffrey Garvin (“Plaintiff”), a New Mexico resident and frequent visitor and rental
3 car customer in San Diego, seeks preliminary approval of an outstanding proposed settlement with
4 Defendant San Diego Unified Port District (“Port” or “Defendant”) in which the Port would provide
5 100% disgorgement of monies it received from rental car customers on Port tidelands in San Diego
6 to resolve three related lawsuits pending before this Court. In all three cases, Plaintiffs allege that
7 rental car customers were improperly assessed a \$3.50 fee on each vehicle rented from the San Diego
8 Airport Rental Car Center and other locations on Port tidelands.

9 In *Enterprise Rent-A-Car Co. of Los Angeles, LLC and The Hertz Corporation v. San Diego*
10 *Unified Port District*, the two rental car companies themselves sought to have the assessments by
11 the Port deemed an illegal tax to be refunded¹. As this Court is well-aware, the Enterprise Actions
12 were intensely litigated for nearly two years, with the Court declaring the Fee an illegal and
13 unconstitutional tax in its tentative decision on December 4, 2019. In the third and instant case, the
14 putative class action titled *Garvin v. San Diego Unified Port District*, Plaintiff Garvin sought to have
15 the fees all consumers paid to all rental car companies refunded.

16 In submissions to the Court and on the record in the Enterprise Actions, the Port disagreed
17 with the tentative ruling and explicitly reserved its rights to appeal final decisions on the validity of
18 the Fee and any remedy. Similarly, the Port expressed its intent to fully litigate Plaintiff Garvin’s
19 claims as to all issues, and additionally to raise defenses that could have limited the remedies
20 available to the putative class to *one year* under the Government Claims Act (“GCA”). Under
21 California Government Code §911.2, the Port argued that the statute of limitations for Plaintiff
22 Garvin’s claim would be limited to one year. Because the Port has been assessing Fees on class
23 members’ rentals since May 2018 – *two years now* – if the Port prevailed on its defense, almost *half*
24 the class would have been barred from relief. Alternatively, the Port argued that Plaintiff could not
25 obtain any remedies because he did not timely comply with the Reverse Validation statutes.

26 In light of the risks going forward and the likelihood that multi-year appeals in all three cases

27 ¹ *Enterprise Rent-A-Car Co. of Los Angeles, LLC* (“Enterprise”) and *The Hertz Corporation* (“Hertz”) v. *San*
28 *Diego Unified Port District*, Case No. 37-2018-00028276-CU-MC-CTL (the “Reverse Validation Action”) and *Enterprise Rent-A-Car Co. of Los Angeles, LLC and The Hertz Corporation v. San Diego Unified Port District*, Case No. 37-2019-00029137-CU-MC-CTL (the “Refund Action”) (collectively referred to as the “Enterprise Actions”)

1 would cause significant delay in getting relief to consumers, the settlement reached here – in which
2 the Port will pay the Gross Settlement Amount into a fund to allow *all* rental car customers who paid
3 the Fees to seek refunds, not just Enterprise and Hertz rental car customers in the year preceding the
4 submission of class action claims to the Port – is a tremendous result. Subject to final approval by
5 this Court, Plaintiff has agreed to settle his and putative class members’ claims for a total gross non-
6 reversionary amount of all Fees remitted to the Port by all rental car companies (not just the Hertz
7 and Enterprise Plaintiffs) pursuant to Resolution 2018-065 and Ordinance 2030 and accrued interest
8 less the fees and costs to be paid pursuant to the Settlement Agreement and Mutual Release of All
9 Claims in the Enterprise Actions.

10 This settlement is the result of arm’s-length negotiations between the parties in this Action.
11 The parties reached an agreement that strikes a balance between the risks of continued litigation and
12 fair and prompt compensation to the Settlement Class members. The Settlement is fair and
13 reasonable, and provides substantial compensation for all class members representing approximately
14 2,288,000 rentals. Indeed, the Settlement provides what would likely be better than a trial win here:
15 the opportunity for all renters to seek refunds of the Fees paid during the entire, approximate two-
16 year assessment period.

17 It is well within the discretion of this Court to grant preliminary and conditional approval of
18 the proposed Settlement Agreement which satisfies all the criteria for preliminary settlement
19 approval under California law. *See* Exhibit 1 to the Declaration of Helen I. Zeldes (“Zeldes Decl.”)
20 submitted concurrently herewith, Accordingly, Plaintiff requests that the Court: (1) provisionally
21 and conditionally certify the proposed Class and claims; (2) grant preliminary and conditional
22 approval of the proposed Settlement; (3) direct distribution to the Class of the proposed Notices
23 (attached as Exhibit B to the Settlement Agreement); (4) schedule a final approval hearing; (5)
24 appoint Helen I. Zeldes, and Ben Travis of Schonbrun Seplow Harris Hoffman & Zeldes, LLP as
25 Class Counsel; (6) appoint Jeffrey Garvin as Class Representative; and (7) grant the additional relief
26 set forth in the Notice of Motion.

27 **II. PROCEDURAL BACKGROUND**

28 On April 10, 2018, the Board of Port Commissioners of the Port adopted Resolution 2018-

1 065, which purported to re-enact San Diego Port Ordinance 2030 and imposed a special tax, Plaintiff
2 alleges is disguised as a “user fee,” on car renters. The special tax is a charge of \$3.50 that renters
3 are assessed for each rental car transaction that takes place on San Diego Port tidelands, which
4 includes San Diego International Airport and the adjacent Rental Car Center. The Resolution ordered
5 the rental car companies to commence collecting the fee on May 10, 2018. Zeldes Decl. ¶ 5.

6 The Enterprise Reverse Validation Action was commenced on June 8, 2018, seeking: (a) a
7 declaration that the Port’s Resolution 2018-065, which required Plaintiffs and other rental car
8 companies to collect from their customers and remit to the Port a \$3.50 Fee for each transaction on
9 Port tidelands, was an illegal and unconstitutional tax, and (b) a refund of the Fees so collected and
10 remitted to the Port by the Reverse Validation Plaintiffs. On or about June 6, 2019, Plaintiffs in that
11 case also filed the Refund Action, seeking a refund of Fees collected and remitted to the Port
12 pursuant to Resolution 2018-065 and Ordinance 2030. Zeldes Decl. ¶ 6.

13 A bench trial was held on October 16, 2019. On or about December 4, 2019, the Court issued
14 its tentative decision in the Reverse Validation Action, declaring Resolution 2018-065 and the
15 associated \$3.50 Fee unconstitutional and illegal. The Parties were ordered to meet and confer and
16 submit a Proposed Statement of Decision and a Proposed Order on Refund Process. The Parties
17 submitted briefing on various issues, but no Statement of Decision or Order on Refund Process was
18 entered; instead, the Parties engaged in settlement discussions, stipulating to a stay of the Enterprise
19 Actions pending potential approval of this Class Action Settlement by this Court. Zeldes Decl. ¶ 7.

20 On or about January 24, 2020, Plaintiff Garvin filed a proposed class action in the United
21 States District Court for the Southern District of California titled *Jeffrey Garvin v. Payless Car*
22 *Rental, Inc. et al.* Case No. 3:20-cv-00172-AJB-WVG, against several rental car companies seeking
23 refunds of the Fees that he and other proposed Class Members paid to those companies that were
24 remitted to the Port. Zeldes Decl. ¶ 8. After meeting and conferring with the defendants in that
25 action about their anticipated defenses, and after the defendants presented Plaintiff with evidence
26 that his contract with them included arbitration provisions and class action waivers, and upon further
27 review of his claims, Plaintiff determined that it was in the best interests of the proposed Class to
28 seek refunds directly from the Port. Zeldes Decl. ¶ 9.

1 On or about February 13, 2020, Plaintiff filed the requisite prefiling claim with the Port,
2 pursuant to Government Code sections 910 *et seq.*, on behalf of himself and all others similarly
3 situated, seeking a refund of the Fees collected by the rental car companies and remitted to the Port.
4 On March 5, 2020, the Port rejected the claim. Zeldes Decl. ¶ 10.

5 On March 12 and 13, 2020, the Port reached out to the Enterprise Plaintiffs and expressed
6 interest in resolving all three matters: the two Enterprise cases and the putative class action. The
7 Enterprise Plaintiffs reached out to Plaintiff Garvin to notify him of the Port’s interest in possible
8 resolution of his class claims. Global settlement discussions commenced. Zeldes Decl. ¶ 11.

9 Having not reached an agreement, on or about March 20, 2020, Plaintiff Garvin filed his
10 class action complaint in the San Diego Superior Court against the Port seeking refunds on behalf
11 of himself and others similarly situated who rented vehicles and paid the \$3.50 Fee to the rental car
12 companies, who then remitted the Fee to the Port (the “Class Action Complaint”). Counsel for the
13 Port accepted service of the Class Action Complaint by email on the same date, however, due to the
14 COVID-19 pandemic, the Court did not issue a summons or process the filing of the Class Action
15 Complaint until it reopened on May 26, 2020. Zeldes Decl. ¶ 12.

16 While the court was closed due to the COVID-19 pandemic, the Parties continued to meet
17 and confer frequently and engaged in good faith, arm’s-length settlement discussions to attempt to
18 resolve all three actions. Zeldes Decl. ¶ 13. On or about April 20, 2020, Plaintiff, the Port and the
19 Enterprise Plaintiffs entered into a settlement in principle, signing a formal “Term Sheet”. Zeldes
20 Decl. ¶ 14. Because the matters raise similar factual and legal issues, the administration of the
21 settlement requires cooperation of all the Parties, and because the Port made resolution of each
22 matter contingent on the other, Plaintiff includes these facts in this Motion for Preliminary Approval.

23 **III. THE PROPOSED SETTLEMENT CLASS DEFINITION**

24 The proposed class, as set forth in the Settlement Agreement (¶2.29), is defined as follows:

25 All individuals who rented vehicles from rental car companies, with the rentals originating at
26 locations in San Diego, California on San Diego Port tidelands, from the period of May 10, 2018
through the date that is seven days after Preliminary Approval, and who were assessed a \$3.50
27 fee by the rental car companies that was then remitted to the San Diego Port.

28 Excluded from the Settlement Class are any of Defendant’s officers, directors, or employees;
officers, directors, or employees of any entity in which Defendant currently has or had a controlling

1 interest; and Defendant's legal representatives, heirs, successors, and assigns.

2 **IV. SUMMARY OF THE TERMS OF THE SETTLEMENT**

3 **The basic terms of the proposed Settlement are as follows:**

4 1. Defendant will pay a non-reversionary cash sum in the amount of *all* Fees remitted
5 to the Port by any and all rental car companies pursuant to Resolution 2018-065 and Ordinance 2030
6 plus accrued interest, less attorneys' fees and costs to be paid pursuant to the Settlement Agreement
7 and Mutual Release of All Claims in the Enterprise Actions. Settlement Agreement at ¶ 2.33. The
8 Port will not retain any of the funds remitted by the rental car companies and will pay its own legal
9 fees and costs.

10 2. Plaintiff Garvin will seek Court approval for attorneys' fees in the amount of no more
11 than 20 percent of the Settlement Fund (after Cash Awards are paid), as well as reimbursement of
12 their costs and expenses not to exceed \$10,000. *Id.* at ¶5.01.

13 3. The Class Administration costs are paid from the Settlement Fund. *Id.* at ¶¶2.32, 4.01.

14 4. Plaintiff will seek Court approval of a Service Award in the amount of \$5,000 for
15 Plaintiff Jeffrey Garvin. *Id.* at ¶5.02.

16 5. Eligible class members who do not opt out of the settlement ("Settlement Class
17 Members") and file a valid claim, will receive a Cash Award. *Id.* at ¶4.02. The amount of each Cash
18 Award for a valid claim will be determined by the following formula: Number of rentals claimed
19 by the Settlement Class Member multiplied by \$3.50. If the dollar value of all valid claims exceeds
20 the Net Settlement Fund, the Cash Awards will be reduced pro rata. *Id.* at ¶ 4.03.

21 6. There is no cap on the number of rentals each Settlement Class Member may submit
22 in their claim for reimbursement. However, any Settlement Class Member who claims to have paid
23 the Fee more than six times (i.e. claims more than \$21) must do so under penalty of perjury and any
24 Settlement Class Member who claims to have paid the Fee more than 20 times (i.e. claims more than
25 \$70) must provide evidence in support of their claims. *Id.* at ¶4.04; *see also* Exhibit B (Class Notices).

26 7. The Release covers all claims which were pled or could have been pled based on the
27 facts alleged in the Class Action Complaint. *Id.* at ¶ 13.01.

28 8. Notice will be mailed to all members of the Settlement Class via: (i) electronic mail,

1 to the most recent email address as reflected in the Notice Databases, to all persons in the Settlement
2 Class for whom such records exist; and (ii) first class mail, to the most recent mailing address
3 reflected in the Notice Databases, for all those for whom mailing addresses exist. *Id.* at ¶ 8.01.
4 Notice will also be provided by Publication Notice with the issuance of a nationwide press release
5 supplemented by electronic publication notice. *Id.* at ¶ 8.04. Class Members shall have 60 days to
6 opt out or submit an objection to the proposed settlement. *Id.* at ¶ 2.14, 2.23.

7 9. Settlement checks will be valid and negotiable for 90 days, after which the Class
8 Administrator will distribute the amount of uncashed checks and/or unclaimed funds to the San
9 Diego Association of Governments (“SANDAG”) to use to improve ingress and egress at the
10 Consolidated Rental Car Center at the San Diego International Airport. *Id.* at ¶¶ 4.05, 7.03(e), 9.02.

11 **V. STATEMENT REGARDING CLASS NOTICE PURSUANT TO CRC 3.766(b)**

12 Subject to Court approval, within 21 calendar days of the Court’s granting preliminary
13 approval, Enterprise, Hertz Corporation, and all third-party rental car companies, will be authorized
14 to provide to the Class Administrator, in an electronically searchable and readable format, Settlement
15 Class Member Information. That information will become part of the Notice Databases. *Id.* at ¶¶
16 7.02(a), 7.02(b).

17 Subject to Court approval, Notices shall be mailed and emailed by the Class Administrator
18 to the last known address and email address of Class Members within 35 calendar days after the
19 Preliminary Approval Order. The Settlement Administrator shall re-mail any returned Notice
20 Packets to the forwarding address affixed thereto; if there is no forwarding address, the Class
21 Administrator shall attempt to locate the correct address by use of skip tracing or other searches.
22 *Id.* at ¶8.01. The Class Administrator shall also issue a nationwide press release about the settlement
23 supplemented by electronic publication notice. Settlement Agreement at ¶8.04. Class Members shall
24 have 60 days to submit their exclusion form (*i.e.*, opt out) or submit an objection. *Id.* at ¶ 2.14. This
25 manner of notice is reasonably calculated to provide notice to Class Members and complies with the
26 requirements of Rule 3.766 of the California Rules of Court. The cost of the Notice shall be paid
27 from the Settlement Fund. The parties agree that notice is necessary with regard to this settlement.

28 **VI. THE SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE**

A class action may not be dismissed, compromised or settled without approval of the Court.

1 See Cal. Civ. Code § 1781(f); Cal. Rules of Court 3.769. The decision to approve or reject a proposed
2 settlement is committed to the “broad discretion” of the Court. *Wershba v. Apple Computer, Inc.* 91
3 Cal. App. 4th 224, 235 (2001) (disapproved on other grounds). The law favors the settlement of
4 lawsuits, particularly in class actions and other complex cases where substantial resources can be
5 conserved by avoiding time, expense and rigors of protracted litigation. *Lealao v. Beneficial Cal.,*
6 *Inc.* (2000) 82 Cal. App. 4th 19, 52 (2000) .

7 The purpose of the preliminary evaluation of a proposed class action settlement is to
8 determine only whether the settlement is within the range of possible approval, and thus whether
9 notice to the class of the terms and conditions and the scheduling of a formal fairness hearing are
10 warranted. *Wershba*, 91 Cal. App. 4th at 234-235, 251. To make the fairness determination, the
11 Court should consider several factors, including “the strength of plaintiffs’ case, the risk, expense,
12 complexity and likely duration of further litigation, the risk of maintaining class action status through
13 trial, the amount offered in settlement, the extent of discovery completed and the stage of the
14 proceedings, [and] the experience and views of counsel.” *Dunk v. Ford Motor Co.* 48 Cal. App. 4th
15 1794, 1801 (1996). “The list of factors is not exclusive and the court is free to engage in a balancing
16 and weighing of the factors depending on the circumstances of each case.” *Wershba* at 245.

17 The Court should begin its analysis with a presumption that the proposed Settlement is fair:

18 [A] presumption of fairness exists where: (1) the settlement is reached through arm’s-
19 length bargaining; (2) investigation and discovery are sufficient to allow counsel and
20 the court to act intelligently; (3) counsel is experienced in similar litigation; and (4) the
percentage of objectors is small.

21 *Dunk*, 48 Cal. App. 4th at 1802; *see also Wershba*, 91 Cal. App. 4th at 245. As set forth
22 more fully below, the settlement proposed here is fair, adequate and reasonable, and should be
23 preliminarily approved by this Court.

24 **A. The Amount Offered in Settlement Is Fair and Reasonable.**

25 Notably, the settlement achieved here is close to a trial win: disgorgement of 100% of the
26 Fees collected by Defendant from *any and all* rental car companies on Port tidelands pursuant to
27 Resolution 2018-065 and Ordinance 2030 and accrued interest. A settlement fund will be created
28 from the collected Fees, less the fees and costs to be paid by the Port to settle the Enterprise Actions,

1 and all rental car customers who paid the Fees will have the opportunity to claim a refund². The
2 Fees remitted to the Port during the class period total approximately \$8 million to date. Given the
3 relatively low cost of Claims Administration and the foreseeable claims rate for refunds, the global
4 settlement should amply cover all claims filed by Settlement Class Members, the fees and costs in
5 both this matter and those incurred by the Plaintiffs in the Enterprise Actions³, the costs of
6 administration of the class settlement, and still have money left for a *cy pres* award.

7 This hypothetical illustrates the distribution for a 20% claim rate, based on the most recent
8 estimate of the settlement fund, which will certainly be larger by the time of final approval⁴:

9	Gross Settlement Fund =	<u>\$6,600,000</u>
10	Claims submitted by 20% of class (457,600 x \$3.50) =	(\$1,601,600)
11	Settlement Admin (notice & distribution of funds) =	(\$1,115,215)
12	Class Representative Service Award =	(\$5,000)
	Class Action fees & costs (20% of fund) =	(\$1,320,000)
	Remainder to <i>cy pres</i> award =	(\$2,558,185)

13 To help ensure that Settlement Class Members receive the full amount of their claims, Class
14 Counsel has agreed to receive their attorneys' fees and costs once Cash Awards are paid to the
15 settlement class. The Port will bear its own costs. Zeldes Decl. ¶ 15.

16 Plaintiff and class members would be hard pressed to do any better at trial. The Port would
17 argue that the statute of limitations on Plaintiff's claims is only one year, cutting the potential relief
18 achieved through this settlement in almost half. And the cost and time to get to trial is not
19 insignificant. Plaintiff would have to engage in the lengthy litigation process, pursuing further
20 discovery and file a resource heavy motion for class certification (and pay for class notice if they
21 prevailed – a reimbursable cost that would come out of class members' pockets). Attorneys' fees
22 and litigation costs would increase significantly if Plaintiff was to take this case through class

23
24 ² The Parties discussed the best notice possible here and weighed all options, including mailing checks directly
25 to class members instead of through a claims process, however, that option is impractical for several reasons.
26 First, some rental car companies do not have the ability to determine whether class members have multiple
27 rentals during the class period, making it likely that class members will only receive reimbursement for one
28 Fee even if they had multiple rentals. Second, some rental car companies assert that even if they had the
ability to determine if a Class Member has multiple rentals, they would object to turning over that information
as they view it as a confidential trade secret. There would be no way to fairly distribute the funds to consumers,
many of whom, like Plaintiff Garvin, have rented on multiple occasions from the rental car companies on
Port tidelands during the class period. Zeldes Decl. ¶ 29.

³ The "Settled Attorneys' Fees and Costs" in the Enterprise Actions is estimated to be \$1.4 million.

⁴ There are approximately 2,288,000 rentals. 20% x 2,288,000 = 457,600 estimated claims.

1 certification, summary judgment and trial. Moreover, Defendant would likely appeal any adverse
2 verdict at trial, and thus any relief to class members would be postponed for years, reducing the
3 likelihood of claims submissions. Zeldes Decl. ¶ 16. Additionally, the Port has taken the position in
4 the Enterprise Actions that California law would permit it to continue to assess and collect the fee
5 during the pendency of any appeal, whereas this settlement cuts off collection of the charge
6 potentially years earlier than would be possible through litigation of this matter. Zeldes Decl. ¶ 17.
7 The Settlement is a fair and reasonable outcome for the Settlement Class members.

8 **B. An Assessment of the Claims and Defenses Asserted, and Other Relevant**
9 **Factors, Weighs Strongly in Favor of Approving the Settlement.**

10 The Settlement considers the strengths and weaknesses of both parties' respective positions.
11 Plaintiff's counsel extensively researched the legality of the Fee imposed by the Port and believe
12 that Plaintiff has a viable claim that Defendant improperly imposed the Fee and forced rental car
13 companies to collect the Fee from renters of their vehicles. Furthermore, in its tentative decision,
14 this Court has concluded after a trial in the Enterprise Actions that the Fee was unconstitutional and
15 improperly assessed. Zeldes Decl. ¶ 18.

16 However, Defendant believes that class certification of the same or similar claims would be
17 denied for lack of predominance, and contends that the Fee was proper. Thus, in Defendant's view,
18 there is no guarantee that class certification would be granted if the case were to proceed to the class
19 certification stage. Further, even if class certification were granted, Defendant posits that there
20 would be no guarantee of a good outcome for Plaintiff at trial in this case. Finally, even if Plaintiff
21 were to obtain a favorable judgment, there would be a significant risk that such result would be
22 significantly smaller than achieved through this Settlement given Defendant's defenses under the
23 GCA and the Reverse Validation statutes, and any appeal by the Defendant would delay the outcome
24 of this action for several years. Zeldes Decl. ¶ 19.

25 Even if Plaintiff were to be successful on class certification, at trial and on appeal, the Class
26 members would likely receive the same or less benefits that they are receiving in this Settlement
27 (\$3.50 per rental) and unclaimed funds would likely revert back to the Port instead of being used to
28 improve ingress and ingress at the Rental Car Center. That Plaintiff was able to achieve such an
outstanding result so early on and play an instrumental role in thawing the impasse between the

1 parties in the Enterprise Actions, weighs in favor of approving the settlement.

2 **C. Discovery and Investigation Weigh in Favor of Approving the Settlement.**

3 The discovery and investigation conducted in this case has allowed both parties to act
4 prudently in coming to an informed settlement. The parties engaged in extensive informal arms-
5 length discussions in advance of settlement. Defendant provided important information about the
6 claims. Plaintiff's counsel have conducted extensive legal and factual research and have reviewed
7 the extensive filings and trial documents in the Enterprise Actions. Prior to filing, Plaintiff's counsel
8 completed an extensive and detailed analysis of the issues in the Enterprise Actions, on Plaintiff
9 Garvin's claims and Defendant's potential liabilities. *See*, Zeldes Decl. ¶ 20. Plaintiff Garvin was
10 also aware of the defenses the Port could raise and knew that the Port would likely put forth as
11 vigorous a defense to the class action as it had to the Reverse Validation Action. *Id.* Plaintiff was
12 aware the Port threatened appeal in the Reverse Validation Action and knew there was significant
13 risk that it would be many years before his matter would be resolved. *Id.*

14 As the above makes clear, at the time of settlement, Plaintiff's counsel had a wealth of
15 information upon which to make an informed decision about the appropriate value at which to settle
16 this case. The parties had sufficient information and extensive knowledge about the strengths and
17 weaknesses of each other's cases to allow for negotiation of a fair settlement. Indeed, it is hard to
18 imagine Plaintiff attaining a better result at trial than full refunds.

19 **D. The Settlement Is the Product of Arm's-Length and Good-Faith Negotiations.**

20 The proposed settlement is the result of extensive investigation and negotiations between
21 the parties. Negotiations were, at all times, adversarial, non-collusive, in good faith, and at arms-
22 length. The Settlement Agreement is the product of extensive and informed negotiations between
23 counsel with substantial litigation experience, who are fully familiar with the legal and factual issues
24 in this case, and who have experience litigating and settling complex class action cases.

25 **E. The Requested Service Award to the Plaintiff is Reasonable.**

26 Plaintiff seeks a service award of \$5,000. Plaintiff's counsel is of the opinion that the service
27 award is reasonable and proper, given that Plaintiff participated meaningfully in the litigation and
28 settlement process. *See*, Zeldes Decl. ¶ 22. Defendant does not oppose the requested service award

1 and it is supported by the particular circumstances of this case as well as the applicable law. Courts
2 have long acknowledged that active litigants are entitled to be compensated for bearing the risk and
3 time to represent others. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726 (2004)
4 (upholding service payments to named plaintiffs for their efforts in bringing class case.)
5 Compensation for all of the class members in this case could not have been achieved but for
6 individuals such as Plaintiff being willing to step forward. A \$5,000 service award is fair and
7 reasonable in light of all of the circumstances.

8 **F. The Requested Attorneys' Fee Award Is Reasonable**

9 California Rule of Court 3.769(b) states: "Any agreement, express or implied, that has been
10 entered into with respect to the payment of attorney's fees or the submission of an application for
11 the approval of attorney's fees must be set forth in full in any application for the approval of the
12 dismissal or settlement of an action that has been certified as a class action." In the present case,
13 Plaintiff's counsel requests an award of attorneys' fees of no more than 20 percent of the Settlement
14 Fund, to include all work previously rendered by Plaintiff's counsel and all future work to be
15 rendered in connection with this case. This is consistent with, if not well below, amounts typically
16 approved by California courts. *See, Laffitte v. Robert Half Internat. Inc* 1 Cal.5th 480 (2016)
17 (affirming award of one-third of the common fund); *Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66
18 n. 11 (2008) ("Empirical studies show that, regardless whether the percentage method or the lodestar
19 method is used, fee awards in class actions average around one-third of the recovery.") Thus, the
20 requested award is well within or below the range typically awarded by courts in comparable cases.

21 Further, the requested award is more than justified in that Plaintiff's counsel achieved an
22 outstanding settlement that will result in a likely 100% cash refund to all claimants – a result
23 equivalent if not better than Plaintiff could have achieved at trial, that would not have been possible
24 without the investigation, discovery and negotiation conducted by Plaintiff's counsel. Zeldes Decl.
25 ¶ 24. Plaintiff's case was the catalyst for resolution of the Enterprise Actions – the parties there had
26 not discussed resolution in the two years that matter was pending⁵. Moreover, Plaintiff's counsel's
27

28 ⁵ In the Reverse Validation Action, the Court determined that a claims process should be established to provide refunds to the rental car customers, but only the customers of the Plaintiffs in that action.

1 work is not yet complete, as they will spend significant time overseeing and participating in the
2 settlement claims administration process, including working to ensure that Class Members receive
3 notice of the settlement, answering Class Member calls, the work involved in the final approval
4 proceedings, preparing and filing the motion for final approval of the class action settlement and the
5 motion for attorneys' fees and reimbursement of litigation costs. Zeldes Decl. ¶¶ 25, 26.

6 Finally, Plaintiff's counsel has agreed to not be paid any attorneys' fees and costs until
7 Settlement Class Members are paid their Cash Awards. This helps to ensure that Class Members
8 receive their full Cash Award. Zeldes Decl. ¶ 27. For all these reasons, Plaintiff submits that the
9 requested attorneys' fee award is fair and reasonable.

10 **VII. THE PROPOSED SETTLEMENT CLASS SHOULD BE CONDITIONALLY**
11 **CERTIFIED FOR SETTLEMENT PURPOSES**

12 The court has broad discretion to certify a class for purposes of a class action settlement.
13 *Dunk*, 48 Cal. App. 4th 1807 n. 19 (holding that class certification in settlement cases is subject to a
14 "lesser standard of scrutiny".) Provisional and conditional class certification is appropriate at the
15 preliminary approval stage where, as here, the proposed Class as it is defined in the parties'
16 Settlement Agreement has not previously been certified by the Court, and the requirements for
17 certification are met. The practical purpose of provisional and conditional certification is to facilitate
18 distribution to all Class members of notice of the terms of the proposed Settlement, and the date and
19 time of the final approval hearing. The additional rulings sought on this motion – approving the
20 form, content and distribution of the Class Notice, and scheduling a formal fairness hearing –
21 facilitate the settlement approval process, and are also typically made at the preliminary approval
22 stage. *See* Cal. R. Ct. 3.769.

22 Under California law, a settlement class must meet the following criteria for certification:
23 (1) the individuals in the settlement class are so numerous that joinder would be impractical; (2)
24 there is a commonality of interest between the plaintiffs and the members of the settlement class; (3)
25 plaintiffs' claims are typical of the claims of the absent settlement class members; and (4) plaintiffs
26 and their counsel will fairly and adequately represent the interests of the absent settlement class

27 _____
28 The Port argued that the Plaintiff rental car companies did not have standing to seek refunds on
behalf of their customers. Plaintiff Garvin's claim and action provide the vehicle to seek refunds on
behalf of not just those customers, but the customers of all rental car companies who have been
charged the fees at issue in this litigation.

1 members. *See* California Rule of Court 3.769(d); Cal. Code Civ. Proc. § 382; *see also Sav-on Drug*
2 *Stores, Inc.*, 34 Cal. 4th at 326-27. As explained below, all of these factors are met and preliminary
3 approval of the parties' request for certification of a settlement class is appropriate.

4 **A. Numerosity Is Satisfied.**

5 The numerosity requirement is met if the class is so large that joinder of all members would
6 be impracticable. Cal. Code Civ. Proc. § 382. Here, with approximately 2,288,000 rentals, the
7 proposed class is sufficiently numerous. *See Hebbard v. Calgrov* 28 Cal. App. 3d 1017, 1030 (1972).
8 Numerosity also requires that the identities of class members may be ascertained. *See Daar v. Yellow*
9 *Cab Co.* (1967) 67 Cal. 2d 695, 706 (1967). Ascertainability is determined largely by examining
10 the class definition, the size of the class, and the means available for identifying class members. *See*
11 *Bufile v. Dollar Financial Group, Inc.*, 162 Cal. App. 4th 1193, 1207 (2008). "Class members are
12 ascertainable where they may be readily identified without unreasonable expense or time by
13 reference to official records." *Id.* at 1206. Here, the proposed class is ascertainable because all
14 putative Class Members can be identified through third-party rental car companies' records.

15 **B. The Commonality and Typicality Requirements are Satisfied.**

16 Typicality requires only that the proposed class representative's interests in the action be
17 significantly similar to those of the other members of the proposed class. The proposed
18 representative's claims need not be identical to the claims of other members of the class; it is
19 sufficient that the representative is similarly situated, so that he will have the motive to litigate on
20 behalf of all class members. *See Classen v. Weller* 145 Cal. App. 3d 27, 46 (1983). Here, typicality
21 is easily met. Plaintiff's claim is typical of the claims of the whole Class because they arise from
22 the same factual basis and are based on the same legal theory as those applicable to Class Members.
23 *See Wehner v. Syntex Corp.* 117 F.R.D. 641, 644 (N.D. Cal. 1987). The existence of numerous
24 common issues of fact and law, and the well-defined community of interests among Class Members,
25 ensure that the claims of the Plaintiff are typical of the Class. *See Classen*, 145 Cal. App. 3d at 46.

26 **C. Plaintiff and Class Counsel Will Fairly and Adequately Represent the Class.**

27 In order to fairly and adequately protect the class, the named plaintiff must: (1) be represented
28 by counsel qualified to conduct the litigation, and (2) not have interests that are antagonistic to those

1 of the class. *McGhee v. Bank of America* 60 Cal. App. 3d 442, 450 (1976). With respect to the first
2 requirement, proposed Class Counsel is experienced in litigating consumer class actions such as this
3 and has successfully litigated a significant number of class action cases. Zeldes Decl. Ex. 2.
4 Accordingly, Plaintiff's counsel are more than qualified to represent the interests of the Class. The
5 second requirement is also met here. The Plaintiff here is an adequate class representative because
6 he has raised claims that are similar to the claims of other members of the Class. In addition, there
7 is no indication that there are, or ever will be, any conflicts between Plaintiff and the Class. Further,
8 Plaintiff has assisted the investigation and litigation efforts undertaken by Plaintiff's counsel.

9 **D. Class-wide Settlement Is Superior to Other Available Methods of Resolution.**

10 Particularly in the settlement context, class resolution is superior to other available methods
11 for the fair and efficient adjudication of the controversy. As here, individual Class Members have
12 relatively small amounts of damages. Their claims are not economical to pursue on an individual
13 basis because litigation costs greatly exceed potential recovery. *Daar*, 67 Cal. 2d at 714-15.⁶

14 **VIII. THE PROPOSED CLASS NOTICE IS MORE THAN ADEQUATE AND**
15 **INCLUDES ALL REQUIRED COMPONENTS.**

16 A court order preliminarily approving a class settlement must detail the notice to be given to
17 the class. Cal. R. Ct. 3.769(e). According to California Rule of Court 3.766(d), the notice must
18 include the following:

19 (1) A brief explanation of the case, including the basic contentions or denials of the parties;
20 A statement that the court will exclude the member from the class if the member so requests
21 by a specified date; (3) A procedure for the member to follow in requesting exclusion from
22 the class; (4) A statement that the judgment, whether favorable or not, will bind all members
23 who do not request exclusion; and (5) A statement that any member who does not request
24 exclusion may, if the member so desires, enter an appearance through counsel.
25 Cal. R. Ct. 3766(d).

26 The court has broad discretion in deciding whether to approve the proposed class notice.
27 *Wershba*, 91 Cal. App. 4th at 252.

28 Here, the proposed Class Notice contains all of the required components. Specifically, it

27 ⁶ Defendant disputes that the class certification requirements would be met if the case were litigated
28 because, among other things, common issues would not predominate at trial, or unique defenses
could arise at trial as to Plaintiffs' claims. Defendant thus agrees that the class certification elements
can be met for purposes of a settlement class only. Defendant reserves all rights if approval of the
settlement class is denied.

1 includes: (1) the definition of the Class, (2) a description of the substantive issues and proceedings
 2 to date; (3) a neutral description of the proposed Settlement; (4) the amount of attorneys' fees and
 3 costs sought; (5) information regarding the right to request exclusion from (i.e., "opt out" of) the
 4 Settlement, the procedure for doing so, and the date by which such action must be taken; (6)
 5 information regarding the right to file an objection regarding the Settlement, the procedure for doing
 6 so and the date by which such action must be taken; (7) the consequences of remaining a member of
 7 the Settlement Class, including the fact that one will be bound by the judgment; (8) the date, time
 8 and place of the final approval hearing; (9) the identity of Plaintiff, Plaintiff's counsel and
 9 Defendant's counsel; and (10) contact information for Plaintiff's counsel, Defendant's counsel, and
 10 the Class Administrator. Thus, the proposed Class Notice includes all required information. Further,
 11 the method of notice is more than adequate, in that the Postcard Notice and Email Notice will be
 12 mailed to Class Members at their last known address and e-mail address respectively and there are
 13 procedures in place to make reasonable efforts to locate Class members who no longer live at their
 14 last known address.

15 **IX. PROPOSED SCHEDULE**

16 Plaintiff proposes the following schedule:

EVENT	DATE
Deadline for rental car companies to Provide Class Administrator with Class Member Data	21 calendar days after Preliminary Approval Order
Deadline for Administrator to Mail Notice to Class	35 calendar days after Preliminary Approval Order
Last day for Class Members to file objections	60 days after Notice first mailed by Administrator
Last day for Class Members to request exclusion	60 days after Notice first mailed by Administrator
Last day for Class Members to file claims	60 days after Notice first mailed by Administrator
Last day for Class Counsel to file Motion for Final Approval and Motion for Attorneys' Fees, Litigation Costs, Administration Costs and Service Award	16 court days before final approval hearing
Final Approval Hearing	November 20, 2020

24
 25 **X. CONCLUSION**

26 For all the foregoing reasons, Plaintiff respectfully requests that the Court preliminarily
 27 approve the proposed Settlement, conditionally certify the Settlement Class, and enter the proposed
 28 order submitted concurrently herewith.

1 DATED: June 24, 2020

**SCHONBRUN SEPLOW HARRIS
HOFFMAN & ZELDES LLP**



2
3
4 By: _____

5 HELEN I. ZELDES
6 *Attorneys for Plaintiff and the Proposed Class.*

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