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Superior Court of California,  
County of San Diego  
**10/21/2020** at 11:47:00 PM  
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By Gen Dieu, Deputy Clerk

11 *Attorneys for Plaintiff and the Proposed Class*

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

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

Plaintiff,

vs.

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

Defendants.

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

CLASS ACTION

**NOTICE OF MOTION AND MOTION  
FOR FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT, AWARD OF  
ATTORNEYS FEES AND COSTS, AND  
APPROVAL OF CLASS  
REPRESENTATIVE SERVICE AWARD;  
MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT THEREOF**

*[FILED CONCURRENTLY WITH  
SUPPORTING DECLARATIONS, AND  
[PROPOSED] ORDER AND JUDGMENT]*

Date: November 13, 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 **November 13, 2020, at 1:30 p.m.**, or as soon thereafter  
4 as the 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 conditionally certified for settlement purposes,  
7 will and hereby does move this Court for entry of an Order granting final approval of this class action  
8 settlement, conditionally certifying the class for settlement purposes, approving administration costs,  
9 attorneys’ fees, expenses, and a service award for the class representative and entering judgment, all  
10 in accordance with the parties’ Settlement Agreement for the above-captioned class action and this  
11 Court’s order granting preliminary approval of the settlement. The parties’ proposed Order and  
12 Judgment is lodged concurrently herewith.

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

16 This motion is based upon this notice and motion; the Memorandum of Points and  
17 Authorities submitted herewith; the Zeldes Declaration and attached exhibits filed concurrently  
18 therewith; the Travis Declaration; the Azari Declaration; the Byrd Declaration; the Garvin  
19 Declaration; the other records and pleadings filed in this action; and upon such other documentary  
20 and oral evidence or argument as may be presented to the Court at the hearing of this motion.

21  
22 DATED: October 21, 2020

SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES LLP



23  
24  
25 By: \_\_\_\_\_  
26 HELEN I. ZELDES  
27 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 final approval of a truly outstanding settlement with Defendant  
4 San Diego Unified Port District (“Port” or “Defendant”) in which the Port would provide 100%  
5 disgorgement of monies it received from rental car customers on Port tidelands in San Diego to  
6 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*, a case pending before this Court, two rental car companies sought to have the  
11 assessments by the Port deemed an illegal tax to be refunded.<sup>1</sup> This Court declared the Fee an illegal  
12 and unconstitutional tax in its tentative decision on December 4, 2019. No consumers were involved  
13 or represented in the *Hertz & Enterprise* actions. In the third and instant case, *Garvin v. San Diego*  
14 *Unified Port District*, Plaintiff Garvin brought a consumer class action on behalf of all rental car  
15 drivers seeking to have the fees that *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 this Court’s tentative ruling and explicitly reserved its rights to appeal final decisions on the  
18 validity of the Fee and any remedy. Similarly, the Port expressed its intent to fully litigate Plaintiff  
19 Garvin’s claims as to all issues, and would have moved to limit the remedies available to the putative  
20 class to *one year* under the Government Claims Act (“GCA”). Under California Government Code  
21 §911.2, the Port argued that the statute of limitations for Plaintiff Garvin’s claim would be limited  
22 to one year. Because the Port has been assessing Fees on class members’ rentals since May 2018 –  
23 more than *two years now* – almost half the class would have been barred from relief under the GCA.  
24 Alternatively, the Port argued that Plaintiff could not obtain any remedies at all because he did not  
25 timely comply with the Reverse Validation statutes.

26 \_\_\_\_\_  
27 <sup>1</sup> *Enterprise Rent-A-Car Co. of Los Angeles, LLC* (“Enterprise”) and *The Hertz Corporation*  
28 (“Hertz”) *v. San 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 In light of the risks going forward and the likelihood of multi-year appeals in all three cases  
2 causing significant delay in getting relief to consumers, the settlement reached here – in which the  
3 Port will pay the Gross Settlement Amount into a fund to allow *all* rental car customers who paid  
4 the Fees to seek refunds, not just Enterprise and Hertz rental car customers in the year preceding the  
5 submission of class action claims to the Port – is a tremendous result. Subject to final approval by  
6 this Court, Plaintiff has agreed to settle his and putative class members’ claims for a total gross non-  
7 reversionary amount of all Fees remitted to the Port by all rental car companies pursuant to  
8 Resolution 2018-065 and Ordinance 2030 and accrued interest less the fees and costs to be paid  
9 pursuant to the Settlement Agreement and Mutual Release of All Claims in the Enterprise Actions.  
10 The total Settlement Fund will be at minimum \$7 million.<sup>2</sup>

11 This settlement is the result of arm’s-length contentious negotiations between the parties in  
12 this Action. The parties reached an agreement that strikes a balance between the risks of continued  
13 litigation and fair and prompt compensation to the Settlement Class Members. The Settlement is  
14 fair and reasonable, and provides substantial compensation for all class members representing  
15 approximately 2,359,441 rentals. Indeed, the Settlement provides what would likely be better than a  
16 trial win here: the opportunity for all renters to seek refunds of the Fees paid during the entire,  
17 approximate two-year assessment period.

18 Final Approval is warranted because this is a fair and reasonable result for Class Members,  
19 as evidenced by the lack of any objections and the very limited number of opt-outs. As of the  
20 drafting of this Motion, no Class Member objected to the settlement and only twenty-eight Class  
21 Members opted out<sup>3</sup>, evidencing overwhelming approval by Class Members. All of the Court’s  
22 requirements for Notice to the Class, set forth pursuant to the Order Granting Preliminary Approval,  
23 have been fully complied with. In fact, as further described below, the Notice program is an  
24 overwhelming success, providing direct notice to over 97% of the identified class members.

25 \_\_\_\_\_  
26 <sup>2</sup> The Fees that the Port collected are in an interest-bearing account. The \$7 million includes interest  
27 through September 30, 2020. Any additional interest earned between September 30, 2020 and the  
28 date the Port funds the Settlement will be added to the Settlement Fund.

<sup>3</sup> On September 21, 2020, the Court signed an Order allowing Epiq to consider claim forms and  
requests for exclusion received or postmarked by November 2, 2020 and the Court will consider  
objections properly filed on or before that date. Plaintiff will submit a supplemental filing prior to  
the hearing updating the court on the number of claims and exclusions received and responding to  
objections, if any.

1 Plaintiff also seeks an award of attorneys' fees in the amount of \$1,400,000, litigation costs  
2 in the amount of \$6,741,44, the costs of claim administration of approximately \$1,115,215.00<sup>4</sup>, and  
3 a service award for the named Class Representative, Jeffrey Garvin, in the amount of \$5,000. The  
4 attorneys' fees and litigation costs are not to be paid until after class members are sent their Cash  
5 Awards, and only to the extent there is money remaining in the Settlement Fund. Given the claims  
6 rate of around 20%, it is anticipated that all Class Members who filed claims will receive Cash  
7 Awards in the amount of 100% of the Fees they paid.

8 The request for attorneys' fees and costs is justified because the settlement in this case confers  
9 a substantial benefit upon the Settlement Class Members. Indeed, Plaintiff's counsel were able to  
10 effectuate a rapid resolution to this action. Class Counsel devoted substantial time and effort to  
11 analyzing and investigating Plaintiffs' claims, reviewing documents and data, negotiating a fair and  
12 reasonable settlement, and ensuring maximum participation by the settlement class. The fruits of  
13 these efforts have manifested in this Settlement, which has been preliminarily approved by this  
14 Court. The attorneys' fees requested by Class Counsel are further justified by their skill, experience  
15 and diligence. Accordingly, Plaintiff's request for attorneys' fees and costs should be granted.

16 In addition, the requested \$5,000 service award to the named Plaintiff is justified by the  
17 amount of time he devoted to this lawsuit, the invaluable assistance he provided to counsel, and the  
18 risks associated with being a named Plaintiff in a class action lawsuit. Simply put, as Class  
19 Representative, Mr. Garvin provided immeasurable assistance to counsel and bore risks that other  
20 class members did not. Accordingly, the request for a service award should be granted.

21 Finally, the amount requested for notice and claims administration is reasonable and warrants  
22 approval, as explained below. Accordingly, Plaintiff's motion should be granted in its entirety.

## 23 **II. PROCEDURAL BACKGROUND**

24 On April 10, 2018, the Board of Port Commissioners of the Port adopted Resolution 2018-  
25 065, which purported to re-enact San Diego Port Ordinance 2030 and imposed a special tax, Plaintiff  
26 alleges is disguised as a "user fee," on car renters. The special tax is a charge of \$3.50 that renters  
27

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28 <sup>4</sup> Since claims can be submitted till November 2<sup>nd</sup>, Epiq will have a better sense of the approximate  
administration costs closer to the hearing and will submit a supplemental declaration.

1 are assessed for each rental car transaction that takes place on San Diego Port tidelands, which  
2 includes San Diego International Airport and the adjacent Rental Car Center. The Resolution ordered  
3 the rental car companies to commence collecting the fee on May 10, 2018. Zeldes Decl. ¶ 5.

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

11 A bench trial was held on October 16, 2019. On December 4, 2019, the Court issued its  
12 tentative decision in the Reverse Validation Action, declaring Resolution 2018-065 and the  
13 associated \$3.50 Fee unconstitutional and illegal. The Parties were ordered to meet and confer and  
14 submit a Proposed Statement of Decision and Proposed Order on Refund Process. The Parties  
15 submitted briefing on various issues, but no Statement of Decision or Order was entered. Zeldes  
16 Decl. ¶ 7.

17 On January 24, 2020, Plaintiff Garvin filed a proposed class action in the United States  
18 District Court for the Southern District of California titled *Jeffrey Garvin v. Payless Car Rental, Inc.*  
19 *et al.* Case No. 3:20-cv-00172-AJB-WVG, against several rental car companies seeking refunds of  
20 the Fees that he and other proposed Class Members paid to those companies that were remitted to  
21 the Port. Zeldes Decl. ¶ 8. After meeting and conferring with Defendants in that action about their  
22 anticipated motions to dismiss pursuant to Federal Rule 12, their anticipated defenses, and after  
23 Defendants presented Plaintiff with evidence that his contract with them included arbitration  
24 provisions and class action waivers, and upon further review of his claims, Plaintiff determined that  
25 it was in the best interests of the Class to seek refunds directly from the Port. Zeldes Decl. ¶ 9.

26 On February 13, 2020, Plaintiff filed the requisite pre-filing claim with the Port, pursuant to  
27 Government Code sections 910 *et seq.*, on behalf of himself and all others similarly situated, seeking  
28 a refund of the Fees collected by the rental car companies and remitted to the Port. On March 5,

1 2020, the Port rejected the claim. Zeldes Decl. ¶ 10.

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

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

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

20 On July 17, 2020, the Court granted preliminary approval of this Settlement. The Court  
21 ordered that claims administration be conducted in accordance with the Settlement Agreement. As  
22 explained in detail below, the Class Members were given the opportunity to file claims, exclude  
23 themselves from, or object to, this Settlement.

### 24 **III. THE NOTICE PROVIDED TO CLASS MEMBERS**

25 The Port’s counsel provided Class Counsel with a list of all rental car companies that remitted  
26 Fees to the Port. Class Counsel contacted all of the rental car companies on the list to see if they  
27 would be willing to provide their customers’ information. The majority of the rental car companies  
28 agreed to provide contact information for class members, totaling approximately 95% of the class.

1 Several of the rental car companies expressed concerns with providing the information. Class  
2 Counsel worked with Epiq to ensure that provisions were added to the contract between them and  
3 Class Counsel in which they agreed keep it confidential. After receiving those assurances, a few  
4 more companies agreed to provide contact information. Travis Decl. ¶¶8-9.

5 One small rental car company expressed concerns with providing customer information and  
6 declined to provide information. Several others were in bankruptcy proceedings and did not have  
7 the resources to be able to do so, so they declined to provide the information as well. A few of the  
8 rental car companies did not respond at all. However, of the companies that agreed to produce class  
9 member information, it is estimated that those companies include 95% of the class members. Epiq  
10 was therefore provided with class member information for close to the entire class. Travis Decl. ¶10.

11 Between July 29, 2020 and August 5, 2020, five rental car companies provided Epiq with  
12 substantial data files containing class member contact information, totaling 2,112,561 rental car  
13 transactions (*i.e.* the total number of fees collected from class members). Epiq de-duplicated the  
14 data, which resulted in 1,477,868 unique Settlement Class Member records (*i.e.* the total number of  
15 class members). Azari Decl. ¶11. On August 25, 2020, Epiq received a supplemental data file from  
16 Enterprise Rent-A-Car which totaled 1,340 records. Epiq de-duplicated the data, which resulted in  
17 233 additional unique Settlement Class Member records with a mailing address. Azari Decl. ¶12.

18 From August 21, 2020 to September 4, 2020, Epiq sent 1,444,200 Postcard Notices to  
19 Settlement Class Members after running the addresses through the National Change of Address  
20 (“NCOA”) database maintained by the USPS. The addresses were certified via the Coding Accuracy  
21 Support System (“CASS”) to ensure the quality of the zip code and verified through Delivery Point  
22 Validation (“DPV”) to verify the accuracy of the addresses. Azari Decl. ¶¶.13-14.

23 On August 21, 2020, Epiq sent 975,550 Email Notices to Settlement Class Members. Azari  
24 Decl. ¶17. On October 9, 2020, Epiq sent 715,184 Reminder Email Notices, which included the  
25 successfully delivered email addresses from the original mailing as well as 1,048 individuals who  
26 signed up for email notifications via the Settlement Website. Azari Decl. ¶20.

27 To supplement the individual notice efforts, a Banner Notice campaign was disseminated to  
28 provide reach to individuals nationwide who may have rented a car in San Diego but whose contact

1 information was unknown or to whom individual notice may have been undeliverable. Azari Decl.  
2 ¶21. To build additional reach and extend exposures, a party-neutral Informational Release was  
3 issued on August 21, 2020, to approximately 5,000 general media (print and broadcast) outlets across  
4 the United States and 4,500 online databases and websites. Azari Decl. ¶26.

#### 5 **IV. THE PROPOSED SETTLEMENT CLASS DEFINITION**

6 The proposed Settlement Class is defined as follows:

7 All individuals who rented vehicles from rental car companies, with the rentals originating  
8 at locations in San Diego, California on San Diego Port tidelands, from the period of May  
9 10, 2018 through July 24, 2020, and who were assessed a \$3.50 fee by the rental car  
10 companies that was then remitted to the San Diego Port.

11 Excluded from the Settlement Class are any of Defendant's officers, directors, or employees;  
12 officers, directors, or employees of any entity in which Defendant currently has or had a controlling  
13 interest; and Defendant's legal representatives, heirs, successors, and assigns.

#### 14 **V. SUMMARY OF THE TERMS OF THE SETTLEMENT**

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

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

21 2. Notice will be mailed to all members of the Settlement Class via: (i) electronic mail,  
22 to the most recent email address as reflected in the Notice Databases, to all persons in the Settlement  
23 Class for whom such records exist; and (ii) first class mail, to the most recent mailing address  
24 reflected in the Notice Databases, for all those for whom mailing addresses exist. *Id.* at ¶ 8.01.  
25 Notice will also be provided by Publication Notice with the issuance of a nationwide press release  
26 supplemented by electronic publication notice. *Id.* at ¶ 8.04. Class Members shall have 60 days to  
27 opt out or submit an objection to the proposed settlement. *Id.* at ¶¶2.14, 2.23. The Class  
28 Administration costs are paid from the Settlement Fund. *Id.* at ¶¶2.32, 4.01.

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

6           4.       There is no cap on the number of rentals each Settlement Class Member may submit  
7 in their claim for reimbursement. However, any Settlement Class Member who claims to have paid  
8 the Fee more than six times (i.e. claims more than \$21) must do so under penalty of perjury and any  
9 Settlement Class Member who claims to have paid the Fee more than 20 times (i.e. claims more than  
10 \$70) must provide evidence in support of their claims. *Id.* at ¶4.04.

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

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

17          7.       Plaintiff Garvin will seek Court approval for attorneys’ fees in the amount of up to  
18 20 percent of the Settlement Fund (after Cash Awards are paid), as well as reimbursement of their  
19 costs and expenses not to exceed \$10,000. *Id.* at ¶5.01.

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

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

23 **A. Public Policy Favors Settlement of Class Actions**

24           A class action may not be dismissed, compromised or settled without approval of the Court.  
25 *See* Cal. Civ. Code § 1781(f); Cal. Rules of Court 3.769. The law favors the settlement of lawsuits,  
26 particularly in class actions and other complex cases where substantial resources can be conserved  
27 by avoiding time, expense and rigors of protracted litigation. *Lealao v. Beneficial Cal., Inc.* (2000)  
28 82 Cal. App. 4th 19, 52 (2000) .

1 In approving a proposed settlement, the court must determine whether the class settlement is  
2 fair, reasonable and adequate. *Dunk v. Ford Motor Co.* (1996) 48 Cal. App. 4th 1794, 1801. The  
3 Court has broad discretion in making this determination. *Id.*; *Rebney v. Wells Fargo Bank* (1990)  
4 220 Cal. App. 3d 1117, 1138. However, the purpose of the final approval hearing is not to allow  
5 others to rework a settlement that is the result of long, complex, and hard-fought negotiations.  
6 *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 246 [“[T]he proposed settlement is  
7 not to be judged against a hypothetical or speculative measure of what might have been achieved  
8 had plaintiffs prevailed at trial.”]; *Rebney*, 220 Cal. App. 3d at 1135 [class action settlement must  
9 stand or fall as a whole.] As set forth below, this settlement is fair, reasonable and adequate.

10 **B. This Settlement is Entitled to a Presumption of Fairness**

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

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

16 *Dunk*, 48 Cal. App. 4th at 1802; *see also Wershba*, 91 Cal. App. 4th at 245.

17 Each of the elements leading to a presumption of “fairness” exists in this case. First, the  
18 settlement value was agreed to through arm-length negotiations (Zeldes Decl., ¶13). Negotiations  
19 were, at all times, adversarial, non-collusive, in good faith, and at arms-length. The Settlement  
20 Agreement is the product of extensive and informed negotiations between counsel with substantial  
21 litigation experience, who are fully familiar with the legal and factual issues in this case, and who  
22 have experience litigating and settling complex class action cases. Second, Plaintiff conducted an  
23 extensive investigation into Defendant’s liability and the damages owed to Class Members.  
24 Plaintiffs determined based on this investigation and discovery that the terms of the final settlement  
25 were fair and reasonable and that a significant risk of recovering nothing or less than the proposed  
26 settlement existed if the litigation continued. (Zeldes Decl., ¶¶ 16-20). Third, Class Counsel are  
27 experienced class action litigators and strongly believe the settlement is fair and reasonable. (Zeldes  
28 Decl., ¶3) Finally, no Class Members filed an objection to the settlement. (Zeldes Decl., ¶42.)



1           **C.       The Settlement is Reasonable and Adequate**

2           To make the fairness determination, the Court should consider several factors, including “the  
3 strength of plaintiffs’ case, the risk, expense, complexity and likely duration of further litigation, the  
4 risk of maintaining class action status through trial, the amount offered in settlement, the extent of  
5 discovery completed and the stage of the proceedings, the experience and views of counsel... and  
6 the reaction of the class members to the proposed settlement” *Dunk v. Ford Motor Co.* 48 Cal. App.  
7 4th at 1801; *see also In re Microsoft I-V Cases* (2006) 135 Cal. App. 4th 706, 723. “The list of factors  
8 is not exclusive and the court is free to engage in a balancing and weighing of the factors depending  
9 on the circumstances of each case.” *Wershba*, 91 Cal. App. 4th at 245. Each of these factors strongly  
10 points to the conclusion that the settlement is fair, reasonable and adequate.

11                   **1.       The Strength of Plaintiffs’ Case, the Risk, Expense, Complexity and**  
12                   **Likely Duration of Further Litigation, and Maintaining Class Action**  
13                   **Status Through Trial**

14           One important factor in evaluating the fairness and adequacy of the settlement is the strength  
15 of Plaintiff’s case and the likelihood of a significantly larger recovery after the completion of the  
16 trial and any subsequent appeals. *7-Eleven Owners for Fair Franchising v. Southland Corp.* (2000)  
17 85 Cal.App.4th 1135. On the other hand, courts are not to “reach any ultimate conclusions on the  
18 contested issues of fact and law which underlie the merits of the dispute, for it is the very uncertainty  
19 of outcome in litigation and avoidance of wasteful and expensive litigation that induce consensual  
20 settlements.” *Id.* While Plaintiff and his counsel firmly believe in the strength of their case, they  
21 are also mindful of the significant risks they face in proceeding to a trial on the complex issues in  
the litigation. *Zeldes Decl.*, ¶26.

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

28           However, Defendant believes that class certification of the same or similar claims would be

1 denied for lack of predominance, and contends that the Fee was proper. In Defendant's view, there  
2 is no guarantee that class certification would be granted if the case were to proceed to the class  
3 certification stage. Even if class certification were granted, Defendant posits that there would be no  
4 guarantee of a good outcome for Plaintiff at trial in this case. Finally, even if Plaintiff were to obtain  
5 a favorable judgment, there would be a significant risk that such result would be significantly smaller  
6 than achieved through this Settlement given Defendant's defenses under the GCA and the Reverse  
7 Validation statutes, and any appeal by the Defendant would delay the outcome of this action for  
8 several years. Zeldes Decl. ¶ 19.

9 Notably, even if Plaintiff were successful on class certification, at trial and on appeal, Class  
10 members would likely receive *the same or less benefits* than they are receiving in this Settlement  
11 (\$3.50 per rental) and unclaimed funds would likely revert back to the Port instead of being used to  
12 improve ingress and egress at the Rental Car Center. That Plaintiff was able to achieve such an  
13 outstanding result so early on and play an instrumental role in thawing the impasse between the  
14 parties in the Enterprise Actions, weighs in favor of approving the settlement.

## 15 **2. The Amount Offered in Settlement is Likely Better than a Trial Win**

16 The settlement achieved here would undoubtedly exceed a trial win: the Port has agreed to  
17 disgorgement of 100% of the Fees it collected from *any and all* rental car companies on Port  
18 tidelands pursuant to Resolution 2018-065 and Ordinance 2030, plus accrued interest, not just those  
19 Fees collected from Hertz and Enterprise during the one-year GCA statutory period. A settlement  
20 fund will be created from the collected Fees, less the fees and costs to be paid by the Port to settle  
21 the Enterprise Actions, and all rental car customers who paid the Fees will have the opportunity to  
22 claim a refund.<sup>5</sup> The Fees remitted to the Port during the class period plus accrued interest total

---

23  
24 <sup>5</sup> The Parties discussed the best notice possible here and weighed all options, including mailing  
25 checks directly to class members instead of through a claims process, however, that option was  
26 impractical for several reasons. First, some rental car companies did not have the ability to determine  
27 whether class members have multiple rentals during the class period, making it likely that class  
28 members will only receive reimbursement for one Fee even if they had multiple rentals. Second,  
some rental car companies asserted 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. Third, as the notice program has borne out, many class members have  
numerous rentals and would be unfairly treated if they received only one or a pro rata share of the  
fund. There would be no way to fairly distribute the funds to consumers, many of whom, like

1 approximately \$8,460,044.90 to date. Given the foreseeable claims rate for refunds, the global  
2 settlement is anticipated to cover all claims filed by Settlement Class Members, the fees and costs  
3 in both this matter and those incurred by the Plaintiffs in the Enterprise Actions<sup>6</sup>, the costs of  
4 administration of the class settlement, and still have money left for a *cy pres* award.

5 This hypothetical illustrates the distribution for a 20% claim rate, based on the most recent  
6 estimate of the settlement fund<sup>7</sup>:

7	Gross Settlement Fund =	<b>\$7,053,029.39</b>
8	Claims submitted by 20% of class (471,888 x \$3.50) =	-\$1,651,608
9	Settlement Admin (notice & distribution of funds) =	-\$1,115,215
9	Class Representative Service Award =	-\$5,000
10	Class Action fees & costs (20% of fund) =	_____
10	Remainder to <i>cy pres</i> award =	<u>\$1,400,000</u>
		<b>\$2,881,206.39</b>

11  
12 To help ensure that Settlement Class Members receive the full amount of their claims, Class  
13 Counsel agreed to bear the risk and receive their attorneys' fees and costs only after Cash Awards  
14 are paid to the settlement class. The Port agreed to bear its own costs. Zeldes Decl. ¶ 15.

15 In determining whether a proposed settlement is reasonable and adequate, appellate courts  
16 apply the following analysis: "It is well settled that in the judicial consideration of proposed  
17 settlements, 'the [trial] judge does not try out or attempt to decide the merits of the controversy', and  
18 the appellate court 'need not and should not reach any dispositive conclusions on the admittedly  
19 unsettled legal issue.'" *7-Eleven Owners*, 85 Cal. App. 4th at 1146 [quoting *Detroit v. Grinnell Corp.*  
20 (2d Cir. 1974) 495 F.2d 448, 456.].

21 Should the Court not approve the Settlement, Plaintiff would have to pursue further discovery  
22 and file a motion for class certification. Attorneys' fees and litigation costs would increase  
23 significantly if Plaintiff were to take this case through class certification and trial. Plaintiff and class  
24 members would be hard pressed to do any better at trial. The Port would argue that the statute of  
25 limitations on Plaintiff's claims is only one year, cutting the potential relief achieved through this

26  
27 Plaintiff Garvin, have rented on multiple occasions from the rental car companies on Port tidelands  
during the class period.

28 <sup>6</sup> The "Settled Attorneys' Fees and Costs" in the Enterprise Actions is \$1,407,015.51.

<sup>7</sup> There are approximately 2,359,441 rentals. 20% x 2,359,441 = 471,888 estimated claims.

1 settlement in almost half. And the cost and time to get to trial is not insignificant. Plaintiff would  
2 have to engage in the lengthy litigation process, pursuing further discovery and file a resource heavy  
3 motion for class certification (and pay for class notice if they prevailed – a reimbursable cost that  
4 would come out of class members’ pockets). Attorneys’ fees and litigation costs would increase  
5 significantly if Plaintiff was to take this case through class certification, summary judgment and  
6 trial. Moreover, Defendant would likely appeal any adverse verdict at trial, and thus any relief to  
7 class members would be postponed for years, reducing the likelihood of claims submissions. Zeldes  
8 Decl. ¶ 16. Additionally, the Port has taken the position in the Enterprise Actions that California  
9 law would permit it to continue to assess and collect the fee during the pendency of any appeal,  
10 whereas this settlement cuts off collection of the charge potentially years earlier than would be  
11 possible through litigation of this matter. Zeldes Decl. ¶ 17. The Settlement is a fair and reasonable  
12 outcome for the Settlement Class Members.

### 13 **3. The Extent of Discovery Completed and the Stage of the Proceedings**

14 The discovery and investigation conducted in this case has allowed both parties to act  
15 prudently in coming to an informed settlement. The parties engaged in numerous informal arms-  
16 length discussions in advance of settlement. Plaintiff’s counsel have conducted legal and factual  
17 research and have reviewed the filings and trial documents in the Enterprise Actions. Prior to filing,  
18 Plaintiff’s counsel completed a detailed analysis of the issues in the Enterprise Actions, on Plaintiff  
19 Garvin’s claims and Defendant’s potential liabilities. *See*, Zeldes Decl. ¶ 20. Plaintiff Garvin was  
20 also aware of the defenses the Port could raise and knew that the Port would likely put forth as  
21 vigorous a defense to the class action as it had to the Reverse Validation Action. *Id.* Plaintiff was  
22 aware the Port threatened appeal in the Reverse Validation Action and knew there was a significant  
23 risk that it would be many years before his matter would be resolved. *Id.*

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

1                                   **4.       The Experience and Views of Counsel**

2           The endorsement of qualified and experienced counsel that a settlement is fair and reasonable  
3 strongly supports a grant of final approval. *Dunk*, 48 Cal. App. 4th at 1802. Class Counsel are highly  
4 experienced at litigating consumer class actions and have been qualified as class counsel in  
5 numerous other actions. See Zeldes. Decl. at ¶3. Accordingly, their opinion that the Settlement is  
6 fair, reasonable, and adequate; that it is in the best interests of the class; and that it is an excellent  
7 result for the Class, weighs in favor of final approval.

8                                   **5.       The Reaction of the Class Has Been Overwhelmingly Positive**

9           The reaction of Class Members to this settlement has been extremely positive. Almost as  
10 soon as notice went out, Class Counsel started receiving calls from class members including  
11 international class members from as far away as Argentina, Mexico, Canada and the United  
12 Kingdom. All of the class members that Class Counsel spoke to were happy with the settlement and  
13 Class Counsel helped them by answering their questions and assisting them with getting their claims  
14 submitted timely. Travis Decl. ¶13.

15           Class Counsel also received communications from several corporations (such as Oracle, TE  
16 Connectivity and Charter Communications ), nonprofits (such as San Diego’s renowned Innocence  
17 Project) and universities (like the University of Colorado) who paid for their employees and/or  
18 volunteers to rent vehicles. These entities reached out for assistance to submit claims on behalf of  
19 all of their employees and/or volunteers. Class Counsel worked with Epiq and these entities to ensure  
20 that such claims have been submitted properly and sufficient proof was provided. Travis Decl. ¶14.

21           As of October 16, 2020, Plaintiff’s counsel has received no objections to the settlement and  
22 only twenty-eight Class Members had filed a Notice of Exclusion. Azari Decl., ¶32. This supports  
23 that class members overwhelmingly believe that the settlement is fair, reasonable and adequate.

24           As of October 16, 2020, 140,483 class members have filed claims, claiming a total of more  
25 than 350,000 Fees, for a total of more than \$1.2 million. Azari Decl. ¶¶33-34. The claims period  
26 will continue to run for another thirteen days, so that number will continue to increase. The  
27 tremendous response to the Notice Program further evidences that this Settlement provides real relief  
28 to class members during these difficult economic times.

1 **VII. THE REQUESTED SERVICE AWARD FOR THE PLAINTIFF IS REASONABLE**

2 Plaintiff seeks a service award of \$5,000. Plaintiff’s counsel is of the opinion that the service  
3 award is reasonable and proper, given that Plaintiff participated meaningfully in the litigation and  
4 settlement process. *See*, Zeldes Decl. ¶ 22. Defendant does not oppose the requested service award  
5 and it is supported by the particular circumstances of this case as well as the applicable law. Courts  
6 have long acknowledged that active litigants are entitled to be compensated for bearing the risk and  
7 time to represent others. *See Bell v. Farmers Ins. Exch.* (2004) 115 Cal. App. 4th 715, 726  
8 (upholding service payments to named plaintiffs for their efforts in bringing class case.) As detailed  
9 in his declaration in support of this motion, Plaintiff undertook considerable risk and invested  
10 significant time in agreeing to step forward and represent this class. *See* Declaration of Jeffrey  
11 Garvin. Compensation for all of the class members in this case could not have been achieved but for  
12 individuals such as Plaintiff being willing to step forward. A \$5,000 service award is fair and  
13 reasonable in light of all of the circumstances.

14 **VIII. THE REQUESTED ATTORNEYS’ FEE AWARD IS REASONABLE**

15 The Court “has a duty, independent of any objection, to assure that the amount and mode of  
16 payment of attorneys’ fees are fair and proper, and may not simply act as a rubber stamp for the  
17 parties’ agreement.” *In re Consumer Privacy Cases* (2009) 175 Cal. App. 4th 545, 555. At the same  
18 time, it has long been recognized that the “‘experienced trial judge is the best judge of the value of  
19 professional services rendered in his [or her] court, and while his [or her] judgment is of course  
20 subject to review, it will not be disturbed unless the appellate court is convinced that it is clearly  
21 wrong.’” *Id.* at 556 [quoting *Serrano v. Priest* (1977) 20 Cal.3d 25, 49] [citations omitted]. It is  
22 similarly “well settled that the parties to a lawsuit may negotiate a settlement according to which the  
23 defendant makes a lump-sum payment embracing both monetary relief to the plaintiff and attorney’s  
24 fees liability.” *Apple Computer, Inc. v. Superior Court* (2005) 126 Cal. App. 4th 1253, 1269; *See*  
25 also *Serrano, supra*, 20 Cal. 3d at 35; *see also Boeing Co. v. Van Gemert* (1980) 444 U.S. 472, 478  
26 [the Supreme Court “has recognized consistently that a litigant or a lawyer who recovers a common  
27 fund . . . is entitled to a reasonable attorney’s fee from the fund as a whole.”].

28 Moreover, important public policies underlie a court’s determination of a motion for  
attorneys’ fees and expenses in class actions. If counsel are not adequately compensated in successful

1 cases like this one, then effective representation for plaintiffs in these cases will not be available.  
2 *See Lealao, supra*, 82 Cal. App. 4th at 47-50 [legal system relies on private litigants to enforce  
3 substantive provisions of law through class and derivative actions; attorneys providing the essential  
4 enforcement services must be provided incentives roughly comparable to those negotiated in the  
5 private bargaining that takes place in the legal marketplace]; *see also Melendres v. City of Los*  
6 *Angeles* (1975) 45 Cal. App. 3d 267, 273.

7 **A. Under the Percentage of the Fund Method, Class Counsel’s Requested Award is**  
8 **Reasonable**

9 California law allows the award of attorneys’ fees in class actions based on the percentage-  
10 of the-fund method. *Chavez v. Netflix* (2008) 162 Cal.App.4th 43, 63 [“fees based on a percentage  
11 of the benefits are in fact appropriate in large class actions when the benefit per class member is  
12 relatively low”]; *Consumer Cause v. Mrs. Gooch’s Natural Food Markets* (2005) 127 Cal.App.4th  
13 387, 397 (disapproved on other grounds) [the common fund doctrine is “frequently applied in class  
14 actions when the efforts of the attorney for the named class representatives produce monetary  
15 benefits for the entire class”]. Class Counsel requests an award of attorneys’ fees of only twenty-  
16 percent of the Settlement Fund, to include all work previously rendered by Plaintiff’s counsel and  
17 all future work to be rendered in connection with this case. This is well below the one-third average  
18 typically sought by Plaintiff’s counsel and approved by California courts in class action litigation.  
19 *See, Laffitte v. Robert Half Internat. Inc* 1 Cal.5th 480 (2016) (affirming award of one-third of the  
20 common fund); *Chavez v. Netflix, Inc.* 162 Cal. App. 4th 43, 66 n. 11 (2008) (“Empirical studies  
21 show that, regardless whether the percentage method or the lodestar method is used, fee awards in  
22 class actions average around one-third of the recovery.”) The requested award is well within or  
23 below the range typically awarded by courts in comparable cases.

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

1 not discussed resolution in the two years that matter was pending and it was not until Plaintiff  
2 Garvin’s consumer class action was filed that the Port came to the table to discuss resolution.<sup>8</sup>  
3 Moreover, Plaintiff’s counsel’s work is not yet complete, as they will spend additional time  
4 overseeing and participating in the settlement claims administration process. Zeldes Decl. ¶30.

5 Plaintiff’s counsel has taken the additional risk of agreeing not to be paid any attorneys’ fees  
6 and costs until Settlement Class Members are paid their Cash Awards. This helps to ensure that Class  
7 Members receive their full Cash Award. Zeldes Decl. ¶ 33.

8 A demonstrated below, all of the factors that courts typically consider in evaluating a request  
9 for attorneys’ fees support the approval of a 20% award here.

### 10 **1. The Results Achieved Are Outstanding**

11 “The quality of work performed in a case that settles before trial is perhaps best measured by  
12 the benefit obtained.” *In re Warner Communications Sec. Litig.* (S.D.N.Y. 1985) 618 F. Supp. 735,  
13 748. In particular, the common fund itself is often considered the primary measure of success and  
14 represents the benchmark from which a reasonable fee will be awarded. Newberg and Conte,  
15 *Newberg on Class Actions*, 4th ed. § 14.6 at p. 550. Here, counsel obtained a substantial settlement  
16 on behalf of the class -- a 100% refund to all claimants – a significant amount for a class-action  
17 recovery by any measure. This is not a “coupon” settlement but will put real cash in the hands of  
18 the class. Class Members will receive 100% of the Fees claimed – *substantially* more than in most  
19 class actions. Moreover, the fact that no Class Members, to date, have objected to the settlement  
20 and only twenty-eight have requested exclusion from the settlement further indicates that the Class  
21 Members were extremely satisfied with the settlement.

### 22 **2. The Risks of the Litigation Were High**

23 It has been recognized that one of the primary factors justifying an enhanced attorneys’ fees  
24 award is the attendant risks inherent in the litigation. As observed in *City of Detroit v. Grinnell*

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25  
26 <sup>8</sup> In the Reverse Validation Action, the Court determined that a claims process should be established  
27 to provide refunds to the rental car customers, but only for the customers of the Plaintiffs in that  
28 action. 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 *Corporation*, (2d Cir. 1974) 495 F.2d 448, 470:

2 No one expects a lawyer whose compensation is contingent upon his success  
3 to charge, when successful, as little as he would charge a client who had agreed  
4 to pay for his services, regardless of success. Nor, particularly in complicated  
cases producing large recoveries, is it just to make a fee depend solely on  
reasonable amount of time expended.

5 The need to fairly compensate attorneys who undertake risky litigation on behalf of plaintiff  
6 classes was also noted in *Muehler v. Land O'Lakes, Inc.* (D. Minn. 1985) 617 F. Supp. 1370, 1375-  
7 76, where, in justifying the award of fees representing 35% of the recovery fund, the court observed:  
8 "If the plaintiffs' bar is not adequately compensated for its risk, responsibility, and effort when it is  
9 successful, then effective representation for plaintiffs in these cases will disappear . . ."

10 Had litigation continued, Plaintiffs would have faced substantial obstacles in establishing  
11 Defendant's liability and damages and in obtaining class certification. It is this kind of situation,  
12 involving complex issues, that has been recognized as deserving of a substantial attorneys' fee  
13 award. There are real risks for plaintiffs' attorneys in undertaking the prosecution of class action  
14 cases on a contingency basis. One only has to perform a cursory review of the numerous reported  
15 decisions of class action cases in which defendants prevailed, either on the merits, or on class  
16 certification, and despite plaintiffs' attorneys devoting hundreds, if not thousands of hours to the  
17 case, and tens or even hundreds of thousands of dollars in costs, they received nothing. Here,  
18 Plaintiff's counsel also took the additional risk of getting paid last.

### 19 **3. Expeditious Resolution of the Case**

20 The expeditious settlement that counsel achieved in this case, without the necessity of  
21 extensive pleadings, formal discovery, motion practice, or trial, supports a fee award of 20% of the  
22 fund. This expeditious approach has saved judicial resources as well as the resources of the parties  
23 involved. Had the case not been settled so expeditiously, litigation would inevitably have consumed  
24 substantially more time and would have cost both parties substantial sums. During the time that  
25 would be consumed by the litigation and possible appeals, expenses would have accrued, which  
26 could have reduced any award ultimately received by the class.

### 27 **4. The Degree of Competence and Skill of Counsel**

28 Class Counsel consists of a highly qualified team of experienced complex class action

1 litigators. All of the counsel involved have been involved in many other class actions. Zeldes Decl.  
2 at Exhibit 1. Class Counsel were able to bring this matter to a successful conclusion because of their  
3 significant experience with complex litigation.

#### 4 **5. The Contingent Nature of the Award**

5 Under their agreement with the class representatives, counsel would only recover attorney's  
6 fees if the individual plaintiffs recovered an award. In the absence of recovery for the plaintiffs,  
7 counsel would have received nothing. This risk of loss also serves to justify an enhanced attorneys'  
8 fee award. *See Conte, Attorney Fee Awards*, §2.07, p. 46 [court must consider risk of loss to  
9 counsel]; Zeldes Decl. ¶24.

#### 10 **6. Customary Fee Arrangements in Non-Class Litigation**

11 Class Counsel's request for a fee of 20% of the common fund is consistent with customary  
12 fee arrangements in private litigation. Class Counsel are entitled to the fee they would have received  
13 had they handled a similar suit on a contingent fee basis with a similar outcome. *In re Continental*  
14 *Illinois Sec.* (7th Cir. 1992) 962 F.2d 566, 572. The court should consider the nature of the contingent  
15 agreements between counsel and the class representatives. *See Kirkorian v. Borelli* (N.D. Cal. 1988)  
16 695 F. Supp. 446, 455-456 [looking to the contingency fee agreements between counsel and  
17 members of the class for guidance]. These agreements are relevant because "[i]n common fund  
18 cases, it is reasonable that the fee award will be within those percentage ranges, based on historic  
19 and prevailing market rates for contingent representation." *In re M.D.C. Holdings Sec. Litig.* (S.D.  
20 Cal. 1990) 1990 WL 454747, at \*8 [I]n private contingent litigation, fee contracts have traditionally  
21 ranged from 30% to 40% of the total recovery. If this were a non-representative litigation, the  
22 customary fee arrangement would be contingent, on a percentage basis, and in the range of 30% to  
23 40% of the recovery." (*Id.* at \*7.)

#### 24 **B. Under the Lodestar Method, Class Counsel's Requested Award is Also** 25 **Reasonable**

26 Although counsel believes that the overwhelming authority supports a percentage approach  
27 to the attorneys' fees award, counsel is providing the number of hours devoted to this case, counsel's  
28 hourly rates, and a calculation of their lodestar, as a cross-check for the Court.

1 As is set forth in the Declaration of Helen Zeldes, filed concurrently herewith, class counsel  
2 and paralegals devoted 627.6 hours to this matter through October 20, 2020 and are estimated to  
3 expend on this litigation from October 21, 2020 through final approval 70 hours. Zeldes Decl. ¶34  
4 & Ex. 2 [summarizing lodestar and hours.] Ms. Zeldes’ hourly rate is \$850, Mr. Travis’ is \$595.  
5 For the other attorneys who assisted on this case, Paul Hoffman’s rate is \$1,050 and John  
6 Washington’s rate is \$450. Paralegal rates are at \$250-265. *Id.* ¶35. Multiplying the hours devoted  
7 to this case by Class Counsel at a straight hourly rate, the total attorneys’ fees equal \$487,911. *Id.* ¶  
8 34 & Ex. 2. Class Counsel also submits the hours and rates of Wolf Haldenstein Adler Freeman &  
9 Herz, LLP, counsel for plaintiff *Gauvin* in the related case, as Class Counsel have agreed to  
10 reimburse them from their awarded Fees so as not to increase the amount that would be taken from  
11 Class Members. The Declaration of Rachele Byrd, filed concurrently herewith, sets forth the *Gauvin*  
12 attorneys’ total lodestar of \$70,598. The total lodestar for both firms is \$558,509. *Id.* ¶40

13 As discussed in detail below, given that the settlement provides the class with an excellent  
14 result, the class strongly supports the fairness of the settlement, and Class Counsel is taking the risk  
15 of not getting any Attorneys’ Fees by agreeing to only take Attorneys’ Fees if funds are remaining  
16 after class members gets paid, the application of a multiplier is justified. A lodestar-multiplier cross-  
17 check confirms that the requested fee award justifies approval.

18 **1. The Time Submitted By Counsel Was Reasonably Necessary to Achieve**  
19 **Success in the Litigation.**

20 The declaration of counsel in support of this motion demonstrates that the hours spent in  
21 order to obtain the important benefits conferred upon the Settlement Class Members are reasonable.  
22 *See* Zeldes Decl. ¶29-30. Hours are reasonable if “at the time rendered, [they] would have been  
23 undertaken by a reasonable and prudent lawyer to advance or protect his client’s interest.” *Moore*  
24 *v. Jas H. Matthews & Co.* (9th Cir. 1982) 682 F.2d 830, 839.) To deny compensation, “it must  
25 appear that the time claimed is obviously and convincingly excessive under the circumstances.” *Id.*

26 The total number of hours claimed by Class Counsel is on its face appropriate relative to the  
27 work product produced in this case. Prior to filing the complaint, counsel worked on pre-filing  
28 investigation, document review, research of the issues presented, drafted of pleadings and other

1 related documents and attended hearings. Class counsel engaged in numerous calls with defense  
2 counsel and counsel for Enterprise and Hertz in order to reach this Settlement. Counsel completed  
3 an extensive and detailed analysis of Plaintiff's claims and the Defendant's potential liabilities.

4 In addition to the above work, Plaintiffs' counsel performed a substantial amount of other  
5 work in the case, including but not limited to the following:

- 6 • Drafted the Class Notice to be circulated to Settlement Class Members.
- 7 • Drafted Plaintiff's Motion for Preliminary Approval of the class action settlement,  
8 and supporting documentation;
- 9 • Coordinated administration of class notice with the Claims Administrator;
- 10 • Assisted numerous class members and corporations with filing claims; and
- 11 • Drafted Plaintiff's Motion for Final Approval of the class action settlement.

12 In addition, Plaintiff's counsel will represent Plaintiff at the hearing on Plaintiff's Motion for Final  
13 Approval and, assuming the Court grants final approval of the settlement, will oversee its  
14 administration and perform necessary follow-up work.

## 15 2. The Hourly Rates Are Reasonable

16 Under California law, reasonable hourly rates must be determined according to prevailing  
17 market rates for attorney services. *See Serrano v. Unruh* (1982) 32 Cal.3d 621, 640-43; see also  
18 *Bihun v. AT&T Information Systems, Inc.* (1993) 13 Cal.App.4th 976, 997, *overruled on other*  
19 *grounds* [appellate court approved hourly rate of \$450.00 twenty-six years ago, finding that hourly  
20 rates are determined by "fees customarily charged by that attorney and others in the community for  
21 similar work."]. This, in turn, requires consideration of two primary factors: (1) the expertise of  
22 Plaintiff's counsel; and (2) prevailing hourly rates for attorneys of comparable expertise in this legal  
23 community. *Serrano, supra*, 32 Cal.3d 621, 640-43 and n. 31.

24 The backgrounds of Class Counsel and the reasonableness of their hourly rates are set forth  
25 in the Zeldes declaration. (*See Zeldes Decl.* ¶¶3, 23, 30.) In light of the qualifications of Plaintiff's  
26 counsel, their requested hourly rates are reasonable and in keeping with prevailing hourly rates for  
27 attorneys of comparable expertise.

28

### 3. A Multiplier Would Be Justified Here

Counsel would be justified in seeking a multiplier in that counsel's lodestar is \$558,509 and they are seeking \$1,400,000 – that is a multiplier of 2.51. California law dictates that the lodestar is the basic fee for comparable legal services in the community but may be adjusted by the court based on several factors. *Serrano v. Priest* (1977) 20 Cal. 3d 25, 48-49. The fee award should compensate counsel not only for the legal services they rendered, but also for the loan of those services and for the factor of contingent risk. *Amaral v. Cintas Corp.* (2008) 163 Cal. App. 4th 1157, 1217; *Ketchum v. Moses* (2001) 24 Cal.4th 1122, 1132, 1138.

The purpose of the multiplier “is to bring the financial incentives for attorneys enforcing important . . . [rights] into line with incentives they have to undertake claims for which they are paid on a fee-for-service basis.” *Ketchum*, 24 Cal.4th at 1132. Risk multipliers are “intended to approximate market-level compensation for . . . services, which typically includes a premium for the risk of nonpayment or delay in payment.” *Id.* at 1138. The “adjustment to the lodestar figure, e.g., to provide a fee enhancement reflecting the risk the attorney will not receive payment if the suit does not succeed, constitutes earned compensation; unlike a windfall, it is neither expected nor fortuitous.” *Id.* Further, California courts and the Ninth Circuit hold that the trial court in determining whether to apply a multiplier should look at the case and its results as a whole. Historically, California courts have approved multipliers of 1.5 to 4. *See Coalition for Los Angeles County Planning v. Board of Supervisors* (1977) 76 Cal. App. 3d 241, 251 [multiplier of 2+]; *Wershba v. Apple Computer, Inc.* (2001) 91 Cal. App. 4th 224, 255 [“[m]ultipliers can range from 2 to 4 or even higher”]. Furthermore, the Federal courts have applied multipliers ranging from 1.7 to 4.0, even when the class action involved relatively routine issues. *See Rabin v. Concord Assets Group, Inc.* (S.D.N.Y. 1991) WL 275757 [multiplier of 4.4]; *Behrens v. Wometco Enterprises, Inc.* (S.D.Fla 1988) 118 F.R.D. 534, 549 [multiplier of 3]; *Rievman v. Burlington Northern Railroad Co.* (S.D.N.Y. 1987) 118 F.R.D. 29, 35 [noting multipliers between 3 and 4.5 are common].

Here, for example, a multiplier of 2.51 would be quite modest. *See, e.g., Wershba* at 255 [“[m]ultipliers can range from 2 to 4 or even higher”]; *Van Vranken v. Atlantic Richfield Co.*, 901 F. Supp. 294, 298 (N.D. Cal. 1995) [“Multipliers in the 3-4 range are common in lodestar awards

1 for lengthy and complex class action litigation”]. Moreover, a multiplier would be fully warranted  
2 in the present case. Plaintiff’s counsel assumed representation in this case on a purely contingent  
3 basis. Zeldes Decl. ¶24. They have received no compensation for time or expenses invested in this  
4 case thus far, and would have received no compensation whatsoever if the case had been  
5 unsuccessful or if there were no funds after Class Members received their Cash Awards . *Id.* In  
6 assuming representation in this case on a contingent basis, Class Counsel necessarily assumed  
7 significant risks. Plaintiff’s counsel took this case on in the face of uncertainties in the law with  
8 regard to the legality of the Fee *Id.* ¶25. While Plaintiff and his attorneys believe that they should  
9 ultimately prevail on the merits in this litigation, resolution of these issues through motion practice,  
10 at trial and/or on appeal present a risk at each juncture that the Settlement Class would not recover.

11 Class Counsel risked not only a great deal of time but also a great deal of expense to ensure  
12 the successful litigation of this action on behalf of the entire Class. There was the prospect of the  
13 enormous cost inherent in class action litigation, as well as a long battle with Defendant. That  
14 prospect has become a reality in both trial court and courts of appeal in other class action litigation.  
15 The expense of protracted litigation is formidable and can run on the tens of thousands if not  
16 hundreds of thousands of dollars. Therefore, the risks of litigation undertaken by Class Counsel  
17 would support the modest multiplier. For these reasons, adjusting the lodestar amount in this case  
18 by applying a small multiplier would be both reasonable and justified. Here, the multiplier factors  
19 over time spent litigating, the skill and experience of class counsel, the preclusion of counsel from  
20 pursuing other employment, and the contingent risk of not being paid for their services. The fee  
21 award would also likely encourage other capable counsel to accept contingent representation in cases  
22 of comparable risk and significance.

23 **IX. THE REQUESTED COSTS ARE REASONABLE**

24 As set forth in the Zeldes Declaration and Exhibit 2 attached thereto, Class Counsel have  
25 spent \$4,651.11 in connection with this case and Wolf Haldenstein Adler Freeman & Herz, LLP  
26 have spent \$2,090.33. *See* Zeldes Decl. ¶¶37, 39 & Ex. 2 [detailing costs]) Accordingly, it is  
27 requested that the Court also award costs of \$6,741.44 - less than the \$10,000 in costs preliminarily  
28 approved by this Court.

1 Plaintiff also seeks approval of the requested Settlement Administrator's costs in the amount  
2 of approximately \$1,115,215.00. Because factors are unknown regarding the completion of the  
3 claims processing and the distribution phase of the settlement (total claims filed, total payments  
4 issued, quantities of check re-issues, class member inquiries, effect of any possible delays such as  
5 appeals, etc), the exact final cost to complete the administration cannot be yet determined with  
6 certainty. Azari Decl. ¶37. Plaintiff will submit supplemental briefing closer to the hearing with a  
7 better approximation of the cost. Given the size of the class and the fact that the administration costs  
8 cover provision of notice as well as distribution of checks and electronic payments, the settlement  
9 administration costs are reasonable in Class Counsel's experience.

10 Class Counsel obtained bids from four well-known and reputable class action administrators  
11 Epiq, JND, CPT and KCC. The notice program presented numerous challenges: there were fifteen  
12 rental car companies that remitted money to the Port during the class period. Each maintains its own  
13 database. There were approximately 2.3 million rental car transactions, however, the data needed to  
14 be combined between entities and then de-duplicated. In the end, there were approximately 1.4  
15 million unique class members, with available contact information, who needed to received notice –  
16 both domestically and internationally. Class Counsel spent considerable time with the prospective  
17 administrators discussing whether they can handle cases involving this many class members, how  
18 they would handle international notice, how they would handle class member PII, whether they  
19 have procedures in place to ensure the security of class member information, and how they propose  
20 to notify class members for whom contact information does not exist. Class Counsel worked with  
21 the administrators to revise their estimates to ensure that the bids were comparing apples to apples  
22 and using similar assumptions. Travis Decl. ¶4.

23 After receiving the final estimates from all four administrators, Class Counsel, Defendant's  
24 counsel and counsel for the Plaintiffs in the Enterprise Actions reviewed the bids. While Epiq's bid  
25 was slightly higher than some of the other bids, the Parties felt that their bid was the best overall and  
26 they were best qualified to administer the complex notice and claims process in this matter due to  
27 their extensive experience in administering large settlements with millions of class members,  
28 multiple databases and multiple notice formats. Travis Decl. ¶6. In sum, the bidding process was

1 competitive, included several reputable companies and the bids were not far apart in price.

2 Part of the reason the administration costs are so high here, is that notice was mailed to  
3 approximately 1.4 million class members, both domestically and internationally. The cost of postage  
4 alone was \$425,000. Azari Decl. ¶36.

5 Plaintiff requests that the Court award approximately \$1,115,215.00 from the Settlement  
6 Fund to Epiq for its costs to administer the Notice and Claims Administration.

7 **X. THE PROPOSED SETTLEMENT CLASS SHOULD BE CONDITIONALLY**  
8 **CERTIFIED FOR SETTLEMENT PURPOSES**

9 In the Preliminary Approval Order, the Court conditionally certified the Class for settlement  
10 purposes and found that “(i) the number of individuals in the Settlement Class is so numerous that  
11 joinder would be impractical; (ii) there is a commonality of interests between the Class  
12 Representative and the members of the Settlement Class; (iii) there are questions of law and fact that  
13 are common to the Settlement Class, and the common questions related to the settlement  
14 predominate over individual questions; (iv) the Class Representative's claims are typical of the  
15 claims of absent members of the Settlement Class; and (v) the Class Representative and Class  
16 Counsel will fairly and adequately represent the interests of the absent members of the Settlement  
17 Class. Nothing has changed since then, and the Court should find that the Settlement Class meets all  
18 of the legal requirements for class certification for settlement purposes under California Code of  
19 Civil Procedure §382 and California Rules of Court, Rule 3.769.

20 **XI. CONCLUSION**

21 For all the foregoing reasons, Plaintiff respectfully requests that the Court finally approve  
22 the settlement, certify the class for settlement purposes, approve administration costs, attorneys’  
23 fees, expenses, and a service award for the class representative and enter the proposed order and  
24 judgment submitted concurrently herewith.

25 DATED: October 21, 2020

**SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES LLP**



By: \_\_\_\_\_

HELEN I. ZELDES

*Attorneys for Plaintiff and the Proposed Class*