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**FILED**  
Clerk of the Superior Court  
**JUL 17 2020**  
By: C. Beutler, Deputy

**ELECTRONICALLY RECEIVED**  
Superior Court of California,  
County of San Diego  
**06/24/2020** at 10:19:13 PM  
Clerk of the Superior Court  
By Carolina Miranda, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO - CENTRAL DIVISION**

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

**[PROPOSED] ORDER FOR  
PRELIMINARY APPROVAL OF CLASS  
ACTION SETTLEMENT, SETTING OF A  
FINAL APPROVAL HEARING, AND  
APPROVAL OF NOTICE TO THE CLASS**

Date: July 17, 2020  
Time: 1:30 p.m.  
Department: C-69  
Judge: Katherine A. Bacal

1           The Court, having reviewed the unopposed Motion for Preliminary Approval of Class  
2 Action Settlement and Conditional Certification of Class, the supporting Points and Authorities,  
3 the Declaration of Helen Zeldes (“Zeldes Declaration”) in support thereof, as well as the fully-  
4 executed Settlement Agreement (“Settlement Agreement”) and proposed Notices, attached as  
5 Exhibit 1 to the Zeldes Declaration,  
6

7           **HEREBY FINDS AND ORDERS THAT:**

8           1.       The Motion for Preliminary Approval of Class Action Settlement and Conditional  
9 Certification of Class is GRANTED.

10          2.       All terms not defined herein shall have the same meanings as set forth in the  
11 Settlement Agreement.

12          3.       The Court finds on a preliminary basis, that the settlement memorialized in the  
13 Settlement Agreement appears to be within the range of reasonableness and therefore meets the  
14 requirements for preliminary approval.

15          4.       The Court finds for the purposes of settlement only that: (i) the number of  
16 individuals in the Settlement Class is so numerous that joinder would be impractical; (ii) there is a  
17 commonality of interests between the Class Representative and the members of the Settlement  
18 Class; (iii) there are questions of law and fact that are common to the Settlement Class, and the  
19 common questions related to the settlement predominate over individual questions; (iv) the Class  
20 Representative’s claims are typical of the claims of absent members of the Settlement Class; and  
21 (v) the Class Representative and Class Counsel will fairly and adequately represent the interests of  
22 the absent members of the Settlement Class.

23          5.       The Court conditionally certifies, for settlement purposes only, a Settlement Class  
24 of all individuals who rented vehicles from rental car companies, with the rentals originating at  
25 locations in San Diego, California on San Diego Port tidelands, from the period of May 10, 2018  
26 through the date that is seven days after the date of this Order, and who were assessed a \$3.50 fee  
27 by the rental car companies that was then remitted to the San Diego Port. Excluded from the  
28 Settlement Class are any of Defendant’s officers, directors, or employees; officers, directors, or

1 employees of any entity in which Defendant currently has or had a controlling interest; and  
2 Defendant's legal representatives, heirs, successors, and assigns.

3 6. The Court appoints Jeffrey Garvin as Class Representative.

4 7. The Court appoints Helen I. Zeldes and Ben Travis of Schonbrun Seplow Harris  
5 Hoffman and Zeldes, LLP as Class Counsel.

6 8. The Court appoints Epiq Class Action and Claims Solutions, Inc. ("Epiq") as Class  
7 Administrator with costs estimated to be approximately \$1,115,215.

8 9. Within ten (10) business days after entry of this Order, Defendant shall pay to the  
9 Class Administrator (Epiq) an amount agreed upon by all Parties and the Class Administrator to  
10 cover the reasonable costs of Notice and Class Administration that will be incurred to implement  
11 this Order before the Settlement Fund is created. This amount may be paid by Defendant using Fees  
12 remitted to the Port by any rental car company pursuant to Resolution 2018-065 and  
13 Ordinance 2030 and shall be deducted from the amount Defendant is required to pay to create the  
14 Settlement Fund.

15 10. The Court preliminarily approves the payment of a service award in the amount of  
16 \$5,000 to Jeffrey Garvin coming from the Gross Settlement Amount.

17 11. The Court preliminarily approves the application for payment to Class Counsel of  
18 reasonable attorneys' fees of up to 20 percent of the Settlement Fund and costs and expenses not to  
19 exceed \$10,000, with payment coming out of the Settlement Fund after Cash Awards are paid to  
20 Class Members.

21 12. The Court preliminarily approves the designation of the San Diego Association of  
22 Governments ("SANDAG") as the cy pres recipient, to receive any remaining funds 100 days after  
23 the distribution to the Class, for use to improve ingress and egress at the Consolidated Rental Car  
24 Center at the San Diego International Airport. If, for any reason, the Parties determine that this  
25 recipient is no longer appropriate or the Court determines that it is not appropriate, the Parties shall  
26 agree on replacement recipients, subject to Court approval. If there is no agreement, Class Counsel  
27 shall move for Court approval of appropriate recipients.

28

1           13.     The Court finds that the manner and content of the Notice specified in the Settlement  
2 Agreement shall provide the best notice practicable to the Settlement Class. The Notices attached  
3 as Exhibit B to the Settlement Agreement are approved. The Class Administrator is ordered to send  
4 the Notices to the Settlement Class as provided in the Settlement Agreement.

5           14.     Within twenty-one (21) calendar days of this Order, Enterprise Rent-A-Car Co. of  
6 Los Angeles, LLC (“Enterprise”) and The Hertz Corporation (“Hertz”) are authorized to provide  
7 to the appointed Class Administrator, Epiq, in an electronically searchable and readable format, the  
8 names, last known mailing addresses and last known email addresses of all Settlement Class  
9 members.

10          15.     Within twenty-one (21) calendar days of this Order, third-party rental car companies  
11 (other than Enterprise and Hertz) are authorized to provide to the appointed Class Administrator,  
12 Epiq, in an electronically searchable and readable format, the names, last known mailing addresses  
13 and last known email addresses of all Settlement Class members.

14          16.     Within thirty-five (35) calendar days of this Order, Epiq shall mail to each member  
15 of the Settlement Class, by first class mail, postage pre-paid, the postcard Notice. All mailings  
16 shall be made to the present and/or last known mailing address of the Settlement Class members  
17 based on the records received from Enterprise, Hertz, and the other third-party rental car companies,  
18 as well as addresses that may be located by the Class Administrator, who will conduct standard  
19 address searches in cases of returned mail. Epiq shall also email a summary of the notice and a  
20 link to the settlement website to the last known e-mail address of all Settlement Class members for  
21 whom e-mail addresses exist in the Notice Databases. The Class Administrator shall also issue a  
22 nationwide press release about the Settlement as well as supplemental internet notice. The Court  
23 finds that the notice to Settlement Class members as set forth in this paragraph is the best means  
24 practicable by which to reach Settlement Class members and is reasonable and adequate pursuant  
25 to all constitutional and statutory requirements, including all due process requirements and the  
26 California Rules of Court.

27          17.     By the Settlement Notice Date, the Class Administrator shall maintain and  
28 administer a dedicated Settlement Website containing class information and related documents. At



1 a minimum, such documents will include the Settlement Agreement and attached exhibits, E-mail  
2 Notice, Mail Notice, the Preliminary Approval Order, all submissions regarding final settlement  
3 approval, attorney's fees and costs, the service award for the Class Representative, and the Final  
4 Approval Order. The Website shall permit members of the Settlement Class who elect to do so to  
5 register online to receive (a) email notice that the Court has granted Final Approval of the  
6 Settlement, (b) updates on the deadlines to submit Requests for Exclusion and make Objections,  
7 and (c) the status of payments under the terms of the Settlement. The Website shall be taken down  
8 and rendered inaccessible by 120 calendar days after distribution to Settlement Class Members.

9 18. Members of the Settlement Class who wish to participate in the Settlement shall  
10 complete and submit a Claim Form at the Settlement Website or submit a paper claim form. All  
11 Claim Forms must be postmarked or submitted electronically within sixty (60) calendar days after  
12 the Notice is mailed to Settlement Class members. Any Class member who does not timely submit  
13 a Claim Form within the time provided for, shall be forever barred from sharing in the distribution  
14 of the proceeds of the Settlement Fund, unless otherwise ordered by the Court, but will in all other  
15 respects be subject to and bound by the provisions of the Settlement Agreement, the releases  
16 contained therein, this Order, the Final Judgment, and the Final Approval Order. Notwithstanding  
17 the foregoing, Class Counsel shall have the discretion (but not the obligation) to accept late-  
18 submitted Claim Forms for processing so long as distribution of the Net Settlement Fund to  
19 Settlement Class Members is not materially delayed thereby.

20 19. The Class Administrator shall review and process each Claim Form to determine  
21 whether it qualifies for a Cash Award, and in what amount, in accordance with terms of the  
22 Agreement. Claim Forms that do not meet the submission requirements may be rejected. Prior to  
23 rejecting a Claim Form, in whole or in part, the Class Administrator shall communicate with the  
24 claimant in writing to give the claimant the chance to remedy any deficiencies in the Claim Form  
25 submitted.

26 20. Any written Objection to the settlement must be filed with the Court no later than  
27 sixty (60) calendar days after the Notice is mailed to Settlement Class Members by the Class  
28 Administrator. In the Objection, the Settlement Class Member must state his or her (1) full name

1 and address; and (2) any other proof of Settlement Class membership, if such proof exists. The  
2 written Objection must also state the reasons for the Settlement Class Member's Objection and  
3 indicate whether he or she intends to appear at the Final Approval Hearing on his or her own behalf  
4 or through counsel. Any documents supporting the Objection must be attached to the Objection.  
5 Unless otherwise permitted by the Court, Settlement Class Members shall not be entitled to speak  
6 at the Final Approval Hearing unless they have submitted a timely written Objection and indicated  
7 an intent to appear.

8 21. Any member of the Settlement Class who desires exclusion from the Settlement  
9 Class must timely mail a Request for Exclusion to the Class Administrator, in the manner described  
10 in the approved Notice, postmarked no later than sixty (60) days after the Notice is mailed to the  
11 Settlement Class by the Settlement Administrator. All persons who properly execute and timely  
12 mail a Request for Exclusion shall not be bound by the settlement and shall have no rights with  
13 respect to the settlement.

14 22. The Court will conduct a Final Approval Hearing on 11/13/20 at  
15 1:30 ~~a.m.~~ p.m. to determine the overall fairness of the settlement, consider any objections, and  
16 determine whether to award the requested Class Counsel's attorneys' fees, expenses and costs,  
17 Class Administration costs and Class Representative service award. The Final Approval Hearing  
18 may be continued without further notice to Settlement Class Members. Class Counsel shall file  
19 their motions for final approval of the settlement and for approval of attorneys' fees, costs,  
20 expenses, and Class Representative service award at least 16 court days before the hearing.

21 23. If the Settlement is approved at the Final Approval Hearing, the Court shall enter a  
22 Final Approval Order approving the settlement. The Final Order shall be binding with respect to  
23 all Settlement Class Members who did not timely request exclusion in accordance with the terms  
24 of the Settlement Agreement.

25 24. Pending final determination of whether this proposed Settlement should be granted  
26 final approval, no Settlement Class Member, either directly or representatively, or in any other  
27 capacity, shall commence or prosecute any action or proceeding asserting any of the Settlement  
28

1 Class Member's Released Claims, as defined in the Settlement Agreement, against Defendant in  
2 any court or tribunal.

3 25. The Port shall suspend enforcement of Resolution 2018-065 and Ordinance 2030  
4 and cease collection of the Fees as of the date of this Order. Upon final approval of the Settlement,  
5 the Port shall repeal Resolution 2018-065 and Ordinance 2030. If, for any reason, Final Approval  
6 is not granted, the Port shall not attempt to collect from the rental car companies any amounts for  
7 the period that the collection of the Fees was suspended.


8 26. If, for any reason, the Court does not execute and file a Final Approval Order, the  
9 proposed Settlement Agreement and the proposed Settlement subject of this Order and all evidence  
10 and proceedings had in connection therewith, shall be without prejudice to the status quo ante rights  
11 of the parties to the litigation as more specifically set forth in the Settlement Agreement.

12 27. Pending further order of this Court, all proceedings in this matter except those  
13 contemplated herein and in the Settlement Agreement are stayed.

14 28. Counsel for the Parties are hereby authorized to utilize all reasonable procedures in  
15 connection with the administration of the Settlement that are not materially inconsistent with either  
16 this Order or the terms of the Settlement Agreement.

17  
18 **IT IS SO ORDERED.**

19  
20 DATE: 7/17/20

  
\_\_\_\_\_  
THE HONORABLE KATHERINE A. BACAL  
JUDGE OF THE SUPERIOR COURT OF  
CALIFORNIA, COUNTY OF SAN DIEGO