

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ELECTRONICALLY RECEIVED
Superior Court of California,
County of San Diego
10/21/2020 at 11:47:14 PM
Clerk of the Superior Court
By Gen Dieu, 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 AND JUDGMENT
GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT, AWARD
OF ATTORNEYS' FEES AND COSTS,
AND APPROVAL OF CLASS
REPRESENTATIVE SERVICE AWARD**

Date: November 13, 2020

Time: 1:30 PM

Department: C-69

Judge: Katherine A. Bacal

1 On June 24, 2020, Plaintiff and Defendant San Diego Unified Port District (“the Port”)
2 entered into a Settlement Agreement and Release (“Settlement Agreement”). On July 17, 2020,
3 this Court granted Preliminary Approval of the Settlement Agreement and ordered that Notice be
4 sent to the class.

5 On November 13, 2020, this Court heard Plaintiff’s Motion for Final Approval of Class
6 Action Settlement, Award of Attorneys’ Fees and Costs, and Approval of Class Representative
7 Service Award (the “Motion”). After reviewing (a) the Motion and the supporting papers,
8 including, the Settlement Agreement; (b) any objections filed with or presented to the Court; (c)
9 the parties’ responses to any objections; and (d) counsels’ arguments, the Court finds good cause
10 to grant the Motion.

11 **FINDINGS:**

12 1. Upon review of the record, the Court hereby finds that the Settlement Agreement is,
13 in all respects, fair, adequate, and reasonable.

14 2. The Court finds that Settlement Class Members have been adequately represented
15 by the Class Representative and Class Counsel.

16 3. The Court also finds that extensive arm’s-length negotiations have taken place, in
17 good faith, between Class Counsel and the Port’s Counsel resulting in the Settlement Agreement.

18 4. The Settlement Agreement provides substantial and adequate value to the class.

19 5. Notice was provided to Class Members in compliance with the Settlement
20 Agreement, California Code of Civil Procedure §382 and California Rules of Court 3.766 and
21 3.769, the California and United States Constitutions, and any other applicable law, and constitutes
22 the best notice practicable under the circumstances, by providing notice to all individual Class
23 Members who could be identified through reasonable effort, and by providing due and adequate
24 notice of the proceedings and of the matters set forth therein to the other Class Members. The
25 Notice fully satisfied the requirements of due process.

26 6. The Notice: (i) fully and accurately informed Class Members about the lawsuit and
27 settlement; (ii) provided sufficient information so that Class Members were able to decide whether
28 to accept the benefits offered, opt-out and pursue their own remedies, or object to the proposed

1 settlement; (iii) provided procedures for Class Members to exclude themselves from the Settlement
2 Class (iv) provided procedures for Class Members to file written objections to the proposed
3 settlement, to appear at the hearing, and to state objections to the proposed settlement; and (v)
4 provided the time, date, and place of the Final Approval Hearing.

5 7. The Parties adequately performed their obligations under the Settlement Agreement.

6 8. No Class members have objected to the terms of the Settlement.

7 9. For the reasons stated in the Preliminary Approval Order, and having found nothing
8 in any submitted objections that would disturb these previous findings, this Court finds and
9 determines that the proposed Settlement Class, as defined below, meets all of the legal requirements
10 for class certification for settlement purposes under California Code of Civil Procedure §382 and
11 California Rules of Court, Rule 3.769.

12 10. An award of \$1,400,000 in attorneys' fees and \$6741.44 in costs to Class Counsel
13 is fair and reasonable in light of the nature of this case, Class Counsel's experience, its efforts in
14 prosecuting this Action, and the benefits obtained for the Class.

15 11. A Service Award of \$5,000 for Plaintiff is fair and reasonable in light of his
16 contributions to the litigation and settlement of this Action.

17
18 **IT IS ORDERED THAT:**

19 1. This Court has jurisdiction over the subject matter of the Action and over all parties
20 to the Action, including all members of the Settlement Class.

21 2. Plaintiff's Motion is hereby GRANTED.

22 3. The Settlement Agreement is finally approved. Accordingly, the Court directs the
23 Parties and their counsel to implement and consummate this Settlement in accordance with the
24 terms and conditions of the Settlement Agreement.

25 4. The Settlement Class is certified for purposed of settlement only and is defined as
26 follows: "All individuals who rented vehicles from rental car companies, with the rentals
27 originating at locations in San Diego, California on San Diego Port tidelands, from the period of
28 May 10, 2018 to July 24, 2020, and who were assessed a \$3.50 fee by the rental car companies that

1 was then remitted to the San Diego Port.” Excluded from the Settlement Class are any of
2 Defendant’s officers, directors, or employees; officers, directors, or employees of any entity in
3 which Defendant currently has or had a controlling interest; and Defendant’s legal representatives,
4 heirs, successors, and assigns.

5 5. Upon entry of this Order, compensation to the Settlement Class Members shall be
6 effected pursuant to the terms of the Settlement Agreement.

7 6. The Court hereby confirms Helen I. Zeldes and Ben Travis of Schonbrun Seplow
8 Harris Hoffman and Zeldes, LLP as Class Counsel.

9 7. Class Counsel shall be awarded \$1,400,000 as attorneys’ fees and \$6741.44 as
10 litigation costs and expenses, with payment coming out of the Settlement Fund. The Court further
11 finds that the hourly rates of Class Counsel are reasonable and in keeping with market rates for
12 comparably complex litigation in Southern California.

13 8. Plaintiff Jeffrey Garvin is hereby awarded \$5,000 as a Service Award, with payment
14 coming out of the Settlement Fund.

15 9. Administration Costs of \$_____ shall be paid out of the Settlement Fund
16 according to the terms of the Settlement Agreement to the Class Administrator, Epiq Class Action
17 and Claims Solutions, Inc.

18 10. If any funds are still remaining 100 days after the distribution (the “cy pres residue”),
19 they shall be paid to the San Diego Association of Governments (“SANDAG”) for use to improve
20 ingress and egress at the Consolidated Rental Car Center at the San Diego International Airport. If,
21 for any reason, the Parties determine that this recipient is no longer appropriate, the Parties shall
22 agree on replacement recipients, subject to Court approval. If there is no agreement, Class Counsel
23 shall move for Court approval of appropriate recipients.

24 11. No other litigation costs and/or attorneys’ fees shall be awarded, either against
25 Defendant or any related persons or entities or from the award to the Class.

26 12. The Port shall repeal Resolution 2018-065 and Ordinance 2030.
27
28

1 13. Each member of the Settlement Class, excluding those Members identified as timely
2 opting-out, is bound by the Settlement Agreement, including the releases and covenant not to sue,
3 and this Final Order and Judgment.

4 14. This Final Order and Judgment does not bind persons who filed timely and valid
5 Requests for Exclusion.

6 15. Upon entry of this Final Order and Judgment, and by operation of this Final Order
7 and Judgment, the claims in this Action of each Settlement Class Member against any and all of
8 the Released Parties as defined in the Settlement Agreement, are fully, finally, and forever released,
9 relinquished, and discharged pursuant to the terms of the Settlement Agreement.

10 16. Each Settlement Class Member is permanently enjoined from bringing, joining, or
11 continuing to prosecute any Released Claims against Defendant or any Released Parties.

12 17. This Final Order and Judgment, and all papers related thereto, are not, and shall not
13 be construed to be, an admission by Defendant of any liability, claim, or wrongdoing whatsoever,
14 and shall not be offered as evidence of any such liability, claim, or wrongdoing in this Action or in
15 any other proceeding.

16 18. Notice of entry of this Final Approval Order and Judgment shall be given to the
17 Class Members by posting a copy of the Final Approval Order and Judgment on the Settlement
18 Website for a period of at least one-hundred and eighty (180) calendar days after the date of entry
19 of this Final Approval Order and Judgment

20 19. The Court hereby enters final judgment in this case in accordance with the terms of
21 the Settlement, Preliminary Approval Order, this Order, and Rule 3.769(h) of the California Rules
22 of Court.

23 //
24 //
25 //
26 //
27 //
28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

20. Without affecting the finality of this Final Order and Judgment, the Court reserves exclusive and continuing jurisdiction over the Action, Plaintiff, the Class, and Defendant for the purposes of supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement, the Preliminary Approval Order, the distribution of the Cash Awards and the cy pres residue, and the Final Order and Judgment.

IT IS SO ORDERED.

DATE: _____

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