

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between Plaintiff Jeffrey Garvin (“Plaintiff”) for himself and the Settlement Class Members (as defined below) and the San Diego Unified Port District (the “Port” or “Defendant”). Plaintiff and Defendant, the Parties to the Settlement, are referred to collectively in this Settlement Agreement as the “Parties” or individually as a “Party.”

### **I. RECITALS**

**1.01** On June 8, 2018, a Verified Complaint and Petition was filed in the case of *Enterprise Rent-A-Car Co. of Los Angeles, LLC and The Hertz Corporation v. San Diego Unified Port District*, Case No. 37-2018-00028276-CU-MC-CTL, in the San Diego Superior Court (the “Reverse Validation Action”). A First Amended Verified Complaint and Petition was filed on October 8, 2019. In that case, the Plaintiffs sought (a) a declaration that the Port’s Resolution 2018-065, which resumed the Port’s Ordinance 2030 and which required Plaintiffs and other rental car companies to collect from their customers and remit to the Port a \$3.50 fee (the “Fee”) for each transaction on Port tidelands, was an illegal and unconstitutional tax, and (b) a refund of the Fees so collected and remitted to the Port by the Plaintiffs. On or about June 6, 2019, Plaintiffs in that case also filed the case of *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 in the San Diego Superior Court (the “Refund Action”), seeking a refund of the Fees collected and remitted to the Port pursuant to Resolution 2018-065 and Ordinance 2030, and the Refund Action was related to the Reverse Validation Action, pending before the Honorable Katherine Bacal of the San Diego Superior Court. The Reverse Validation Action and the Refund Action are collectively referred to herein as the “Enterprise Actions”.

**1.02** A court trial was held on October 16, 2019. On or about December 4, 2019, the Court issued its tentative decision in the Reverse Validation Action, declaring Resolution

2018-065 and the associated \$3.50 Fee that the Plaintiffs were required to collect from their rental car customers and remit to the Port, unconstitutional and illegal.

**1.03** On or about January 24, 2020, Plaintiff Garvin filed a proposed class action in the United States District Court for the Southern District of California titled *Jeffrey Garvin v. Payless Car Rental, Inc. et al.* Case No. 3:20-cv-00172-AJB-WVG, against several rental car companies seeking refunds of the Fees that he and other proposed Class Members paid to those companies that was then remitted to the Port.

**1.04** After meeting and conferring with the defendants in that action about their anticipated defenses, and after the defendants presented Plaintiff with evidence that his contract with them included arbitration provisions and class action waivers, and upon further review of his claims, Plaintiff determined that it was in the best interests of the proposed Class to seek refunds directly from the Port.

**1.05** On or about February 13, 2020, Plaintiff filed a claim with the Port, pursuant to Government Code section 910 *et seq.*, on behalf of himself and all others similarly situated, seeking a refund of the Fees collected by the rental car companies and remitted to the Port. On March 5, 2020, the Port rejected the claim.

**1.06** On or about March 20, 2020, Plaintiff filed a class action complaint in the San Diego Superior Court against the Port seeking refunds on behalf of himself and others similarly situated who rented vehicles and paid the Fee to the rental car companies, which fee was then remitted to the Port (the “Class Action Complaint”). Counsel for the Port accepted service of the courtesy copy of the Class Action Complaint by email on the same date, however, due to the COVID-19 pandemic, the Court did not issue a summons or process the filing of the Class Action Complaint until May 26, 2020.

**1.07** Plaintiff, the Port, and the Plaintiffs in the Enterprise Actions engaged in good faith, arm’s-length settlement discussions to attempt to resolve the proposed Class Action as well as the Enterprise Actions.

**1.08** On or about April 20, 2020, Plaintiff, the Port and the Plaintiffs in the Enterprise Actions entered into a “Term Sheet” with the terms in principle for settlement of the disputes in the Enterprise Actions and the proposed Class Action.

**1.09** Defendant denies all of the claims asserted by Plaintiff in his Class Action Complaint. Defendant further contends that the claims asserted by Plaintiff in his Class Action Complaint are not amenable to class certification. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Defendant has agreed to settle all claims alleged in the Class Action Complaint on the terms set forth in this Agreement, subject to Court approval.

**1.10** This Settlement Agreement resulted from good faith, arm’s-length settlement negotiations conducted over the course of several months.

**1.11** The Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims. This Settlement Agreement is inadmissible as evidence against any of the Parties except to enforce the terms of the Settlement Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. The Parties desire and intend to effect a full, complete, and final settlement and resolution of all existing disputes and claims between them as set forth herein.

**1.12** The Settlement contemplated by this Settlement Agreement is subject to preliminary approval and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims against the Released Parties, upon and subject to the terms and conditions hereof.

**1.13** This Settlement is also expressly conditioned upon the consummation of the Settlement Agreement between the Port and the Plaintiffs in the Enterprise Actions.

## **II. DEFINITIONS**

**2.01** “Agreement” or “Settlement Agreement” means this Settlement Agreement and Release between Plaintiff and Defendant and each and every exhibit attached hereto.

**2.02** “Cash Award” means a cash payment from the Settlement Fund to a Settlement Class Member, as calculated under Section IV.

**2.03** “Claims Deadline” means sixty (60) calendar days after the Settlement Notice Date.

**2.04** “Class Action Complaint” means the class action complaint filed by Plaintiff on March 20, 2020 via OneLegal, and dated May 26, 2020 when the Court processed the filing of the complaint.

**2.05** “Class Administration” means the activities of the Class Administrator consistent with the terms of this Settlement.

**2.06** “Class Administrator” means Epiq Class Action and Claims Solutions, Inc (“Epiq”).

**2.07** “Class Counsel” means Schonbrun Seplow Harris Hoffman & Zeldes, LLP.

**2.08** “Class Period” means from May 10, 2018 through the date that is seven days after Preliminary Approval.

**2.09** “Class Representative” means Plaintiff Jeffrey Garvin.

**2.10** “Court” means the Superior Court of the State of California, County of San Diego and Judge Katherine A. Bacal or any other judge subsequently assigned to oversee the Litigation and Settlement thereof.

**2.11** “Cy Pres Distribution” means money that may be distributed to charitable or government entities in connection with the Settlement, which shall be the amount of money remaining in the Settlement Fund after payment of all Settlement Costs.

**2.12** “Defendant” or “Port” is the San Diego Unified Port District.

**2.13** “Effective Date” means the date when the Settlement becomes effective after the judgment approving it has become final, as provided in Section XII.

**2.14** “Exclusion Deadline” means sixty (60) calendar days after the Settlement Notice Date.

**2.15** “Final Approval Hearing” means the hearing held by the Court to determine whether to finally approve the Settlement set forth in this Settlement Agreement as fair, reasonable, and adequate.

**2.16** “Final Approval Order” means the order to be submitted to the Court in connection with the Final Approval Hearing, substantially in the form attached hereto as **Exhibit C**.

**2.17** “Final Distribution Date” means the earlier of (i) the date as of which all the checks for Cash Awards have been cashed, or (ii) 90 calendar days after the date on which the checks for Cash Awards were issued.

**2.18** “Funding Date” means ten (10) business days after Final Approval is granted.

**2.19** “Litigation” means the action described by the Class Action Complaint.

**2.20** “Net Settlement Fund” means the amount of money remaining in the Settlement Fund after payment of all Settlement Costs except for Class Counsel’s attorneys’ fees, their expenses and costs of suit.

**2.21** “Notice” means the notices to be provided to individuals within the Settlement Class as set forth in Section VIII including, without limitation, Email Notice, Mail Notice, and Publication Notice. The forms of the Email Notice, Mail Notice, and Publication Notice are attached hereto collectively as **Exhibit B**.

**2.22** “Notice Databases” means the databases containing Settlement Class Member Information that third-party rental car companies will provide the Class Administrator following a court order to be sought in connection with Preliminary Approval, authorizing the provision of this information, pursuant to Section 7.02.

**2.23** “Objection Deadline” means sixty (60) calendar days after the Settlement Notice Date.

**2.24** “Preliminary Approval Order” means the proposed order to be submitted to the Court in connection with the Motion for Preliminary Approval, in the form attached hereto as **Exhibit A**.

**2.25** “Released Claims” means the claims released in Section XIII.

**2.26** “Released Parties” means Defendant, and all of its current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, and attorneys. Also included are the entities that collected the Fees at the direction of the Port, including Enterprise Rent-A-Car Co. of Los Angeles, LLC and The Hertz Corporation, and all of their respective current, former, and future parents, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, agents, assigns, trustees, administrators, executors, insurers, and attorneys.

**2.27** “Request for Exclusion” means the written submission submitted by a member of the Settlement Class to be excluded from the Settlement consistent with the terms of this Agreement.

**2.28** “Settlement” means the Settlement set forth in this Agreement between Plaintiff and Defendant and each and every exhibit attached hereto.

**2.29** “Settlement Class” means and includes:

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

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

**2.30** “Settlement Class Members” means the Class Representative and those persons who are members of the Settlement Class and who do not submit a timely and valid Request for Exclusion from the Settlement Class.

**2.31** “Settlement Class Member Information” means the names, last known mailing addresses and last known email addresses of individuals falling within the Settlement Class.

**2.32** “Settlement Costs” means all costs incurred by the Settlement Class and their attorneys, including but not limited to Class Counsel’s attorneys’ fees, their expenses and costs of suit, any service award paid to the Class Representative, notice costs, costs of Class Administration, and all other costs of administering the settlement.

**2.33** “Settlement Fund” means the fund consisting of all fees remitted to the Port by any rental car company pursuant to Resolution 2018-065 and Ordinance 2030 and accrued interest, less the “Settled Attorneys’ Fees and Costs” to be paid pursuant to the Settlement Agreement and Mutual Release of All Claims in the Enterprise Actions. This is the sum that Defendant will pay to settle this Litigation and obtain a release of all Released Claims in favor of the Released Parties.

**2.34** “Settlement Notice Date” means thirty-five (35) calendar days after the date when the Court issues the Preliminary Approval Order.

**2.35** “Settlement Website” means the Internet website operated by the Class Administrator as described in Section 8.02.

**2.36** “Fee” means the \$3.50 rental car transaction fee at issue in the subject of the Litigation.

### **III. ALL PARTIES RECOMMEND APPROVAL OF THE SETTLEMENT**

**3.01** Defendant’s Position on the Conditional Certification of Settlement Class. Defendant disputes that a litigation class would be manageable and further denies that a litigation class may properly be certified on the claims asserted in this Litigation. Solely for purposes of avoiding the expense and inconvenience of further litigation, however, Defendant does not oppose the certification of the Settlement Class for the purposes of this Settlement only. Certification of

the Settlement Class will not be deemed a concession that certification of a litigation class is appropriate, nor would Defendant be precluded from challenging class certification in further proceedings in this Litigation or in any other action if the Settlement Agreement is not finalized or finally approved by the Court. If the Settlement Agreement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Litigation or any other judicial proceeding. No agreements made by or entered into by Defendant in connection with the Settlement Agreement may be used by Plaintiff, any Settlement Class Member, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Litigation or any other judicial proceeding.

**3.02** Plaintiff's Belief in the Merits of the Case. Plaintiff believes that the claims asserted in this Litigation have merit and that the evidence developed to date supports those claims. This Settlement will in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiff that there is any infirmity in the claims asserted by Plaintiff, or that there is any merit whatsoever to any of the contentions and defenses that Defendant has asserted.

**3.03** Plaintiff Recognizes the Benefits of Settlement. Plaintiff recognizes and acknowledges, however, the expense and amount of time which would be required to continue to pursue this Litigation against Defendant, as well as the uncertainty and risk inherent in prosecuting such claims on behalf of the Settlement Class as well as the likelihood of lengthy appeals. Plaintiff has concluded that it is in the best interest of the Class that this Litigation and all Released Claims be fully and finally settled and released as set forth in this Settlement. Plaintiff and Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Settlement Class, that it is fair, reasonable, and adequate, and that it is in the best interests of the Settlement Class to settle as described herein.

#### **IV. SETTLEMENT TERMS AND BENEFITS TO THE SETTLEMENT CLASS**

**4.01** Settlement Consideration. Defendant will pay a non-reversionary cash sum in the amount of all Fees remitted to the Port by any rental car company pursuant to Resolution 2018-065 and Ordinance 2030 and accrued interest, less the “Settled Attorneys’ Fees and Costs” paid pursuant to the Settlement Agreement and Mutual Release of All Claims in the Enterprise Actions, into the Settlement Fund (“Settlement Consideration”). The Settlement Consideration amount is presently approximately \$6,638,011.38. All Cash Awards and Settlement Costs will be paid from the Settlement Fund, and Defendant will pay nothing apart from its contribution to the Settlement Fund in settlement of the Released Claims.

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

b. Payment of Remainder of Settlement Fund. No later than the Funding Date, Defendant shall pay to the Class Administrator the Settlement Consideration to create the Settlement Fund (after subtracting any amount already paid pursuant to Section 4.01(a)). Defendant thereafter will have no further obligation to pay any amount under this Settlement Agreement.

**4.02** Eligibility for Cash Awards. All Settlement Class Members will be eligible to receive a Cash Award. Each Settlement Class Member who submits a valid claim will receive a Cash Award.

**4.03** Amount Paid per Claim. The amount of each Cash Award for a valid claim will be determined by the following formula: Number of rentals claimed by the Settlement Class Member multiplied by \$3.50. If the dollar value of all valid claims exceeds the Net Settlement Fund, the Cash Awards will be reduced pro rata.

**4.04** Multiple Rentals per Claim. There is no cap on the number of rentals each Settlement Class Member may submit in their claim for reimbursement out of the Settlement Fund. However, any Settlement Class Member who claims to have paid the Fee more than six times (i.e. claims more than \$21) must do so under penalty of perjury and any Settlement Class Member who claims to have paid the Fee more than 20 times (i.e. claims more than \$70) must provide evidence in support of their claims.

**4.05** Cy Pres Distribution. If any funds are still remaining after Cash Awards and Class Counsel's attorneys' fees and costs are paid, they will be transferred to the San Diego Association of Governments ("SANDAG") to use to improve ingress and egress at the Consolidated Rental Car Center at the San Diego International Airport. If, for any reason, the Parties determine that this recipient is no longer appropriate or the Court determines that it is not appropriate, the Parties will agree on replacement recipients, subject to Court approval. If there is no agreement, Class Counsel will move for Court approval of appropriate recipients.

**4.06** Responsibility for Taxes. Each Settlement Class Member will be responsible for remitting to federal, state, and local taxing authorities any taxes that may be due and owing as a result of his or her receipt of a Cash Award. Each Settlement Class Member will hold Class Counsel and the Released Parties harmless and indemnify each of them for any liabilities, costs, and expenses, including attorneys' fees, caused by any such taxing authority relating in any way to the tax treatment of the Cash Award.

**4.07** Suspension and Repeal of Resolution 2018-065 and Ordinance 2030.

The Port agrees to suspend enforcement of Resolution 2018-065 and Ordinance 2030 and to cease collection of the Fees upon preliminary approval of the Settlement. Upon final approval

of the settlement, the Port agrees to repeal Resolution 2018-065 and Ordinance 2030. If final approval is not granted, the Port agrees not to attempt to collect from the rental car companies any amounts for the period that the collection of the Fee was suspended. The Port will not seek to impose any new fee pursuant to Section 57.5 of the Port Act except by a new Ordinance and/or Resolution.

**V. ATTORNEYS' FEES, COSTS AND PAYMENT TO CLASS REPRESENTATIVE**

**5.01 Attorneys' Fees and Costs.** After an agreement was reached among the Parties as to all principal terms and conditions of this Settlement Agreement, the Parties entered into arm's-length discussions regarding Class Counsel's attorneys' fees, costs, and expenses. Class Counsel will move the Court for an award of up to 20% of the total Settlement Fund, to be paid from the Settlement Fund and will also seek a reasonable amount for the costs they have incurred.

**5.02 Payment to Class Representative.** The Class Representative will ask the Court to award him a service award for the time, effort, expense, and service that he personally invested in the Litigation. Defendant will not object to such payment to be paid to the Class Representative from the Settlement Fund provided that the payment does not exceed \$5,000, subject to Court approval.

**5.03 Settlement Independent of Award of Fees, Costs and Payment to Class Representative.** The awards of attorneys' fees, costs, and payment to the Class Representative set forth in Sections 5.01 and 5.02 are subject to and dependent upon the Court's approval. This Settlement, however, is not dependent or conditioned upon the Court's approving Plaintiff's requests for such payments or awarding the particular amounts sought by Plaintiff. If the Court declines Plaintiff's requests or awards less than the amounts sought, this Settlement will continue to be effective and enforceable by the Parties.

**VI. PRELIMINARY APPROVAL**

**6.01 Order of Preliminary Approval.** As soon as practicable after the execution of this

Agreement, Plaintiff will move the Court for entry of the Preliminary Approval Order in substantially the form attached as **Exhibit A**. Pursuant to the motion for preliminary approval, Plaintiff will request that the Court:

- a. conditionally certify the Settlement Class for purposes of this Settlement only;
- b. appoint Class Counsel as counsel for the Settlement Class;
- c. appoint Plaintiff as Class Representative for the Settlement Class;
- d. appoint Epiq as the Class Administrator;
- e. preliminarily approve the Settlement and this Agreement as fair, adequate, and reasonable;
- f. approve the forms of Notice and find that the notice program set forth herein constitutes the best notice practicable under the circumstances and satisfies due process and the California Rules of Court;
- g. set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without further notice; and,
- h. set the Claims Deadline, Objection Deadline, and Exclusion Deadline.

## **VII. ADMINISTRATION AND NOTIFICATION PROCESS**

**7.01** Third-Party Class Administrator. The Class Administrator will be responsible for all matters relating to the administration of this Settlement, as set forth herein. Those responsibilities include, but are not limited to, giving notice, obtaining new addresses for returned mail, setting up and maintaining the Settlement Website and toll-free telephone number, fielding inquiries about the Settlement, acting as a liaison between individuals within the Settlement Class and the Parties regarding claims information, directing the mailing of Cash Awards to Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing. The Class Administrator will provide updates on the claims status to counsel for the Parties at least monthly. The Class Administrator has provided an estimate of \$1,115,215 for the Class Administration; however, Counsel for the Parties and the Class Administrator will reach a final agreement for the

amounts to be paid to the Class Administrator for services rendered under this Settlement Agreement before any undertaking by the Class Administrator.

**7.02** Notice Databases. To facilitate the Notice and Class Administration process, the Parties agree as follows:

a. Plaintiff will request that the Court include in the Preliminary Approval Order provisions authorizing Enterprise Rent-A-Car Co. of Los Angeles, LLC (“Enterprise”) and The Hertz Corporation (“Hertz”) to provide to the Class Administrator, within twenty-one (21) days of Preliminary Approval, in an electronically searchable and readable format, the Settlement Class Member Information. All such provided information will become part of the Notice Databases.

b. Plaintiff will request that the Court include in the Preliminary Approval Order provisions authorizing third party rental companies (other than Enterprise and Hertz) to provide to the Class Administrator, within twenty-one (21) days of Preliminary Approval, in an electronically searchable and readable format, the Settlement Class Member Information. All such provided information will become part of the Notice Databases.

c. Any Settlement Class Member Information provided to the Class Administrator pursuant to this Settlement will be provided solely for the purpose of providing notice to individuals within the Settlement Class, enabling communication with them about the Settlement and the Litigation, and allowing them to recover under this Settlement. The Class Administrator has agreed that it will keep Settlement Class Member Information in strict confidence; will not disclose such information to any third party except for the purposes provided in this Agreement; and will not use such information for any other purpose. The Notice sent to individuals within the Settlement Class will include information explaining that their information was used under this Agreement to provide Notice of the Settlement. Enterprise, Hertz and the other third-party rental car companies, do not have any obligation to provide Settlement Class Member Information to Plaintiff, Class Counsel, Defendant or Defendant’s Counsel. The Class

Administrator will not provide a copy of the Settlement Class Member Information it receives to Plaintiff, Class Counsel, Defendant or Defendant's Counsel. Notwithstanding the foregoing, information on particular Settlement Class Members may be provided to Class Counsel and/or Defendant's Counsel as needed to effectuate the settlement, including, for example, to answer Settlement Class Member questions, resolve issues regarding Settlement Class Member eligibility, or provide reports to the Court regarding requests for exclusion or objections to the proposed settlement. Additionally, nothing herein shall restrict the Class Administrator from sharing Settlement Class Member Information with the rental car company that provided the information regarding that Settlement Class Member.

d. The Class Administrator will certify that the Notice Databases have been destroyed within ten (10) business days after the date that any unclaimed and unused funds have been distributed under Section 7.03, as applicable.

**7.03 Distribution of the Settlement Fund.** The Class Administrator will distribute the funds in the Settlement Fund in the following order and within the time period set forth with respect to each such payment:

a. No later than twenty-five (25) calendar days after the Effective Date has occurred, the Class Administrator will be paid for any unreimbursed costs of notice and claims administration that have been agreed or approved in writing by the Parties.

b. No later than thirty (30) calendar days after the Effective Date has occurred and the Class Administrator has received a W-9 form from the Class Representative, the Class Administrator will pay to Class Counsel the service award ordered by the Court as provided in Section 5.02.

c. No later than thirty (30) calendar days after the Effective Date has occurred, the Class Administrator will pay the Cash Awards to Settlement Class Members as provided in Section IX.

d. No later than thirty-five (35) calendar days after the Effective Date, and the Class Administrator has received a W-9 form from Class Counsel, the Class Administrator will pay to Class Counsel the attorneys' fees and costs up to the amount ordered by the Court as provided in Section 5.01.

e. One-hundred (100) calendar days after the distribution to Class Members, the Cy Pres Distribution, if any, shall be paid to SANDAG as indicated in Section 4.05 and the Class Administrator shall inform Class Counsel and Defendant's Counsel of the amount paid to SANDAG.

## VIII. NOTICES

**8.01** Emailing & Mailing of Settlement Notice. By the Settlement Notice Date, the Class Administrator will send the Notice as set forth in **Exhibit B** via: (i) electronic mail, to the most recent email address as reflected in the Notice Databases, to all persons in the Settlement Class for whom such records exist; and (ii) first class mail, to the most recent mailing address reflected in the Notice Databases, for all those for whom mailing addresses exist. The Notice will advise Class Members of their ability to update their email address and mailing address with the Class Administrator. The Parties shall consult with counsel for Enterprise and Hertz to obtain Enterprise and Hertz's approval for the form of notice, which approval shall not be unreasonably withheld.

a. Address Confirmation. The last known mailing address of individuals within the Settlement Class will be subject to confirmation or updating as follows: (a) the Class Administrator will check each address against the United States Post Office National Change of Address Database before the initial mailing; (b) the Class Administrator will conduct a reasonable search to locate an updated address for individuals whose Settlement Notice is returned as undeliverable; (c) the Class Administrator will update addresses based on any forwarding information received from the United States Post Office; and (d) the Class Administrator will update addresses based on any requests received from individuals within the Settlement Class.

b. Re-Mailing of Returned Settlement Notices. The Class Administrator will promptly re-mail any Notices that are returned as non-deliverable with a forwarding address to such forwarding address. For all returned mail, the Class Administrator will perform data searches and other reasonable steps to attempt to obtain better contact information for the individuals within the Settlement Class.

**8.02** Internet Notice. By the Settlement Notice Date, the Class Administrator will maintain and administer a dedicated settlement Website containing class information and related documents. At a minimum, such documents will include the Settlement Agreement and attached exhibits, Email Notice, Mail Notice, the Preliminary Approval Order, all submissions regarding final settlement approval, attorney's fees and costs, the service award for the Class Representative, and the Final Approval Order. The Website will permit members of the Settlement Class who elect to do so to register online to receive (a) email notice that the Court has granted Final Approval of the Settlement, (b) updates on the deadlines to submit Requests for Exclusion and make Objections, and (c) the status of payments under the terms of the Settlement. The Website will be taken down and rendered inaccessible by 120 calendar days after the distribution to class members.

**8.03** Toll-Free Telephone Number. By the Settlement Notice Date, the Class Administrator will set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number will be maintained until the Exclusion Deadline. After that time, and for a period of ninety (90) calendar days thereafter, a recording will advise any caller to the toll-free telephone number that details regarding the Settlement may be reviewed on the related Settlement Website.

**8.04** Publication Notice. The Class Administrator will issue a nationwide press release about the settlement. The press release shall be subject to the approval of the Plaintiffs in the Enterprise Actions, which approval shall not be unreasonably withheld. If the direct notice provided by mail and email and the press release do not have sufficient reach to satisfy the requirements of due process, they will also be supplemented by electronic publication notice

sufficient to provide that reach, using methods developed by the Class Administrator and approved by the Parties.

## **IX. CLASS ADMINISTRATION PROCESS**

**9.01 Potential Claimants.** Each member of the Settlement Class who does not timely and validly request exclusion from the Settlement as required in this Agreement will be a Settlement Class Member and will be entitled to submit a claim for a Cash Award. Each Settlement Class Member who submits a valid claim will be entitled to a Cash Award. To be valid, a claim must be submitted by the Claims Deadline and contain information sufficient to establish that it has been submitted on behalf of a Settlement Class Member. The Class Administrator will take reasonable steps to distinguish valid from invalid and fraudulent claims. The claims for a Cash Award may be submitted by mail or electronically to the Claims Administrator.

**9.02 Payment of Cash Awards.** Settlement Class Members will be provided the option when submitting their claims of receiving an electronic payment in lieu of a paper check. Electronic payments will be sent to Settlement Class Members by the Class Administrator no later than thirty (30) calendar days after the Effective Date. Settlement checks making the Cash Award will be sent to Settlement Class Members by the Class Administrator via U.S. mail no later than thirty (30) calendar days after the Effective Date. The Class Administrator will advise Class Counsel and Defendant's Counsel, of the names of the Settlement Class Members whose checks are returned by the postal service as soon as practicable. Each original settlement check will be negotiable for ninety (90) calendar days after it is issued. Upon a timely request made by a Settlement Class Member, the Class Administrator may re-issue a settlement check, provided that the re-issued check will not be negotiable beyond the date that is ninety (90) calendar days after the date of issuance of the original check to such Settlement Class Member.

**9.03 No claims based on administration.** No person will have any claim against Plaintiff, Class Counsel, the Class Administrator, Defendant or its counsel, the Released Parties, or any other person designated by Class Counsel, the Class Administrator, or the Court to assist in claims

administration, based on the provision of Notice or the administration, processing, or payment of claims consistent with the terms of this Settlement Agreement.

## **X. EXCLUSIONS AND OBJECTIONS**

**10.01 Exclusions from the Settlement.** Members of the Settlement Class who wish to exclude themselves from the Settlement Class must advise the Class Administrator by providing a written Request for Exclusion. The Request for Exclusion must be postmarked no later than the Exclusion Deadline. In it, the member must state his or her full name and address and must state that he or she wishes to be excluded from the Settlement. Any member of the Settlement Class who submits a valid and timely Request for Exclusion will not be a Settlement Class Member and will not be bound by the terms of this Agreement. All members of the Settlement Class who do not submit a timely, valid Request for Exclusion, however, will be bound by this Agreement and the Judgment, including the releases and covenant not to sue in Section XIII below. The Class Administrator will provide the Parties with a copy of each Request for Exclusion that it receives. The Class Administrator will also provide a list of all members of the Settlement Class who timely and validly excluded themselves from the Settlement in its declaration filed with the Court, as required by Section 11.01.

**10.02 Objections.** Any Settlement Class Member who intends to object to this Settlement must file a written Objection with the Court by the Objection Deadline. In the written Objection, the Settlement Class Member must state his or her (1) full name and address; and (2) any other proof of Settlement Class membership if such proof exists. The written Objection must also state the reasons for the Settlement Class Member's Objection and indicate whether he or she intends to appear at the Final Approval Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must be attached to the Objection. The Parties will have the right to obtain document discovery and take depositions relevant to the Objection. Any Settlement Class Member who has timely filed an Objection and indicated an intent to appear may appear at the Final Approval Hearing, either in person or through an attorney hired at the Settlement Class

Member's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement.

## **XI. FINAL APPROVAL AND JUDGMENT ORDER**

**11.01 Declaration of Class Administrator.** No later than sixteen (16) court days before the Final Approval Hearing, the Class Administrator will file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Agreement has been completed in accordance with the terms of the Preliminary Approval Order.

**11.02 Request for Final Approval.** If the Court issues the Preliminary Approval Order and all other conditions precedent to the Settlement have been satisfied, no later than sixteen (16) court days before the Final Approval Hearing:

- a. All Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially the form attached as **Exhibit C**. Class Counsel will, and Defendant may, file a memorandum of points and authorities in support of the motion; and,
- b. Class Counsel will, and Defendant may, file a memorandum addressing any Objections submitted to the Settlement.

**11.03 Consideration by the Court.** At the Final Approval Hearing, the Court will consider and determine whether the Settlement should be finally approved as fair, reasonable, and adequate, rule on Objections to the Settlement, determine whether the attorneys' fees and costs award and service award to the Class Representative should be approved, and determine whether a Judgment finally approving the Settlement should be entered.

**11.04 Required Terms of Final Approval Order.** This Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement and enters a final Judgment and:

- a. finds that the Notice provided satisfies the requirements of due process and the California Rules of Court;

b. finds that Settlement Class Members have been adequately represented by the Class Representative and Class Counsel;

c. finds that the Settlement Agreement is fair, reasonable, and adequate with respect to the Settlement Class, that each Settlement Class Member will be bound by this Agreement, including the releases and covenant not to sue in Section XIII, and that this Settlement Agreement should be and is approved;

d. permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against any of the Defendant or the Released Parties; and,

e. retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Settlement Agreement.

## **XII. FINAL JUDGMENT**

**12.01 Effective Date.** The judgment entered at the Final Approval Hearing will be deemed final, and the Effective Date will occur:

a. Sixty (60) calendar days after entry of the Judgment approving the Settlement if no document is filed within that time seeking appeal, review, or rehearing of the Judgment or taking some other action that would extend the time for seeking appeal or review of the Judgment; or

b. If any such document is filed, then five (5) business days after the date upon which all appellate and other proceedings resulting from such document have been finally terminated in such a manner as to permit the Judgment to take effect in substantially the form described in Section 11.04.

## **XIII. RELEASE OF CLAIMS**

**13.01 Released Claims.** Upon the Effective Date, Plaintiff and each Settlement Class Member, as well as their respective assigns, heirs, executors, administrators, successors, and

agents, hereby release, resolve, relinquish, and discharge each and all of the Released Parties from each of the Released Claims (as defined below). The Plaintiff and the Settlement Class Members further agree that they will not institute against the Released Parties any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from or reasonably related to the Released Claims. The release does not apply to members of the Settlement Class who opt out of the Settlement by submitting a valid and timely Request for Exclusion. “Released Claims” means any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorneys’ fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to, all claims relating to or arising out of any state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way related to all claims asserted or the factual allegations made in the Class Action Complaint in this Action.

**13.02 Waiver of Unknown Claims by Plaintiff and Settlement Class Members.** Without limiting the foregoing, the Released Claims specifically extend to claims that Plaintiff and the Settlement Class Members have against the Released Parties but do not know or suspect to exist in their favor at the time that the Settlement and the releases contained therein become effective. Plaintiff, the Settlement Class Members, and each of them, represent, warrant, and agree that they are fully aware that certain jurisdictions may, absent a waiver, impose limitations on a general release of unknown claims, such as, for example, California Civil Code section 1542, but that Plaintiff and the Settlement Class Members intend to waive such limitations with respect to the foregoing releases. Accordingly, Plaintiff, the Settlement Class Members, and each of them, hereby waive and relinquish every right or benefit that they have or might have under California Civil Code section 1542 or any other law with respect to the foregoing releases. California Civil

Code section 1542 provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This Section also constitutes a waiver of any other law of any jurisdiction (domestic or foreign) or principle of common law that is similar, comparable, or equivalent to Section 1542 as it applies to the Released Parties.

Plaintiff and the Settlement Class Members expressly assume the risk of any and all claims which are the subject of the foregoing releases, but of which they do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, might materially affect their decision to enter into this Settlement Agreement.

**13.03 Covenant Not To Sue.** Plaintiff agrees and covenants, and each Settlement Class Member will be deemed to have agreed and covenanted, not to sue any Released Party with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

#### **XIV. TERMINATION OF AGREEMENT**

**14.01 Either Plaintiff or Defendant May Terminate the Agreement.** Plaintiff and Defendant will each have the right to unilaterally terminate this Agreement by providing written notice of his or its election to do so (“Termination Notice”) to all other Parties hereto within ten (10) business days of any one of the following occurrences:

a. The Court rejects, materially modifies, materially amends or changes, or declines to issue a Preliminary Approval Order or a Final Approval Order with respect to the Settlement Agreement.

b. An appellate court reverses the Final Approval Order, and the Settlement Agreement is not reinstated without material change by the Court on remand.

c. Any court incorporates into, or deletes or strikes from, or modifies, amends, or changes, the Preliminary Approval Order, the Final Approval Order, or the Settlement Agreement in a way that Plaintiff or Defendant reasonably considers material, unless such modification or amendment is accepted in writing by all Parties. Any change to the amount that Defendant is required to pay or the scope of its release will be deemed a material change for purposes of this Section XIV. As provided above, the Court's approval of Class Counsel's attorneys' fees and costs and/or payment of a service award to the Class Representative, or their amounts, is not a condition of the Settlement, and its rulings on those terms will not give rise to a right to terminate.

d. The Effective Date of the settlement is prevented from occurring for any reason, including but not limited to if the Final Approval Order does not become final.

e. The Settlement in the Enterprise Actions is not consummated (which consummation will include full payment of the Settled Attorneys' Fees and Costs).

f. Any other ground for termination provided for elsewhere in this Agreement occurs.

**14.02 Revert to Status Quo If Plaintiff or Defendant Terminates.** If either Plaintiff or Defendant terminates this Agreement as provided in Section 14.01, or the Agreement is otherwise terminated: (a) the Agreement will be of no force and effect; (b) the Parties' rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed; (c) any orders entered by the Court in connection with this Agreement will be vacated; and (d) any payments made to the Settlement Fund will be refunded to Defendant within ninety (90) days of termination except that payments made for services provided by the Class Administrator before the date of termination will not be refunded.

## **XV. NO ADMISSION OF LIABILITY**

**15.01** Defendant denies any liability or wrongdoing of any kind associated with the alleged claims in the Class Action Complaint. Defendant has denied and continues to deny each and every material factual allegation and all claims asserted against it in the Litigation. Nothing herein will constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Litigation. Nothing herein will constitute an admission by Defendant that the Litigation is properly brought on a class or representative basis, or that classes may be certified, other than for settlement purposes. To this end, the Settlement of the Litigation, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (i) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendant or of the truth of any of the allegations in the Litigation; (ii) are not and will not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Defendant in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; and (iii) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification.

**15.02** The Parties agree that neither this Agreement nor any related documents filed or created in connection with this Agreement will be admissible as evidence in any proceeding, except as necessary to approve, interpret, or enforce this Agreement.

## **XVI. MISCELLANEOUS**

**16.01** Entire Agreement. This Agreement and the exhibits hereto constitute the entire agreement between the Parties. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and inducements contained in this Agreement.

**16.02** Governing Law. This Agreement will be governed by the laws of the State of California.

**16.03** Continuing Jurisdiction. The Court will retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiff and all Settlement Class Members, for purposes of the administration and enforcement of this Agreement.

**16.04** No Construction Against Drafter. This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement will be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

**16.05** Resolution of Disputes. The Parties will cooperate in good faith in the administration of this Settlement and agree to use their best efforts to promptly file a Motion for Preliminary Approval with the Court and to take any other actions required to effectuate this Settlement. Any unresolved dispute regarding the administration of this Agreement will be decided by the Court or by a mediator upon agreement of the Parties.

**16.06** Counterparts. This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together will constitute one and the same instrument. It is further agreed that signatures may be transmitted by fax or e-mail and are binding.

**16.07** Time Periods. The time periods and dates described herein are subject to Court approval and may be modified upon order of the Court or written stipulation of the Parties.

**16.08** Authority. Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

**16.09** No Oral Modifications. This Agreement may not be amended, modified, altered, or otherwise changed in any manner, except by a writing signed by all of the duly authorized agents of Defendant and Plaintiffs, and if necessary approved by the Court.

**16.10** Publicity and Confidentiality. The Parties agree that they will not initiate any publicity of the Settlement. Notice of the Settlement will be delivered exclusively through the notice process set forth in Section VIII, above.

**16.11 Interim Stay of Proceedings in Action:** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary or appropriate to implement and complete the Settlement, pending the Final Approval Hearing.

**16.12 Enforceability:** When this Settlement Agreement is signed by all Parties and their attorneys of record, it shall be fully enforceable by the Court pursuant to Code of Civil Procedure section 664.6 and any other applicable provision of law.

**16.13 Notices.** Unless otherwise stated herein, any notice to the Parties required or provided for under this Agreement will be in writing and may be sent by electronic mail or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Helen I. Zeldes  
Ben Travis  
SCHONBRUN SEPLOW HARRIS HOFFMAN & ZELDES, LLP  
hzeldes@sshhlzlaw.com  
btravis@sshhlzlaw.com  
501 W. Broadway, Suite 800  
San Diego, CA 92101  
Telephone: (619) 400-4990

If to counsel for Defendant:

Michael G. Colantuono  
mcolantuono@chwlaw.us  
COLANTUONO, HIGHSMITH & WHATLEY, PC  
420 Sierra College Drive, Suite 140  
Grass Valley, CA 95945-5091  
Telephone: (530) 432-7357

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

DATED: June 24, 2020

Plaintiff Jeffrey Garvin

\_\_\_\_\_

DATED: June 24, 2020

San Diego Unified Port District

By: 

Name: Randa J. Coniglio

Title: President/CEO

APPROVED AS TO FORM:

DATED: June 24, 2020

COLANTUONO, HIGHSMITH & WHATLEY, PC

By   
John L. Jones II  
Attorney for San Diego Unified Port District

DATED: June 24, 2020

SCHONBRUN SEPLOW HARRIS HOFFMAN &  
ZELDES, LLP

By \_\_\_\_\_  
Helen I. Zeldes  
Attorney for Plaintiff and Proposed Class  
Counsel

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

DATED: June 24, 2020

Plaintiff Jeffrey Garvin



\_\_\_\_\_

DATED: June 24, 2020

San Diego Unified Port District

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

APPROVED AS TO FORM:

DATED: June 24, 2020

COLANTUONO, HIGHSMITH & WHATLEY, PC

By \_\_\_\_\_

John L. Jones II

Attorney for San Diego Unified Port District

DATED: June 24, 2020

SCHONBRUN SEPLOW HARRIS HOFFMAN &  
ZELDES, LLP

By  \_\_\_\_\_

Helen I. Zeldes

Attorney for Plaintiff and Proposed Class  
Counsel