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County of San Diego  
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5 Attorney for Plaintiffs K.S.A.N. L.L.C.  
AND THE CLASS OF SIMILARLY  
6 SITUATED PERSONS AND ENTITIES  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF SAN DIEGO**  
10

11 K.S.A.N. L.L.C., and on behalf of all other  
similarly situated Persons and Entities

12 )  
13 ) Plaintiffs,  
14 )

14 vs.

15 SAN DIEGO COUNTY REGIONAL AIRPORT  
AUTHORITY and DOES 1-3000 inclusive,

16 )  
17 ) Defendants.  
18 )  
19 )

Case No.: 37-2017-00024982-CU-NP-CTL

) **CLASS ACTION COMPLAINT**  
) **BY K.S.A.N. L.L.C.**  
) **AGAINST SAN DIEGO COUNTY**  
) **REGIONAL AIRPORT AUTHORITY**  
) **AND DOES 1-3000**  
) **FOR DECLARATORY, INJUNCTIVE,**  
) **AND MONETARY RELIEF**

) [Request for Jury Trial]

20 **JURISDICTION AND VENUE**

21 1. This Court has jurisdiction over all Defendants and causes of action asserted herein pursuant to  
22 California Constitution, Article VI, § 10. As to venue, “Unless otherwise designated by statute, the  
23 provisions for venue that pertain to other civil actions apply to actions against state agencies and  
24 public entities.” (*Regents of Univ. of Cal. V. Superior Court* (1970) 3 Cal 3rd 529, 534; *Harris v.*  
25 *Alcoholic Beverage Control Appeals Bd.* (1961) 197 Cal 2nd 759, 765.) Venue is proper in the  
26 County of San Diego because that is where the defendants are situated and/or reside, and that is  
27 where the injuries occurred. (Code of Civ. Proc., §§ 394, 395.)  
28

PARTIES

1  
2 2. Plaintiff, K.S.A.N. L.L.C. is a limited liability company, registered and domiciled in good  
3 standing in the City of San Diego, County of San Diego, State of California. K.S.A.N. L.L.C. is  
4 primarily engaged in the business of organization of taxicabs, and has a close relationship with  
5 passengers, as a licensed Metropolitan Transit System (“MTS”) radio service organization, doing  
6 business as Airport Dispatch. A member of K.S.A.N. L.L.C. has also been a passenger of San  
7 Diego International Airport (“SDIA”), and as a result K.S.A.N. L.L.C. has been a passenger and has  
8 utilized Ground Transportation Modes at SDIA for business purposes. K.S.A.N. L.L.C. is the  
9 named plaintiff on behalf of itself, and as the named representative on behalf of all other similarly  
10 situated passengers of SDIA as a class (“Plaintiffs”).

11  
12 3. Defendant, San Diego County Regional Airport Authority (“SDCRAA”) is a local government  
13 entity established by the San Diego County Regional Airport Authority Act (Pub. Util. Code §  
14 170000 et seq.) which through its Board of Directors (“SDCRAA Board”) and its Executive Staff  
15 (“SDCRAA Staff”), public employees acting in their official capacities, operate San Diego  
16 International Airport (“SDIA”).

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1 4. Defendants, DOES 1-1000, are persons living in, or maintaining offices and/or conducting  
2 business in the State of California.

3

4 5. Defendants, DOES 1001-2000, are business entities maintaining offices and/or conducting  
5 business in the State of California.

6

7 6. Defendants, DOES 2001-3000 are government entities or the public employees of such entities  
8 in the State of California.

9

10 7. The true names and capacities, herein referred to as DOES 1-3000 are presently unknown to  
11 plaintiffs, who, therefore, sue said Defendants by such fictitious names. Plaintiffs allege that each  
12 Defendant designated as a “DOE” is legally responsible in some way for the events and happenings  
13 stated in this Complaint, and that each of these Defendants proximately caused or contributed to the  
14 injuries herein described. Plaintiffs seek leave of the Court to amend this Complaint, if necessary,  
15 to set forth the true names and capacities of such parties when the same have been ascertained.

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1 INTRODUCTION STATEMENT

2 8. For nearly 10 years, SDCRAA has developed a culture of egregiously allowing willing, reckless,  
3 and repeated violations the California Constitution’s prohibition on illegal taxes and illegal gifts of  
4 public funds; and related violations of SDCRAA Code, SDCRAA Resolutions; and Metropolitan  
5 Transit System, Ord. No. 11.

6  
7 9. SDCRAA, newly created in 2003 to operate SDIA, aggressively increased the balance sheet of  
8 SDIA from always under \$500 million in the many decades SDIA was operated by the Port of San  
9 Diego, to over \$2 billion dollars after just one decade of SDCRAA control of SDIA. SDCRAA’s  
10 balance sheet includes tens of millions of dollars of portfolio investments in companies such as  
11 Apple Inc, Berkshire Hathaway, IBM Corporation, and Wells Fargo. The private-business minded  
12 SDCRAA Chief Financial Officer, Vernon Evans, repeatedly told the SDCRAA Board while  
13 referring to the public agency, “it’s a business.”

14  
15 10. SDCRAA is not a business, it is a government agency, no different that the Department of  
16 Motor Vehicles, in that it is extremely restricted in its ability to tax the public and impose a charge  
17 which exceeds its reasonable costs. Nevertheless, with monopoly power, stemming from  
18 controlling the regional single runway international airport of the People of the State of California,  
19 it has been easy to tax the traveling public, by a brash disregard for the will of the People of the  
20 State of California not to be taxed, and a brash disregard for the Constitution and the laws of the  
21 State of California.

22  
23 11. All violations arise from the common nucleus of the SDCRAA trip tax imposed upon  
24 passengers of various SDCRAA Ground Transportation Modes (“Modes”), and illegal gifting of  
25 these public funds to private companies. SDCRAA Ground Transportation Modes include  
26 Taxicabs, Vehicles for Hire Shuttles, Limousines, Courtesy Shuttles, SDCRAA Vehicles, Public  
27 Transit, Rental Cars, Private Vehicles, and since 2015, Transportation Network Companies  
28 (“TNCS”) such as Uber and Lyft.

1 STATEMENT OF FACTS

2 12. As early as August 21, 2008, SDCRAA published a notice of an attempted new trip charge of  
3 "\$2.00 from each vehicle" which "will start between October 2008 and January 2009" (Plaintiffs'  
4 Exhibit 1). This notice was published by SDCRAA Staff, which set the attempted \$2.00 tax amount  
5 sua sponte, on its own, without any public presentment of valuations and cost analysis, and without  
6 formal direction from the SDCRAA Board. Although the 2008 attempted \$2.00 tax by SDCRAA  
7 Staff was not allowed, the August 21, 2008 notice evidenced SDCRAA's culture of avarice, over-  
8 eagerness, over-zealousness, and willingness to disregard the law, and aggressively and illegally tax  
9 the traveling public for use of their public airport.

10  
11 13. On October 1, 2008, the SDCRAA CFO, Vernon Evans presented "Ground Transportation  
12 Fully Allocated Costs" of \$1,986,599 (Plaintiffs' Exhibit 2).

13  
14 14. On or about 2009, under the guise of complying with a 2008 Attorney General Memorandum of  
15 Understanding ("AGMOU") (Plaintiffs' Exhibit 3) for the reduction of greenhouse gases of Ground  
16 Transportation Modes involving Shuttles-only by 2015, SDCRAA Staff began exploring a more  
17 formal attempt to get SDCRAA Board approval to tax the traveling public.

18  
19 15. On December 3, 2009, the SDCRAA Board adopted the Air-Quality Management Plan  
20 ("AQMP"), SDCRAA Resolution 2009-150R (Plaintiffs' Exhibit 4), quickly followed by the  
21 Comprehensive Ground Transportation Management Plan ("CGTMP"), SDCRAA Resolution 2010-  
22 0006, (Plaintiffs' Exhibit 5), adopted on January 7, 2010. Although the 2008 AGMOU regarded  
23 Shuttles-only and Taxicabs were never mentioned, and TNC vehicles did not even exist, both  
24 SDCRAA Resolutions set a broad goal of exploring incentives and disincentives, or as SDCRAA  
25 Vice-President of Operations and chief architect, Ms. Angela Shafer-Payne repeatedly labeled,  
26 "carrots and sticks," as the approach for reaching the goal of 100% conversion of all commercial  
27 Ground Transportation Modes to alternative-fuel vehicles by 2015.

1 16. SDCRAA does not have the authority to regulate vehicle emissions. The regulation of vehicle  
2 emissions is preempted by the United State Environmental Protection Agency and that authority is  
3 waived and expressly delegated to the California Air Resources Board, not to SDCRAA. (40  
4 C.F.R. 1074 (October 8, 2008).)

5  
6 17. Instead of using valid means, such as the issuance of new operating permits to incentivize  
7 Shuttles-only, all commercial Ground Transportation Modes were used to illegally tax the traveling  
8 public and illegally gift public monies to private companies. Soon to be SDCRAA Chairman,  
9 Robert H. Gleason, presciently stated during the January 7, 2010 SDCRAA Board Meeting, “I think  
10 if we start charging trip fees it is going to be very addictive my amendment would be to remove the  
11 trip fee for taxicabs.” (See Plaintiffs’ Exhibit 5.) Nevertheless, Board Member Gleason’s  
12 amendment was ignored. The AQMP and CGTMP, very broadly and without clearly imposing  
13 specific fees, directed SDCRAA Staff to explore the implementation of a full-cost recovery scheme  
14 for all Ground Transportation Modes for Fiscal Year 2011 and Fiscal Year 2012 only.

15  
16 18. Moreover, the CGTMP included a full cost recovery estimate of \$9,182,272 or approximately  
17 \$9.2 million dollars (Plaintiffs’ Exhibit 6). This \$9.2 million estimate of costs, was a 5x increase or  
18 400% inflation of costs, from the full cost recovery estimate previously presented by SDCRAA  
19 CFO Vernon Evans on October 1, 2008, for the same Fiscal Year 2009. Specifically, FY 2009  
20 “Fully Allocated Costs” of \$1,986,599, were inflated to \$9,182,272 (Plaintiffs’ Exhibit 2).

21  
22 19. This pumped up figure included a panoply of additions to inflate costs, such as \$59,047 charge  
23 for Water. A very large \$2.4 million Depreciation charge was also added, which at the July 1, 2010  
24 SDCRAA Board Meeting, SDCRAA Board Member Greg Cox, labeled as “squishy.” This  
25 Depreciation charge included Depreciation of Landscaping, and Depreciation of Roadway Assets.  
26 Despite so many specific additions, \$1.3M to boot was piled on top as a “General &  
27 Administrative” charge. This “General & Administrative” charge allocated to Ground  
28 Transportation, was calculated under the assumption of being 25% of the entire SDCRAA Budget,

1 excluding depreciation, as a kicker, or bonus charge upon whomever the full-cost recovery scheme  
2 would be imposed. (See *ibid.*)

3  
4 20. The newly alleged full cost recovery estimate figures by SDCRAA CFO Vernon Evans, were  
5 striking orderly and contained strikingly repetitive numerals for actual costs such as “\$123,451” for  
6 “Maintenance;” “\$363,363” for “Salaries and benefits;” and “51,051” for the “Environmental Storm  
7 Water Program.” For 30 years under the trusted management of the Port of San Diego, the entire  
8 SDIA Ground Transportation Department was operated at under \$1,986,599, as first stated by  
9 SDCRAA CFO Vernon Evans. Despite the sudden increase of its full-cost recovery charge for the  
10 exact same 2009 Fiscal Year from \$1.9M to \$9.2M, the estimates have continued to grow to  
11 \$15.3M in the current 2018 Fiscal Year. SDCRAA is profiting so much from the trip taxes that it  
12 casually “backed off a million dollars” from its estimates, as stated by the current SDCRAA CFO  
13 Scott Brickner, during the June 2, 2017 SDCRAA Board Meeting.

14  
15 21. Significantly, the exaggerated charges were labeled as “user fees” which are for specific  
16 benefits, the use of specific government services or products (personalty not realty), which in  
17 addition to regulatory costs, are limited to reasonable costs under Article XIII C, § 1(e) of the  
18 California Constitution. None of the charges were pre-labeled and specified as for an entrance to  
19 license, or use easement of local government real property, such that the payor could contemplate  
20 and decide whether to enter onto realty.

21  
22 22. On March 4, 2010, the SDCRAA Board adopted SDCRAA Resolution 2010-0027R (Plaintiffs’  
23 Exhibit 7), the Vehicle Conversion Incentive Based Program (VCIBP). Before making the motion  
24 for approval of the SDCRAA Resolution, SDCRAA Board Member John Davies, now deceased,  
25 questioned the apparent inclusion of high fees which were included as an attached Exhibit A to the  
26 proposed SDCRAA Resolution. After SDCRAA Staff, including Ms. Angela Shafer-Payne,  
27 reassured him that percentage incentives or disincentives to cost recovery fees were only being  
28 adopted, and that specific amounts were not being adopted, Board Member Davies stated as part of

1 his approved motion that the SDCRAA Board was not adopting any fees. (See Plaintiffs' Exhibit  
2 5.)

3  
4 23. On March 4, 2010 at the SDCRAA Board Meeting, General Counsel Breton K. Lobner also  
5 made an admission that the disincentives in the Incentive Based Program are not cost-based. (See  
6 *ibid.*)

7  
8 24. On June 21, 2010, the SDCRAA Board adopted SDCRAA Resolution 2010-0060.1R, which  
9 included the Budget for the SDCRAA Fiscal Year 2011, which began on July 1, 2010 and ended on  
10 June 30, 2011. SDCRAA Resolution 2010-0060.1R contained no reference to the imposition of  
11 specific charges upon Ground Transportation Modes or the traveling public, because SCRAA Board  
12 Member Ramona Finnila removed the Ground Transportation item from the Budget for a separate  
13 discussion scheduled on July 1, 2010.

14  
15 25. On June 29, 2010, Doreen Frasca, an SDCRAA consultant based in New York, wrote a memo  
16 to SDCRAA Staff (Plaintiffs' Exhibit 8) that stated, "...we really can't stay with a straight face that  
17 there will be a material impact on coverage and days cash on hand." when referring to the impact of  
18 the additional revenue from the full-cost recovery scheme. Significantly, Ms. Frasca stated in the  
19 memo, "In addition, this really is an issue of fairness – of charging people a reasonable fee to use  
20 your facilities and benefit financially from that use. If you don't charge everyone fairly, the people  
21 you are currently charging will have every right to complain and challenge you for not being  
22 consistently fair." (See *ibid.*)

23  
24 26. On July 1, 2010, the SDCRAA Board adopted SDCRAA Resolution 2010-0082 (Plaintiffs'  
25 Exhibit 9), which included a 4 year phase in of full-cost recovery fees, and a duplicative \$200  
26 minimum Ground Transportation Permit fee on the Limousine Mode.



1 27. The Limousine Mode was charged double full-cost recovery, because the full-cost recovery  
2 calculations, resulted in a cost of only \$100 per vehicle for Limousines. (See Plaintiffs' Exhibit 6,  
3 January 7, 2010, SDCRAA Full-Cost Recovery "Recommended GT Fees" Slide.) Increasing the  
4 charges on other Ground Transportation Modes, via the January 7, 2010 full-cost recovery  
5 methodology, resulted in a decrease in the charge on the Limousine Mode, which may have been a  
6 surprise for SDCRAA Staff. Nevertheless, SDCRAA Staff recommended a minimum \$200 fee on  
7 all Ground Transportation Modes, and the SDCRAA Board imposed a \$200 minimum on  
8 Limousines, for the permitting administrative cost, as stated in the July 1, 2010 Board Meeting  
9 Minutes (Plaintiffs' Exhibit 10). However, permitting administrative costs were already included in  
10 the full-cost recovery calculations which resulted in only a \$100 fee for Limousines. Thus, the  
11 double full-cost recovery charge on Limousines in the Fiscal Year 2011 imposition, shows  
12 SDCRAA's disregard for reasonable cost recovery.

13  
14 28. During July 1, 2010 meeting SDCRAA Board Member Greg Cox, labeled the very high  
15 depreciation charge included in the full-cost recovery estimates as "a squishy figure," and Board  
16 Member Anthony Young, asked SDCRAA General Counsel if there would be any issue with illegal  
17 gifts of public funds for the incentives. Despite these concerns, SDCRAA Resolution 2010-0082  
18 (Plaintiffs' Exhibit 9) was adopted and a companion SDCRAA Resolution 2010-0083 (Plaintiffs'  
19 Exhibit 10) was adopted to advocate for a possible future imposition of a trip charge on the  
20 traveling public via the taximeter.

21  
22 29. On August 2, 2010, SDCRAA Staff, sua sponte, on its own, imposed a 50 cent trip charge upon  
23 SDIA taxicab passengers, for the first time, by mandating that taxicabs place a decal on the taxicab  
24 dashboard next to the taximeter and collect 50 cents extra by pointing to the decal. Metropolitan  
25 Transit System (MTS) is the sole regulator of taxicab rates of fare. Because the extra 50 cent decal  
26 was mandatorily imposed on taxicab passengers by SDCRAA via taxicab dashboards, and it was  
27 not approved by the MTS Board of Directors, SDCRAA was forced by MTS to remove the 50 cent  
28 charge imposed on taxicab passengers on or about September of 2010. Thus, SDCRAA Staff was

1 forced to abandon this second attempt to impose a trip fee; this time the imposition was attempted  
2 on the traveling public.

3  
4 30. In a September 15, 2010 Memo to the SDCRAA Board (Plaintiffs' Exhibit 11), SDCRAA  
5 Chief Executive Officer, Thella Bowens stated, "Presently, the Airport collects a \$.50 trip fee from  
6 the driver at the taxicab hold lot and, with the Authority's approval, the driver re-collects the \$.50  
7 fee from the passenger, in addition to the taximeter rate of fare." Because MTS had communicated  
8 its intention to stop the illegal taxing of taxicab passengers by SDCRAA, Ms. Bowens wrote, "This  
9 unexpected reading of the ordinance will need to be analyzed and, potentially, our current  
10 procedures for collecting trip charges from taxicab passengers will have to be modified." Thus,  
11 SDCRAA Staff still was showing its over-eagerness to impose a tax on the the traveling public,  
12 without following proper legal procedures.

13  
14 31. On or about October 2010, the 50 cent illegal tax imposed by SDCRAA on passengers was  
15 stopped and MTS mandated the removal of the 50 cent SDCRAA decals from the dashboards of all  
16 taxicabs.

17  
18 32. On May 16, 2011, the City Attorney of the City of San Diego released a legal opinion in a  
19 memorandum titled, "LEGAL ISSUES RELATED TO THE PROPOSED CITY ENDORSEMENT  
20 OF THE AIRPORT AUTHORITY'S TAXICAB TRIP FEE" (Plaintiffs' Exhibit 12). In the legal  
21 memorandum the City Attorney concluded, "The Trip Fee proposed by the Airport Authority to be  
22 added into the MTS taxicab meter rate might be a tax under the recent changes to article XIII C of  
23 the California Constitution imposed by Proposition 26." (See *ibid.*)

24  
25 33. On July 1, 2011, the SDCRAA taxicab trip fee increased from \$0.50 to \$1.00, and was imposed  
26 on taxi drivers and/or taxi companies, but not imposed on passengers or the traveling public.

1 34. On January 5, 2012, seeing the immense financial burden of taxing taxi drivers the \$1.00  
2 imposed on them, the SDCRAA Board approved a Motion giving a directive to SDCRAA Staff to  
3 negotiate an indemnity agreement with MTS and the City of San Diego for the imposition of the trip  
4 fee upon passengers. (See Plaintiffs' Exhibit 13A.) During the discussions, Board Member James  
5 Desmond, admitted that the trip fee was a tax by stating, "You incentivize the behavior you want,  
6 and tax what you don't want." (See *ibid.*) SDCRAA Board Member Lloyd Hubbs suggested a pass  
7 through of the cost of indemnification to the taxis. (See *ibid.*) SDCRAA Board Member Robert H.  
8 Gleason stated it was "distasteful to be in this situation with other governmental agencies," and  
9 SDCRAA Board Member Paul Robinson also noted that indemnification was "distasteful." (See  
10 *ibid.*)

11  
12 35. On February 9, 2012, the SDCRAA Board approved SDCRAA Resolution 2012-0024  
13 (Plaintiffs' Exhibit 13B) authorizing the negotiation and execution of an indemnity agreement. In  
14 the "WHEREAS" provisions of this SDCRAA Resolution, SDCRAA attempted an ex-post  
15 explanation of the current trip fee imposition and made many admissions. SDCRAA Resolution  
16 2012-0024 admits that the imposition is a trip fee on taxicabs, rather than on the traveling public.  
17 Further, there is no clear delineation, or pigeonhole, as to the character of the charge, to notify the  
18 payor ex-ante, beforehand, precisely for what the charge is being imposed. Instead the singular  
19 "taxicab trip fee" is claimed to be exempt from the many provisions of the California Constitution  
20 Article XIII C "pursuant to Sections 1(e)(1),(2),(3) and (4) thereof." (See Plaintiffs' Exhibit 13B.)  
21 SDCRAA's taxicab trip tax was not delineated clearly to the public, ex ante, beforehand; instead  
22 SDCRAA taxed first, and explained later.

23  
24 36. SDCRAA Resolution 2012-0024 admits that the taxicab trip fee is imposed on taxicabs "in  
25 accordance with a phased-in schedule beginning at \$.50 per trip and reaching \$2.00 per trip, subject  
26 to the proviso that the fee shall be imposed on a cost recovery basis and not exceed Authority's  
27 actual costs;" (See Plaintiffs' Exhibit 13B.) Thus, SDCRAA Resolution 2012-0024 admits that as  
28 of February 9, 2012 SDCRAA (1) only imposed the taxicab trip fee on taxicabs (2) the maximum

1 amount was \$2.00, in accordance with the four-year phase in ending in FY 2014, and (3) that the fee  
2 was a cost recovery fee and was not a fee that was authorized to exceed SDCRAA's actual costs.  
3 (See *ibid.*)  
4

5 37. On or about February 2012 to March 2012, SDCRAA negotiated the imposition of the  
6 taximeter trip fee upon the traveling public with MTS and the City of San Diego. The City of San  
7 Diego has original authority over taxi medallions in the City of San Diego, which it delegates to  
8 MTS through a master agreement which is renewed periodically. SDCRAA and MTS initially  
9 drafted an indemnification agreement as a three-party agreement, with the City of San Diego  
10 included. After the May 16, 2011 legal opinion from the City Attorney (Plaintiffs' Exhibit 12)  
11 which concluded that the taxicab trip fee "might be a tax," the City of San Diego, did not sign onto  
12 an indemnification agreement and was removed from the draft indemnification agreement.  
13

14 38. On March 6, 2012 SDCRAA and MTS, without the City of San Diego included as a party,  
15 executed the Indemnity Agreement (Plaintiffs' Exhibit 14), in which MTS was the Indemnatee and  
16 SDCRAA promised to "immediately take all action necessary to defend Indemnatee against  
17 liability." SDCRAA is "entitled to select the legal counsel of its choice." Upon a judgment or  
18 settlement requiring payment of money, SDCRAA is required to "be responsible for all such  
19 payments and shall not request reimbursement from Indemnatee." (See *ibid.*)  
20

21 39. On April 19, 2012, after SDCRAA gave its credit and pledged SDCRAA public funds to MTS  
22 by way of execution of the Indemnity Agreement, the MTS Board of Directors approved the  
23 imposition of the SDCRAA Trip Fee on the taximeter as an extra, when the SDCRAA trip fee was  
24 \$1.00. MTS Ord. No. 11 still requires that changes to the Maximum Rates of Fare and SDIA  
25 Uniform Rates of Fare, which includes the SDCRAA Trip Fee Extra, be approved by the MTS  
26 Board of Directors only. The modification to MTS Ord. No. 11 and MTS Policy and Procedures  
27 No. 34 do not delegate the authority for changes to the taxicab rates of fare extra to SDCRAA.  
28 Instead, the modifications to MTS. Ord. No. 11, § 2.2(b) only state that "Rates for trips originating

1 at the airport may include an extra charge equal to the Airport Trip Fee...” (See Plaintiffs’ Exhibit  
2 15.)

3  
4 40. The April 19, 2012 MTS Board Meeting Minutes state with regard to the MTS Board  
5 discussion between MTS Board Member Todd Gloria and MTS General Counsel Karen Landers:

6 **Mr. Gloria voiced his concern as to the length of time it has taken to**  
7 **allow the drivers to collect the Airport Trip Fee as it was issued back**  
8 **in 2010. Ms. Landers explained that Prop 26 and other various legal**  
9 **issues has [sic] been the cause of delay.**

10 (See *ibid.*)

11  
12 41. Further, the modification to MTS Policy and Procedures Number 34 states, “The extra may not  
13 be charged on any trip that does not originate at the airport or on any trip where the taxicab operator  
14 does not pay the fee to San Diego County Regional Airport Authority.” (See *ibid.*)

15  
16 42. On May 3, 2012, with the belief that it had the ability to impose the trip fee upon the traveling  
17 public via the taximeter, SDCRAA immediately approved a \$3600 per taxi Cash-in Lieu-of-Front-  
18 of-the-Line-Privilege Settlement, in which \$158,400 aggregately was given to private taxi  
19 companies in lieu of a Front of the Line privilege in the taxi cab hold lot. This Front of the Line  
20 Privilege to private taxi companies that switched to alternative fuel vehicles, was never formally  
21 authorized or promised by SDCRAA. Instead the Front of the Line Privilege was implied by the  
22 California Center for Sustainable Energy, which has no authority over SDCRAA or operations at  
23 SDIA, in order to encourage private taxi companies to switch to alternative fuel vehicles.  
24 Previously, during the December 1, 2011 SDCRAA Board Meeting, Vice President of Operations,  
25 Ms. Angela Shafer-Payne, sitting in for CEO Thella Bowens told the SDCRAA Board that the Front  
26 of the Line Privilege was decided on by the SDCRAA Board. On February 9, 2012, SDCRAA  
27 Board Member Bruce Boland, now deceased, stated, “I wish to make sure the Board understands, it  
28 was not our action that put the front of the line action on...” Nevertheless, once SDCRAA Board

1 and SDCRAA Staff believed they acquired control of the taximeter to impose a future trip tax on  
2 the traveling public, \$158,400 in gifts of public funds was SDCRAA Board approved in SDCRAA  
3 Resolution 2012-0056 (Plaintiffs' Exhibit 16), to be given to private taxi companies.

4  
5 43. On May 3, 2012, the SDCRAA Board approved SDCRAA Resolution 2012-0057 (Plaintiffs'  
6 Exhibit 17), which for the first time approved the trip fee to be imposed on the traveling public via  
7 the taximeter. SDCRAA Resolution 2012-0057 caused SDCRAA to impose, extend, or increase a  
8 special tax on the traveling public, without a two-thirds vote of the electorate, after the passage of  
9 Proposition 26 in November of 2010.

10  
11 44. Significantly, SDCRAA Board admitted in SDCRAA Resolution 2012-0057 that, "all trip fees  
12 collected must be remitted to the Authority in order to comply with the provisions of Cal.  
13 Constitution Article XIIIIC;" (See Plaintiffs' Exhibit 17.)

14  
15 45. Further, SDCRAA Resolution 2012-0057 stated:

16 **NOW, THEREFORE, BE IT RESOLVED that the Board hereby**  
17 **FINDS, after considering the evidence presented and the reports**  
18 **provided, that the modified Incentive Program will still achieve its**  
19 **intended goal to reduce greenhouse gas emissions and the carbon**  
20 **footprints of airport businesses in the region, is reasonable in scope**  
21 **and effect, imposes non-discriminatory incentives and disincentives,**  
22 **imposes reasonable fees and incentives, and ensures the public**  
23 **commercial ground transportation industry serving the Airport can**  
24 **continue to economically provide public transportation services;**

25 (Plaintiffs' Exhibit 17, emphasis added.)  
26  
27  
28

1 46. Thus, the Modified Vehicle Conversion Incentive-Based Program (MVCIBP) included special  
2 taxes, and gifts of public funds in the form of rebates to private taxi companies of trip taxes paid by  
3 the traveling public.

4  
5 47. On or about July 1, 2012, for the first time, a \$1.50 trip tax was imposed upon the traveling  
6 public via the taximeter extra button, without a two-thirds vote of the electorate.

7  
8 48. On or about July 1, 2012, the trip tax began to be imposed on each taxicab passenger based on a  
9 taxing and gifting scheme to regulate vehicle emissions, over which SDCRAA had no authority.

10  
11 49. On or about July 1, 2012, the trip tax began to be imposed on each taxicab passenger, based on  
12 a taxing and gifting scheme to regulate vehicle emissions, although generally each passenger has no  
13 control over the vehicle emissions or purchasing decisions of the particular taxicab the passenger  
14 happens to hail at the front of the taxi line.

15  
16 50. On July 12, 2012, the SDCRAA Board made a motion to defer the 25% disincentive or tax on  
17 non-alternative fuel vehicles for all Modes, so there could be further discussion at the next  
18 SDCRAA Board Meeting on Ground Transportation. The honorable motion maker, SDCRAA  
19 Board Member James Panknin, who was formally President Clinton's helicopter pilot, stated, "The  
20 disincentive has nothing to do with cost recovery," before making his motion to delay or extend the  
21 beginning date of taxing non-alternative fuel vehicles. (See Plaintiffs' Exhibit 18.)

22  
23 51. On October 4, 2012, the SDCRAA Board in SDCRAA Resolution 2012-0114 (Plaintiffs'  
24 Exhibit 19) designed a taxing and gifting scheme whereby the newly imposed trip taxes on the  
25 traveling public would be "rebated", or illegally gifted back to the taxi companies. SDCRAA  
26 Resolution 2012-0114 allowed a 100% "rebate" to private taxi companies of trip fees paid by the  
27 traveling public in Fiscal Year 2013 and Fiscal Year 2014. The 100% amount was estimated and  
28

1 then tendered from SDCRAA public funds in the form of large “cash based incentive” checks.  
2 SDCRAA mailed these large “cash based incentive” checks to private taxi companies once a year.

3  
4 52. Prior to July 1, 2012, taxi companies and/or taxi drivers with alternative fuel vehicles were not  
5 charged the SDCRAA taxicab trip fee when the taxi companies and/or drivers had to pay the  
6 taxicab trip fee themselves; *viz.* taxi companies with alternative fuel vehicles did not pay first then  
7 get a rebate back, before a trip tax was imposed on the traveling public.

8  
9 53. After July 1, 2012, when a trip tax was imposed on the traveling public, the trip tax money was  
10 collected, washed through SDCRAA, and then “rebated” or gifted back to those private taxi  
11 companies in the form of large “cash based incentive” checks, or gifts of public funds.

12  
13 54. The amount of the gifts to private taxi companies in SDCRAA Resolution 2012-0114, were  
14 scheduled to be reduced to 25% of estimated trip fees paid by the traveling public in Fiscal Year  
15 2015, and 10% of the estimated trip fees paid by the traveling public in Fiscal Year 2016. (See  
16 *ibid.*)

17  
18 55. Under 49 U.S.C. 47104 SDCRAA has a duty to make itself as “self-sustaining as possible  
19 under the circumstances existing at the airport” and have “policies and procedures to ensure  
20 enforcement against illegal diversion of airport revenues.” SDCRAA was not the regulator of  
21 vehicle emissions, and as such the gift checks to private taxi companies with alternative fuel  
22 vehicles, showed that SDCRAA was not as self-sustaining as possible under the circumstances; and  
23 SDCRAA allowed the illegal diversion of revenues.

24  
25 56. On October 4, 2012, with regard to additional taxes imposed on taxi companies using non-  
26 alternative fuel vehicles, SDCRAA Chairman Robert Gleason admitted the intent of the SDCRAA  
27 Board was to tax by stating, “If we keep not having disincentives, we may never get the behavior  
28



1 we are working to incentivize.” (See Plaintiffs’ Exhibit 19.) SDCRAA commonly used the terms  
2 “incentives” and “disincentives” as euphemistic relabeling of taxes.

3  
4 57. On June 6, 2013, the SDCRAA Board approved the FY 2014 Budget which included an  
5 increase of the imposition of the trip tax on taxi passengers to \$2.00. During this Board meeting  
6 SDCRAA CFO, Vernon Evans, claimed, “No local tax payer dollars” were being used. (See  
7 Plaintiffs’ Exhibit 20.)

8  
9 58. On or about July 1, 2013, the trip tax imposed on taxi passengers at the SDIA was increased to  
10 \$2.00 per trip on the taximeter. The increase from \$1.50 to \$2.00 was imposed upon the traveling  
11 public without a a two-thirds vote of the electorate, in order to regulate vehicle emissions over  
12 which SDCRAA had no authority.

13  
14 59. On March 6, 2014, the SDCRAA Board and SDCRAA Staff made many admissions during the  
15 Ground Transportation discussion regarding the taxing and gifting scheme. (See Plaintiffs Exhibit  
16 21.)

17  
18 60. On March 6, 2014, SDCRAA CFO, Scott Brickner, presumably referring to Proposition 26,  
19 stated:

20 **There was a Proposition a couple of years ago that required us to**  
21 **change the way we were providing the incentives, rather than doing a**  
22 **reduction on the trip fee, we were required to basically give an**  
23 **equivalent cash refund.**

24 (See Plaintiffs’ Exhibit 21.) Mr. Brickner’s statement shows that SDCRAA was knowingly  
25 attempting to evade the prohibitions of Proposition 26.

26  
27 61. On March 6, 2014, SDCRAA Chairman Robert Gleason stated with regards to the fact that the  
28 additional non-alternative fuel tax on private taxi companies had not started, “some folks are

1 waiting to see whether or not we're going to blink about these incentives and disincentives.”  
2 SDCRAA Ground Transportation Director, David Boenitz replied, “I think that is well said, yes.”  
3 (See Plaintiffs Exhibit 21.)  
4

5 62. On March 6, 2014, SDCRAA Board Member, David Alvarez, asked a series of questions about  
6 imposing charges based on cost estimates from two years prior, and about the “premiums” included  
7 in cost recovery fees to which SDCRAA CFO Scott Brickner, SDCRAA Vice President of  
8 Operations, Angela Shafer-Payne, and SDCRAA CEO Thella Bowens all made admissions that  
9 taxes were being charged rather than reasonable cost recovery:

10 **David Alvarez: How is it that we can calculate that [premium] into**  
11 **the cost recovery when there is no cost associated to the airport or**  
12 **what is the cost associated to the airport?**

13  
14 **Scott Brickner: The base fee is the cost recovery piece, any premium**  
15 **above that would be the disincentive fee.**

16  
17 **David Alvarez: Right but so then it is not a cost recovery fee, it is a**  
18 **premium being paid?**

19  
20 **Scott Brickner: If we had no vehicles convert, that is correct, we**  
21 **would be recovering more than our cost, because it would be the base**  
22 **fee for our cost, and it would be the premium above that for non-**  
23 **conversion.**

24  
25 **David Alvarez: Right so what is the cost of non-conversion to us as**  
26 **the Airport Authority?**

27  
28 **Scott Brickner: It depends on how many conversions you have.**

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**David Alvarez: Who assesses a cost to us? What is the cost to us?**

**Angela Shafer-Payne: There is no direct cost, there is no direct cost to the Authority for non-conversion, it is the Attorney General MOU that is driving us to the 2017 date of 100% conversion.**

**David Alvarez: So then going back to I think the first question, so are we charge a premium for lack of a conversion, it wouldn't be a cost recovery fee, it's a premium.**

**Thella Bowens: Right.**

**Scott Brickner: That's correct.**

**Thella Bowens: Exactly the plan.**

(See Plaintiffs' Exhibit 21.)

63. Thus, SDCRAA Staff and SDCRAA Board admitted that they were taxing the public. SDCRAA Vice President of Operations, Angela Shafer-Payne tried to blame the AGMOU; however the AGMOU referenced Shuttles-only; taxicabs were not mentioned in the AGMOU, and the TNC Mode did not exist in 2008 when the AGMOU was executed.

64. On or around March 2014, lobbyists and private taxi companies began asking SDCRAA for even more gifts of public funds, approximately \$3,000,000 more, to purchase their alternative fuel vehicles. (See Plaintiffs' Exhibit 21.) SDCRAA General Counsel responded in a letter to the lobbyists stating that such grants would be illegal gifts of public funds. (Plaintiffs' Exhibits 21 & 22.)

1  
2 65. On April 30, 2014, SDCRAA Staff posted a notice in the taxi hold lot stating that a \$1.50 tax  
3 on taxi companies and/or taxi drivers would be imposed starting on July 1, 2014, in addition to the  
4 \$2.00 collected from taxi passengers. (Plaintiffs' Exhibit 23.)

5  
6 66. On June 5, 2014, SDCRAA General Counsel Breton Lobner made the admission that SDCRAA  
7 was discriminating between alternative fuel vehicles and non-alternative fuel vehicles, in response  
8 to the following inquiry by SDCRAA Board Member David Alvarez:

9 **David Alvarez: The premium though, the premium, how is it that we**  
10 **aren't in some way discriminating, I'll use that word, it might not be**  
11 **the best word, but in terms of adding an additional fee just because**  
12 **they aren't an alternative fuel vehicle?**

13  
14 **Breton Lobner: Discrimination is based upon the concept of equal**  
15 **protection under the constitution, and if you have a rational basis for**  
16 **discriminating then you can entertain the concept of discriminating**  
17 **between two classes, where you have alternative fuel vehicles and non**  
18 **alternative fuel vehicles, that is a rational basis to treat them**  
19 **differently.**

20 (See Plaintiffs' Exhibit 22.)

21  
22 67. By this admission, SDCRAA General Counsel, showed that SDCRAA disregarded the  
23 prohibitions on discrimination for charges imposed in Cal. Const. art. XIII C 1 (e).

24  
25 68. On June 5, 2014, at the SDCRAA Board Meeting, SDCRAA General Counsel Breton Lobner  
26 admitted, "As to the grants or somehow financing the purchase of vehicles, it's the opinion of our  
27 office this is probably revenue diversion and it's also probably a gift of public funds." (Plaintiffs'  
28 Exhibit 24.)

1  
2 69. On June 5, 2014, at the SDCRAA Board Meeting, SDCRAA CFO Scott Brickner estimated  
3 that a 25% rebate alone on the Ground Transportation “Base Fees” would result in a \$722,000  
4 reduction in the SDCRAA Budget in Fiscal Year 2016, and \$1,200,000 in Fiscal Year 2017. These  
5 amounts were based on exaggerated “Base Fees” which would mark up before marking down.  
6 These exaggerations in the amount taxed to the public passengers, had the effect of magnifying the  
7 amounts gifted to private taxi companies from public funds. (See Plaintiffs Exhibit 24.)

8  
9 70. On June 5, 2014, Board Member Lloyd Hubbs, stated that he “philosophically” had an issue  
10 with “making money off of the disincentives” but still voted for a motion to impose a 25% premium  
11 on non-alternative fuel vehicles. (See Plaintiffs’ Exhibit 24.)

12  
13 71. On July 1, 2014, SDCRAA Staff, again sua sponte, on its own, imposed a \$0.50 trip tax on taxi  
14 owners and/or drivers driving non-alternative fuel taxicabs, in addition to the \$2.00 trip tax imposed  
15 on taxi passengers. Despite the fact that SDCRAA Board had previously approved a \$1.50 tax on  
16 taxi companies and/or taxi drivers, SDCRAA Staff, disregarded the SDCRAA Board, and taxed  
17 only \$0.50 to the taxi companies and/or drivers, in addition to the \$2.00 trip tax imposed on public  
18 passengers. (See Plaintiffs’ Exhibit 23.)

19  
20 72. On July 1, 2014, SDCRAA Code § 9.12(b)(1) stated, “The trip fee or any other fees and  
21 charges for a ground transportation service provider shall be set by SDCRAA Resolution of the  
22 Board.” (Plaintiffs’ Exhibit 25, SDCRAA Code § 9.12 (July 12, 2012) as enacted pursuant to San  
23 Diego County Regional Airport Authority Act (Pub. Util. Code § 170000 et seq.)) In addition to  
24 imposing an illegal special tax, SDCRAA Staff violated, SDCRAA Code § 9.12(b)(1) by setting the  
25 \$0.50 trip fee on taxi companies and/or taxi drivers, without SDCRAA Board approval. This was at  
26 least the third time, since 2008, that SDCRAA Staff displayed its disregard for legal procedure, by  
27 imposing a trip fee sua sponte.

28

1 73. On October 2, 2014, the SDCRAA Board adopted SDCRAA Resolution 2014-0109, (Plaintiffs’  
2 Exhibit 26), which “suspended” the prior Modified Conversion Incentive Based Program which had  
3 imposed taxes of 100%, 150%, and 200%, in successive fiscal years. Instead, in response to further  
4 pleas from lobbyists and private taxi companies, SDCRAA imposed a new taxing and gifting  
5 scheme, again, which began in September of 2014, which was in the middle of SDCRAA Fiscal  
6 Year 2015, and lasts until Fiscal Year 2021. The new program replaced the 100%, 150%, and  
7 200% taxes, with taxes of 50%, 75%, and 100% in successive fiscal years, for Modes using non-  
8 alternative fuel vehicles. Also, gifts of public funds of 25% were given, plus an additional 25%  
9 (“for a total of 50%”) was given if an alternative fuel vehicle was purchased after September 1,  
10 2014. (See *ibid.*) During the meeting SDCRAA Finance executive, Michael Sears, estimated that a  
11 25% discount would result in \$330,000 in incentives to private taxi companies and other companies  
12 operating Ground Transportation Modes. (See *ibid.*)

13  
14 74. Despite, the taxing and gifting scheme, SDCRAA Resolution 2014-0109 made the claim,  
15 “WHEREAS, the trip fees comply with Proposition 26 [Cal. Constitution Article XIIIIC] as purely  
16 cost based fees.” (See *ibid.*, emphasis added.) “Purely” cost recovery in combination with  
17 complying with Proposition 26 implies that SDCRAA was labeling the trip fee as purely a Article  
18 XIIIIC (e)(1), (e)(2), or e(3) fee to which there is a specifically stated reasonable cost limitation; and  
19 not an e(4) charge.

20  
21 75. SDCRAA Resolution 2014-0109, included a clause stating:

22 **WHEREAS, the additional 25% trip fee rebate for taxicabs converting to**  
23 **AFVs and CAVs between September 1, 2014 and June 30, 2016: (1) may not**  
24 **reduce any taxicab trip fee paid to the Authority below the required taxicab**  
25 **meter fee (\$2.00 per trip currently); (2) may require fractional rebates of**  
26 **25% trip fee rebates over multiple fiscal years beginning in FY 2016 and (3)**  
27 **will terminate when the 25% trip fee rebates have been fully applied to**  
28 **future taxicab trip fees.**

1 (*Ibid.*) This clause is significant because it shows an awareness by SDCRAA Staff to continue to  
2 tax the traveling public the highest amount available on the taximeter, while gifting “rebates” to the  
3 private taxi companies. Eventually the “rebates” turned into illegal non-remittals of special taxes  
4 imposed by SDCRAA upon the traveling public, and mandated by SDCRAA Staff to be not  
5 remitted by private taxi companies.

6  
7 76. SDCRAA Resolution 2014-0109, also included a clause stating, “Whereas Staff recommends  
8 the Board set a cost recovery fee of \$1.30 per trip for FY 2015 for all permitted TNC vehicles..”

9 (*Ibid.*)

10  
11 77. On October 2, 2014, the SDCRAA Board adopted SDCRAA Resolution 2014-0108, (Plaintiffs’  
12 Exhibit 26) which exempted the Limousine Mode from the Modified Vehicle Conversion Incentive  
13 Based Program. In addition to the Modes of Public Transit, Private Vehicles, Rental Cars,  
14 Limousines were included in the discrimination of charges and taxes imposed on some Modes  
15 and/or passengers and not on other Modes and/or passengers. Discrimination has existed because  
16 there has been no fair or reasonable relationship for benefits; the use of services or products; and  
17 regulation provided to those Modes, when compared to other Modes and/or passengers. For  
18 example, Private pickups of passengers, such as by family members, has not been taxed, while  
19 taxicab passengers have been forced to pay a trip tax, for the same ubiquitous Storm Water Program  
20 (“\$51,051”), Traffic Enforcement Officers for Regulation (“\$363,363”), and Maintenance  
21 (“\$123,451”). (See Exhibit 6, and see *supra* strikingly repetitive and strikingly orderly numerals  
22 stated for costs in FY 2009.) Beautiful landscaping and other personalty, that SDCRAA has  
23 assumed depreciates by millions of dollars a year, have been enjoyed by all classes of passengers  
24 regardless of Mode. Charges must not be imposed only on some passengers of some Modes. As  
25 New York SDCRAA consultant Doreen Frasca warned years earlier, “If you don’t charge everyone  
26 fairly, the people you are currently charging will have every right to complain and challenge you...”  
27 (Plaintiffs’ Exhibit 8.) This discrimination has existed in addition to the discrimination based on

28

1 vehicle emissions, although SDCRAA has never had the authority to regulate private vehicle  
2 emissions or commercial vehicle emissions.

3  
4 78. On May 21, 2015, the SDCRAA Board approved the Fiscal Year 2016 Budget which imposed  
5 special taxes and illegal gifts of public funds proposed in the Budget Workshops of March 19, 2015  
6 and May 11, 2015. (Plaintiffs' Exhibit 27) Significantly, for Fiscal Year 2016 the Budget included  
7 a "Base" taxicab trip fee which suddenly jumped up 80% to \$3.61, from \$2.00 the year before. (See  
8 Plaintiffs' Exhibit 27, Slide 38, "User Fees by Mode.") In reality, SDCRAA marked-up-to-mark-  
9 down, like a bad furniture store. SDCRAA inflated its "purely" cost recovery fees to unreasonable  
10 "Base" amounts, and then either taxed non-alternative fuel vehicles even further, or gifted  
11 alternative fuel vehicles public monies as "rebates" and non-remittals. The FY 2016 \$3.61 "Base"  
12 tax was increased further, with a "tax on top of a tax," to \$5.41 per trip for non-alternatives fuel  
13 vehicles. (See *ibid.*) For alternative fuel vehicles there was a gift "rebate" to \$2.71 for vehicles  
14 purchased before September 1, 2014. Additionally, the FY 2016 Budget included a "gift on top of a  
15 gift" back to \$2.00 for private taxi companies, if the alternative fuel taxi that the passenger  
16 happened to hail was purchased after September 1, 2014. (See *ibid.*)

17  
18 79. On July 1, 2015, passengers were still taxed \$2.00 a trip as a charge imposed by SDCRAA on  
19 the taximeter.

20  
21 80. On July 1, 2015, the SDCRAA Board adopted SDCRAA Resolution 2015-0066 (Plaintiffs'  
22 Exhibit 28) which authorized TNC vehicles to operate at San Diego International Airport, as a new  
23 Mode. A TNC trip fee was imposed for the first time at the rate of \$1.38 for alternative fuel TNC  
24 passengers, and \$2.76 for non-alternative fuel TNC passengers. Article 4 of TNC Permit  
25 Agreements between SDCRAA and TNC Companies, such as Lyft and Uber, gave SDCRAA full  
26 control over the trip fee charged to SDIA passengers. (See Plaintiffs' Exhibit 28, FY 2016 TNC  
27 Permit Agreement.) The introduction of the new TNC Mode and many thousands of private TNC  
28 vehicles complicated SDCRAA Staff's trip fee calculations. Because SDCRAA was not able or



1 willing to distinguish between alternative fuel TNC vehicles and non-alternative fuel TNC vehicles,  
2 SDCRAA Staff conveniently chose to implement the \$2.76 non-alternative fuel TNC trip fee on all  
3 TNC passengers, including alternative fuel TNC passengers. The first notice of the TNC trip fee to  
4 the TNC passenger has been after departure from airport property, and upon arrival at an off-airport  
5 destination, via the TNC receipt. The TNC receipts have often labeled the SDCRAA Trip Fee as a  
6 “Sales Tax.” (See e.g. Plaintiffs’ Exhibit 33, “\$4.06 Sales Tax.”)

7  
8 81. In addition to TNC trip fee complications, SDCRAA Staff simultaneously had difficulties with  
9 the taxicab trip fee. The increase in the “purely” cost recovery taxicab trip fee beyond \$2.00 a trip  
10 in Fiscal Year 2016 resulted in a complicated Catch-22 for SDCRAA because it either was forced to  
11 begin imposing a 71 cent tax on taxi companies and/or taxi drivers beyond the \$2.00 being collected  
12 from the traveling public; or it was forced to tax the traveling public 71 cents more, and illegally  
13 gift back 71 cents. After complaints from taxi drivers of having to pay \$2.71 to SDCRAA while  
14 only collecting a \$2.00 tax from the traveling public, SDCRAA Staff, routinely sua sponte, on its  
15 own, chose to increase the imposition on taxi passengers to \$2.71, without obtaining a specific  
16 SDCRAA Board Resolution.

17  
18 82. On or about September 2015, the “gift on top of a gift” turned into an illegal non-remittal of 71  
19 cents by private taxi companies, when SDCRAA Staff mandated and forced taxi companies to  
20 uniformly increase the taximeter extra under the color of taximeter rate setting authority to 2.71  
21 imposed on passengers; and private taxi companies which purchased alternative fuel vehicles after  
22 September 1, 2014 were forced to keep and not remit 71 cents.

23  
24 83. On or about September 2015, the MTS Board still had sole rate setting authority under MTS  
25 Ord. No. 11, § 2.2(b) and the MTS Board did not approve the increase of the extra on the taximeter  
26 from \$2.00 to \$2.71. When the MTS Board approved the use of the extra button in 2012, post  
27 indemnification, the SDCRAA trip fee was \$1.00 per trip.

28

1 84. The non-remittal of the 71 cents extra, expressly violated MTS Ord. No. 11, Section 2.2(b),  
2 MTS Policy and Procedures No. 34, and SDCRAA Board SDCRAA Resolution 2012-0057, all of  
3 which state that all trip fees collected must be remitted to SDCRAA. **One taxi company refused**  
4 **to tax passengers 2.71, keep 71 cents per trip, and only remit \$2.00. That taxi company was**  
5 **issued a citation for not complying with the SDCRAA Staff mandate to increase the**  
6 **imposition on the taximeter and then kicked out of the SDIA by SDCRAA Staff.**

7  
8 85. On or about September of 2015, Plaintiff, K.S.A.N. L.L.C., also refused to increase its rates of  
9 fare to include the \$2.71 extra, because it was aware that 71 cents would not be remitted to  
10 SDCRAA in violation of MTS Ord. No. 11, MTS Policy and Procedures No. 34, and SDCRAA  
11 Resolution 2012-0057. Under MTS Ord. No. 11, Rates of Fare are common to radio service  
12 organizations, such as K.S.A.N. L.L.C. (MTS. Ord. No. 11, § 2.4(s)(3) (June 27, 1991).) Therefore,  
13 K.S.A.N. L.L.C. suffered damages due to the loss of the ability to market radio service  
14 subscriptions to taxicabs operating at San Diego International Airport.

15  
16 86. K.S.A.N. L.L.C., doing business as Airport Dispatch, has a close relationship to taxi passengers  
17 because under MTS Ord. No. 11, Airport Dispatch sets the rates of fare for taxi passengers who ride  
18 in affiliated taxicabs that subscribe to Airport Dispatch. As such K.S.A.N. L.L.C. has third party  
19 standing to bring this action, in addition to bringing this action on behalf of the class of passengers  
20 of SDIA.

21  
22 87. In addition to the 71 cents extra in Fiscal Year 2016, a rebate of 19 cents per trip in Fiscal Year  
23 2017 was approved in the May 21, 2015 Budget, which approved trip fees for two fiscal years. The  
24 19 cent rebate is noted in Footnote 4 of the “User Fees by Mode” slide contained in the May 11,  
25 2015 Budget Workshop, and approved in the May 21, 2015 Budget. (See Plaintiffs’ Exhibit 27.)  
26 The rebate or non-remittal amounts, show that the charge imposed upon passengers were not for  
27 reasonable cost recovery, and instead were for illegal gifts of public funds, based on vehicle  
28

1 emissions regulation for which SDCRAA had no authority, and which the AGMOU did not  
2 mention, because the AGMOU referenced Shuttles-only.

3  
4 88. On January 21, 2016, during the SDCRAA Board Meeting, Director of Ground Transportation  
5 David Boenitz, admitted that TNC vehicles cannot be distinguished as alternative fuel or non-  
6 alternative fuel; therefore, all TNC passengers were being taxed the premium for non-alternative  
7 vehicles of \$3.76 per trip, which included a non-SDCRAA Board approved \$1.00 “ancillary  
8 charge.” The \$1.00 “ancillary charge” was a new charge imposed by SDCRAA Staff, sua sponte,  
9 again on its own, without SDCRAA Board approval. During the meeting SDCRAA Staff estimated  
10 that the trip fees imposed upon TNC passengers would generate \$1,000,000 in additional revenue,  
11 compared to what was estimated in the Fiscal Year 2016 SDCRAA Budget. (See Plaintiffs’ Exhibit  
12 29.)

13  
14 89. On January 21, 2016, during the SDCRAA Board Meeting SDCRAA Board Member, James  
15 Desmond, opened his Uber app and said:

16 **I just counted, there are 19 cars over at Liberty Station right now,**  
17 **based on Uber X all the way up to the SUVs, it was whispered into my**  
18 **ear, why don’t we bring them onto the airport and make some money**  
19 **off that...**

20 (See Plaintiffs’ Exhibit 29.) This admission shows the state of mind of the SDCRAA  
21 Board to profit rather than recover costs.

22  
23 90. On March 17, 2016, during the SDCRAA Board Meeting, SDCRAA CFO Scott Brickner  
24 stated:

25 **I would just note that cost recovery from a financial perspective isn’t**  
26 **the best for us because of our debt covenants. So if we are only**  
27 **recovery our costs it’s a 1 to 1 ratio, and we are trying to get to a 1.5**  
28 **per Board policy.**

1 (See Plaintiffs' Exhibit 30.)

2  
3 91. The ratio Mr. Brickner referred to has been as high as 3.75x in Fiscal Year 2013, and has never  
4 fallen below 1.5x. This admission by Mr. Brickner is significant, because it implies that the fees  
5 charged to the traveling public for alleged cost recovery have actually been multiplied, at least 1.5  
6 times and as much as 3.75 times, and as such are not reasonable costs. Charges imposed which  
7 exceed the reasonable costs under Article XIII C §§ 1(e)(1), 1(e)(2), or 1(e)(3) are special taxes.

8  
9 92. On March 17, 2016, David Boenitz admitted that the dollars of revenue from TNC trip fee  
10 imposed upon passengers, far exceeded projections. At the same meeting, SDCRAA Board  
11 Member James Desmond said, "I just want to make sure that's going into our pockets and not the  
12 PUC's." SDCRAA Board Member Lloyd Hubbs also admitted that SDCRAA got a "windfall."

13 (See Plaintiffs' Exhibit 30.)

14  
15 93. On March 17, 2016, SDCRAA CEO Thella Bowens, made the following admission that the  
16 TNC trip tax was greater than cost recovery:

17 **I think the Board needs to be reminded that the TNCs pay, all of their**  
18 **rates are paid [by passengers], based upon being non-alternative fuel,**  
19 **so they [TNCs] chose to accept the penalty rather than try to identify**  
20 **every car that drives for them, so they [passengers] are paying a**  
21 **higher rate.**

22 (See Plaintiffs' Exhibit 30, no [sic], passive restatement in original, bracketed insertions  
23 specifying nouns added.)

24  
25 94. On June 23, 2016, the SDCRAA Board adopted SDCRAA Resolution 2016-0052 (Plaintiffs'  
26 Exhibit 31) which included the SDCRAA Fiscal Year 2017 Budget and the Conceptual Fiscal Year  
27 2018 Budget, and numbers presented at the prior June 13, 2016 Budget Workshop. In this June 23,  
28 2016 Budget, the SDCRAA imposed increases in trip taxes beginning Fiscal Year 2017 at a rate of

1 \$3.86 Base Fee on taxicab passengers, \$2.90 for alternative fuel taxicab passengers, and \$6.76 for  
2 non-alternative fuel taxicabs. The \$2.90 trip fee on alternative fuel taxicab passengers was an  
3 increase of 19 cents from the previous year's \$2.71 trip fee on alternative fuel taxicab passengers.  
4 As mentioned *supra*, a 19 cent per trip rebate to private taxi companies was also approved on May  
5 21, 2015, to go into effect in Fiscal Year 2017. (See Plaintiffs' Exhibit 27.) The exact same  
6 amount of 19 cents per trip that was increased and imposed on taxicab passengers, was the amount  
7 approved to be rebated and gifted to private taxi companies.

8  
9 95. On June 23, 2016, SDCRAA Board Resolution 2016-0052 also approved Fiscal Year 2018 trip  
10 taxes to be imposed at the rate of \$3.85 Base Fee per trip on taxicab passengers, \$2.89 per trip to be  
11 imposed on alternative fuel taxicab passengers, and \$7.70 per trip to be imposed on non-alternative  
12 fuel taxicabs. (See Plaintiffs' Exhibit 31.)

13  
14 96. On June 23, 2016, SDCRAA Board Resolution 2016-0052 also approved FY 2017 trip taxes for  
15 TNC vehicles to be imposed at the rate of \$2.22 Base Fee per trip on TNC Passengers; \$1.67 per  
16 trip on alternative fuel TNC passengers, and \$3.89 per trip on non-alternative fuel TNC passengers.  
17 (See Plaintiffs' Exhibit 31.)

18  
19 97. On July 1, 2016 the taxicab trip fee imposed on alternative fuel passengers was still \$2.71 per  
20 trip.

21  
22 98. On or about August 1, 2016 the taxicab trip fee imposed on alternative fuel taxicab passengers  
23 increased to \$2.90 per trip via SDCRAA Staff mandatory direction to taxi companies to increase the  
24 extra charge on the taximeter to \$2.90, without MTS Board approval. SDCRAA, via a few private-  
25 minded managers of SDCRAA Staff, has assumed effective control of the taximeter in San Diego.  
26 This \$2.90 trip tax is still imposed today on public passengers.

1 99. On or about August 1, 2016 SDCRAA Staff, disregarded the SDCRAA Board approved trip fee  
2 amounts for TNC vehicles, and sua sponte, on its own motion as has been the routine, calculated a  
3 \$1.74 fee to be imposed upon alternative fuel TNC vehicles, and a \$4.06 trip fee to be imposed on  
4 non-alternative fuel TNC passengers. (See Plaintiffs' Exhibit 33, Attachment A1, Page 3)  
5 SDCRAA Staff still was not distinguishing between non-alternative fuel and alternative fuel TNCs.  
6 Thus, SDCRAA Staff decided to impose the higher \$4.06 non-alternative fuel TNC charge upon all  
7 TNC passengers, including alternative fuel TNC passengers. In practice, all passengers of TNC  
8 vehicles had a special tax of \$4.06 imposed upon them. Thus, SDCRAA, via a few private-minded  
9 managers on SDCRAA Staff, has assumed effective control of both the MTS taximeter and TNC  
10 smartphone applications, for impositions of special taxes in San Diego at will.

11  
12 100. On October 20, 2016 during the SDCRAA Board meeting, SDCRAAA Board comments  
13 showed a lax culture with regards to special taxes and a lack of effective oversight over SDCRAA  
14 Staff with regards to trip taxes. With regard to the SDCRAA Ground Transportation trip fees,  
15 SDCRAA Board Members and SDCRAA Staff showed an intent by SDCRAA to tax the traveling  
16 public, and disregard or unawareness that SDCRAA does not have the power to tax:

17 **Board Member Mayor James Desmond: It is sort of like you tax**  
18 **cigarettes...You incentive the things you want and you penalize things**  
19 **you don't want via the trip fees...**

20  
21 **Board Member Mayor Mary Sessom: I want to go back to Mayor**  
22 **Desmond's trip fee incentivization, I didn't hear an answer, and I'm**  
23 **fascinated, I think it's a great idea...Do we know then, when a certain**  
24 **cab picks up people, so if we have a \$2.90 charge all day long, which is**  
25 **fine, okay understand that, but we get from the operator, or whoever**  
26 **who collects that data, that this particular cab picked up most of their**  
27 **fare after 10pm, and we can refund, or somehow do something like**  
28 **that to give back?**

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**SDCRAA Vice-President of Operations, Ms. Angela Shafer-Payne:**  
So I think I would like to have General Counsel participate in this conversation. From a Staff perspective we would be refunding the permit holder, when in fact the customer had paid the \$2.90 trip fee, and we would be giving the refund back to the permit holder.

**SDCRAA General Counsel, Ms. Amy Gonzalez:** So the Airport Taxicab Trip Fee, there is an agreement with MTS to put that fee on the meter, and I know in the past we have incentivized for example, alternative fuel vehicles, but I would like to look into the, if there are any legal issues with doing what you are saying, which what I understand would be either to increase or decrease the trip fee based on the time they're here, or if they have a certain kind of vehicle. So, I think there are some legal issues to investigate.

**Chairperson April Boiling:** I think it would be sort of akin to the notion that you would charge a different sales tax at a different time of the day and people's cash registers are preprogrammed with that percentage in it and you can't just change it, and I think that that device that is inside of the taxi is not something that can change at different times of the day.

(Plaintiffs' Exhibit 32.)

101. On October 25, 2016, a K.S.A.N. L.L.C. member, took a Lyft TNC ride from the Terminal 1 TNC pickup area, with the K.S.A.N. L.L.C. Lyft account, in an alternative fuel vehicle which was a Toyota Prius. The charge for this ride was paid with a K.S.A.N. L.L.C. credit card. The total for

1 the ride was \$11.96, which included a \$4.06 “Sales Tax,” as stated on the receipt, paid to San Diego  
2 County Regional Airport Authority. (See Plaintiffs’ Exhibit 33.)

3  
4 102. On October 25, 2016, a member of K.S.A.N. L.L.C. took a Lyft TNC ride from the Terminal 2  
5 TNC pickup area, with the K.S.A.N. L.L.C. Lyft account. The charge for this ride was paid with a  
6 K.S.A.N. L.L.C. credit card. The total for the ride was \$11.30, which included the \$4.06 “Sales  
7 Tax” as stated on the Lyft receipt. This Lyft TNC ride was in a non-alternative fuel Toyota Avalon  
8 with the license plate number 5LOF372. (See Plaintiffs’ Exhibit 33.)

9  
10 103. On November 7, 2016, a member of K.S.A.N. L.L.C. took an Uber TNC ride from the  
11 Terminal 1 TNC pickup area, with the K.S.A.N. L.L.C. Uber account. The charge for this ride was  
12 paid with a K.S.A.N. L.L.C. credit card. The total for this ride was \$8.83, which included the \$4.06  
13 tax paid to San Diego County Regional Airport Authority. This Uber TNC ride was in an  
14 alternative fuel vehicle, with a driver named Rahmatullah. (See Plaintiffs’ Exhibit 33.)

15  
16 104. On November 7, 2016, a member of K.S.A.N. L.L.C. took an UberPool TNC ride from the  
17 Terminal 2 TNC pickup area, with the K.S.A.N. L.L.C. Uber account. The charge for this ride was  
18 paid with a K.S.A.N. L.L.C. credit card. The total for the ride was \$7.95, which included the \$4.06  
19 tax paid to San Diego County Regional Airport Authority. This Uber TNC ride was in an  
20 alternative fuel vehicle which was a Toyota Prius. (See Plaintiffs’ Exhibit 33.)

21  
22 105. Generally, SDIA passengers pay Passenger Facility Charges and Customer Facility Charges,  
23 in addition to the Ground Transportation trip taxes, and Parking Fees. As a result, the payment of  
24 the trip taxes which have euphemistically been relabeled, “access authorization fees,” have resulted  
25 in a double, triple or quadruple, charge to the public for the same access.

26  
27 106. Other than the parking lots, for which there is an entrance barrier for vehicles, the public  
28 generally has had the same open access to all of the public airport facilities and real assets.



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107. SDCRAA has taxed and continues to tax the activity of transportation, and egress or departure from the airport, ex-post access, rather than charging an “access authorization fee” or entrance fee on real property. Thus, the “access authorization fee” is really a trip tax masquerading as an “access authorization fee.”

Compliance with Claim Presentation

108. On November 17, 2016, before the SDCRAA Board, and SDCRAA General Counsel Amy Gonzalez, as witness, Plaintiff, K.S.A.N. L.L.C. complied with the claim presentation requirements of Cal. Gov. Code 910 et seq. and other laws, by hand delivery to the SDCRAA Clerk of a written class claim related to the transactions or occurrences and causes of action stated herein. (See Plaintiffs’ Exhibit 33.)

109. On December 15, 2016, the SDCRAA Board rejected the class claim, after giving notice of the December 15, 2016 Board Meeting, per the Ralph M. Brown Act, Cal. Gov. Code 54950 et seq. (See Plaintiffs’ Exhibit 34.)

110. On a Notice dated January 12, 2017, SDCRAA provided written notice of rejection of the claim by a mailing signed by Amy Gonzalez; with a “WARNING” notice substantially similar to that in Cal. Gov. Code 913; and postmarked, January 13, 2017. (See Plaintiffs’ Exhibit 35.)

111. This complaint is being filed on July 10, 2017, after exhaustion of administrative remedies, and within six calendar months or 182 days, whichever is greater, of the written notice of rejection of the claim by SDCRAA, in accordance with Cal. Gov. Code 945.6.

People’s Will that this Court Strictly Construe Tax Laws to Constrain SDCRAA

112. The People of the State of California have repeatedly stated their will not to be taxed without a vote in Proposition 13, Proposition 4, Proposition 62, Proposition 218, and in their latest tightening,

1 Proposition 26. Proposition 26 furthered the historical trend to constrain local government taxing  
2 power. The People’s will that this Court strictly construe tax laws to constrain SDCRAA’s  
3 phenomenal imposition of “fees” is evidenced in Proposition 26, § 1, Findings and Declarations of  
4 Purpose:

5 **(e) This escalation in taxation does not account for the recent**  
6 **phenomenon whereby the Legislature and local governments have**  
7 **disguised new taxes as “fees” in order to extract even more revenue**  
8 **from California taxpayers without having to abide by these**  
9 **constitutional voting requirements. Fees couched as “regulatory” but**  
10 **which exceed the reasonable costs of actual regulation or are simply**  
11 **imposed to raise revenue for a new program and are not part of any**  
12 **licensing or permitting program are actually taxes and should be**  
13 **subject to the limitations applicable to the imposition of taxes.**

14 **(f) In order to ensure the effectiveness of these constitutional**  
15 **limitations, this measure also defines a “tax” for state and local**  
16 **purposes so that neither the Legislature nor local governments can**  
17 **circumvent these restrictions on increasing taxes by simply defining**  
18 **new or expanded taxes as “fees.”**

19 (Voter Information Guide (August 10, 2010) p. 114.)  
20

21 113. It is the will of the The People of the State of California that this Court circumscribe  
22 SDCRAA’s attempts to circumvent and disguise fees in order to tax the traveling public.  
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1 CAUSES OF ACTION

2 **FIRST CAUSE OF ACTION BY ALL PLAINTIFFS AGAINST SDCRAA AND DOES 1-**  
3 **3000 FOR VIOLATION OF ARTICLE XIII C OF THE CALIFORNIA CONSITUTION**  
4 **AND RELATED LAWS.**

5 114. Plaintiffs incorporate the foregoing paragraphs into this Cause of Action.

6  
7 115. Article XIII C § 2d of the California Constitution states, “No local government may impose,  
8 extend, or increase any special tax unless and until that tax is submitted to the electorate and  
9 approved by a a two-thirds vote.”

10  
11 116. SDCRAA AND DOES 1-3000 did not submit special taxes imposed upon Ground  
12 Transportation passengers to the electorate to be approved by a two-thirds vote.

13  
14 117. Thus, SDCRAA and DOES 1-3000 violated Article XIII C of the California Constitution.

15  
16 **SECOND CAUSE OF ACTION BY PLAINTIFFS AGAINST SDCRAA AND DOES 1-3000**  
17 **FOR VIOLATION OF ARTICLE XIII A OF THE CALIFORNIA CONSITUTION AND**  
18 **RELATED LAWS.**

19 118. Plaintiffs incorporate the foregoing paragraphs into this Cause of Action.

20  
21 119. Article XIII A § 4 of the California Constitution states:

22 **“Cities, Counties and special districts, by a two-thirds vote of the qualified**  
23 **electors of such district, may impose special taxes on such district, except ad**  
24 **valorem taxes on real property or a transaction tax or sales tax on the sale of**  
25 **real property within such City, County or special district.”**

26  
27 120. SDCRAA AND DOES 1-3000 did not submit special taxes imposed upon Ground  
28 Transportation passengers to the electorate to be approved by a two-thirds vote.

1  
2 121. Thus, SDCRAA and DOES 1-3000 violated Article XIII A of the California Constitution.

3  
4 **THIRD CAUSE OF ACTION BY PLAINTIFFS AGAINST SDCRAA AND DOES 1-3000**  
5 **FOR VIOLATION OF ARTICLE XIII B OF THE CALIFORNIA CONSITUTION AND**  
6 **RELATED LAWS.**

7 122. Plaintiffs incorporate the foregoing paragraphs in this Cause of Action.

8  
9 123. ARTICLE XIII B imposes an appropriations limit on on each entity of the government for  
10 each fiscal year, and mandates a return of the proceeds of taxes in excess of the amount  
11 appropriated.

12  
13 124. Under Article XIII B, Section 8(c):

14 **“Proceeds of taxes” shall include, but not be restricted to, all tax**  
15 **revenues and the proceeds to an entity of government, from (1)**  
16 **regulatory licenses, user charges, and user fees to the extent that those**  
17 **proceeds exceed the costs reasonably borne by that entity in providing**  
18 **the regulation, product, or service...”**

19  
20 125. SDCRAA AND DOES 1-3000 have collected special taxes in violation of Article XIII C and  
21 Article III A of the California Constitution. SDCRAA AND DOES 1-3000 have also collected  
22 regulatory licenses, user charges, and user fees the proceeds of which exceed the costs reasonable  
23 borne by SDCRAA in providing regulation, and the use of government property, and services.

24  
25 126. Thus, SDCRAA AND DOES 1-3000 must refund the proceeds of taxes in excess of the  
26 amount appropriated, as requested in the November 17, 2016 claim made per Gov. Code 910 et seq.

1 **FOURTH CAUSE OF ACTION BY PLAINTIFFS AGAINST SDCRAA AND DOES 1-3000**  
2 **FOR VIOLATION OF ARTICLE XVI OF THE CALIFORNIA CONSITUTION AND**  
3 **RELATED LAWS.**

4 127. Plaintiffs incorporate the foregoing paragraphs in this Cause of Action.

5  
6 128. Article XVI, § 6 of the California Constitution states:

7 **“The Legislature shall have no power to give or to lend, or to**  
8 **authorize the giving or lending, of the credit of the State, or of any**  
9 **county, city and county, city, township or other political corporation**  
10 **or subdivision of the State now existing...nor shall it have power to**  
11 **make any gift or authorize the making of any gift, of any public**  
12 **money or thing of value to any individual municipal or other**  
13 **corporation.”**

14  
15 129. SDCRAA and DOES 1-3000, made and authorized the gift of public money to private  
16 individuals and private corporations due to the rebates and non-remittals of SDCRAA trip fees  
17 imposed upon the traveling public.

18  
19 130. SDCRAA and DOES 1-3000, also made and authorized the gift of public money and the  
20 lending of credit by agreeing to indemnify Metropolitan Transit System, also known as San Diego  
21 Transit Corporation, and by extension the City of San Diego a municipal corporation, with valuable  
22 legal insurance and protection against lawsuits, including the credit to pay for attorney and other  
23 legal fees, in an invalid attempt to acquire authority over the taximeter rates of fare, which is  
24 nondelegable authority held by Metropolitan Transit System and the City of San Diego.

25  
26 131. Thus, in authorizing the gift of public money and lending of credit SDCRAA and DOES 1-  
27 3000 violated Article XVI, Section 6 of the California Constitution.

28

1       **FIFTH CAUSE OF ACTION BY PLAINTIFFS AGAINST SDCRAA AND DOES 1-3000**  
2                               **FOR VIOLATION OF EQUAL PROTECTION LAWS**

3 132. Plaintiffs incorporate the foregoing paragraphs in this Cause of Action.  
4

5 133. The 14<sup>th</sup> Amendment of the United States Constitution, 42 U.S.C. 1981 et seq., and Article  
6 7(a) of the California Constitution, prohibit the State of California, and SDCRAA as a local  
7 government agency, from discriminating against or denying any person the equal protection of the  
8 laws.  
9

10 134. Passengers and private companies operating at SDCRAA have been discriminated against  
11 economically by SDCRAA AND DOES 1-3000 due to differences in taxes paid and gifts of public  
12 funds received by different classes of passengers and private companies, without a rational basis.  
13

14 135. Thus, SDCRAA AND DOES 1-3000 have violated the equal protection rights of those  
15 passengers and private companies.  
16

17       **SIXTH CAUSE OF ACTION BY PLAINTIFFS AGAINST SDCRAA AND DOES 1-3000**  
18                               **FOR VIOLATION OF DUE PROCESS LAWS.**

19 136. Plaintiffs incorporate the foregoing paragraphs in this Cause of Action.  
20

21 137. The 14<sup>th</sup> Amendment of the United States Constitution, the 5<sup>th</sup> Amendment of the United  
22 States Constitution, as incorporated to apply to the States, 42 U.S.C. 1981 et seq., and Article 7(a)  
23 of the California Constitution, prohibit the State of California, and SDCRAA as a local government  
24 agency, from depriving any person of the the deprivation of life, liberty, or property without the due  
25 process of law.  
26

27 138. Passengers and private companies operating at SDCRAA have been deprived of due process,  
28 both substantively and procedurally, by SDCRAA AND DOES 1-3000 due to differences in taxes

1 paid and gifts of public funds received by different classes of passengers and private companies,  
2 without a rational basis.

3  
4 139. Thus, SDCRAA AND DOES 1-3000 has violated the due process rights of those passengers  
5 and private companies.

6  
7 **SEVENTH CAUSE OF ACTION BY PLAINTIFFS AGAINST SDCRAA AND DOES 1-3000**  
8 **FOR VIOLATION OF SDCRAA CODE AND SDCRAA RESOLUTIONS**

9 140. Plaintiffs incorporate the foregoing paragraphs in this Cause of Action.

10  
11 141. Since inception, SDCRAA Code, § 9.12 has required that trip fees or any other fees and  
12 charges for a ground transportation service provider shall be set by resolution of the Board.  
13 (SDCRAA Code § 9.12 (September 20, 2002) as enacted pursuant to San Diego County Regional  
14 Airport Authority Act (Pub. Util. Code § 170000 et seq. (2001).))

15  
16 142. The authority for the SDCRAA Code is derived from Pub. Util. Code § 170014(c) which  
17 states, “The board of directors shall act only by ordinance, SDCRAA Resolution, or motion;” and  
18 Pub. Util. Code § 170016, which states:

19 **(a) The board of directors may adopt and enforce rules and regulations for**  
20 **the administration, maintenance, operation, and use of its facilities and**  
21 **services.**

22 **(b) A person who violates a rule, regulation, or ordinance adopted by the**  
23 **board of directors is guilty of a misdemeanor punishable pursuant to Section**  
24 **19 of the Penal Code, or an infraction under the circumstances set forth in**  
25 **paragraph (1) or (2) of subdivision (d) of Section 17 of the Penal Code...**

26 (Pub. Util. Code § 170000 et seq. (2001).)  
27  
28

1 143. Further, SDCRAA Resolution 2012-0057 (May 3, 2012) states that, “all trip fees collected  
2 must be remitted to the Authority in order to comply with the provisions of Cal. Constitution Article  
3 XIIIIC;”  
4

5 144. On or about October 2015, SDCRAA Staff AND DOES 1-3000, sua sponte, mandated that  
6 that trip fee imposed on all taxicab passengers be increased from \$2.00 to \$2.71, and \$0.71  
7 collected not be remitted to SDCRAA for Ground Transportation Service Providers that purchased  
8 alternative fuel vehicles after September 1, 2014.  
9

10 145. Thus, SDCRAA AND DOES 1-3000 violated, SDCRAA Code § 9.12 and SDCRAA  
11 Resolution 2012-0057, and as a result the San Diego County Regional Airport Authority Act (Pub.  
12 Util. Code § 170000 et seq. (2001).  
13

14 **EIGHTH CAUSE OF ACTION BY PLAINTIFFS AGAINST SDCRAA AND DOES 1-3000**  
15 **FOR VIOLATION OF MTS ORD. NO. 11 AND RELATED LAWS.**

16 146. Plaintiffs incorporate the foregoing paragraphs in this Cause of Action.  
17

18 147. MTS Ord. No. 11, § 2.2, Rates of Fare, states:

19 **(a) After a notice and open public hearing of the Taxicab Advisory**  
20 **Committee, MTS shall establish a maximum rate of fare for exclusive**  
21 **ride and group ride hire of taxicabs and/or LSVs except for trips from**  
22 **San Diego International Airport. A permit holder may petition the**  
23 **Board for any desired change in the maximum taxicab or LSV rates**  
24 **for exclusive ride and/or zone rates and group ride hire.**

25 **(b) Taxicab trips from San Diego International Airport shall be at a**  
26 **uniform rate of fare. Rates for trips originating at the airport may**  
27 **include an extra charge equal to the Airport Trip Fee assessed against**  
28 **the individual taxicab operator by the San Diego County Regional**



1                    **Airport Authority. The extra may not be charged on any trip that**  
2                    **does not originate at the airport or on any trip where the taxicab**  
3                    **operator does not pay the fee to the San Diego County Regional**  
4                    **Airport Authority.** The extra charge may only be charged to the  
5                    customer by utilizing the extra button on the taxicab meter. A driver  
6                    may not verbally request payment. All taxicabs utilizing the Airport  
7                    Trip Fee extra button must have a decal, approved by the Chief  
8                    Executive Officer and the County of San Diego Office of Weights and  
9                    Measures. The decal shall identify and accurately describe the extra  
10                   charge consistent with regulatory requirements.

11 (As adopted per Gov. Code 53075.5, Emphasis added.)

12  
13 148. MTS Policy and Procedures, No. 34, FOR-HIRE VEHICLE SERVICES, 34.3 Airport  
14 Taxicab Fare Policy states:

15                    **Rates of fare for trips from Lindbergh Field Airport shall be uniform.**  
16                    **In the event an owner chooses a different rate for nonairport trips for**  
17                    **taxicabs authorized to service the airport, two meters or a multirate**  
18                    **meter shall be installed and identified. The meter(s) shall be activated**  
19                    **according to the proper rate for the trip's origin, and it shall be**  
20                    **clearly visible to the passenger which rate is being charged.**

21                    **34.3.1 The uniform rates of fare for taxicab trips from Lindbergh**  
22                    **Field Airport are initially established at \$1.40 flag drop, \$1.50 per**  
23                    **mile, and \$12.00 per hour, effective June 1, 1990.**

24                    **The airport rates shall be reviewed annually, beginning in January**  
25                    **2009, by the Chief Executive Officer. Airport rates shall be adjusted**  
26                    **based on the 1990 amounts, in accordance with the change in the**  
27                    **Annual All Urban Western Transportation Consumer Price Index/**  
28

1 San Diego. Adjustments shall be rounded up or down, as appropriate,  
2 to the nearest even \$0.10 increment.

3 In addition to the airport uniform rate of fare, a taxicab operator may  
4 charge an “extra” equal to the Airport Trip Fee assessed against the  
5 individual taxicab operator by the San Diego County Regional  
6 Airport Authority. The extra may not be charged on any trip that  
7 does not originate at the airport or on any trip where the taxicab  
8 operator does not pay the fee to the San Diego County Regional  
9 Airport Authority. The extra charge may only be charged to the  
10 customer by utilizing the extra button on the taxicab meter. A driver  
11 may not verbally request payment.

12 (As adopted per Gov. Code 53075.5, Emphasis added.)

13  
14 149. On or about October 2015, SDCRAA Staff, sua sponte, assumed taximeter rate setting  
15 authority and mandated that that trip fee imposed on all taxicab passengers on the taximeter be  
16 increased from \$2.00 to \$2.71. SDCRAA Staff mandated this increase in the extra to \$2.71,  
17 although it mandated that the fee not be paid to SDCRAA, and instead kept by private taxi  
18 companies that purchased alternative fuel vehicles after September 1, 2014.

19  
20 150. Thus, the SDCRAA mandate to change the rate charged on the taximeter, and the SDCRAA  
21 mandate to not remit to SDCRAA the extra fee charged to the passenger violates MTS. Ord. No. 11  
22 and MTS Policy and Procedures No. 34 (As adopted per Gov. Code 53075.5).

PRAYER

151. WHEREFORE, Plaintiffs, pray for judgment as to the Causes of Actions against SDCRAA and DOES 1 to 3000 as follows:


1. A declaration that SDCRAA Ground Transportation trip fees are special taxes imposed upon the traveling public without a vote of the electorate, and as such are invalid and/or unconstitutional;
2. A declaration that SDCRAA trip fee rebates and non-remittals to private taxi companies violate the prohibition on gifts of public funds in Article XVI, Section 6, and as such are invalid and/or unconstitutional;
3. A declaration that the SDCRAA agreement to indemnify MTS violates the prohibition on gifts of public funds and the prohibition on the the giving or lending, of the credit of the State or SDCRAA in violation of Article XVI, Section 6, and as such is invalid and/or unconstitutional;
4. A declaration that the authority to regulate taxicab rates of fare is a held by MTS and non-delegable to SDCRAA.
5. A declaration that MTS Ordinance No. 10, SDCRAA Code, and SDCRAA Resolution 2012-0057, have been violated, due to the SDCRAA mandated non-remittal of trip fees by private taxi companies to SDCRAA.
6. An order enjoining SDCRAA from further collection of the invalid or unconstitutional taxes;
7. An order enjoining SDCRAA from further gifting of public funds and lending of the credit of the State and/or SDCRAA;
8. An order enjoining SDCRAA from further indemnifying MTS for the attempted authority to impose trip taxes upon the taximeter;
9. An order requiring reimbursement to Plaintiffs of all illegal taxes imposed and collected by the Defendants, plus any allowable pre-judgment and post-judgment interest, at the legal rate authorized under Cal. Civ. Code 3287;

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10. All other relief that Plaintiffs may be entitled to at equity or at law.

11. An award of costs, including recoverable attorney's fees, pursuant to California Code of Civil Procedure section 1021.5 and 42 U.S.C. 1988, and any other applicable statute or law.

DATED: July 10, 2017



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Kamran Hamidi  
Attorney for Plaintiffs

TABLE OF PLAINTIFFS' EXHIBITS

- 1
- 2 Plaintiffs' Exhibit 1: August 21, 2008, SDCRAA \$2.00 Trip Charge Notice
- 3 Plaintiffs' Exhibit 2: October 1, 2008, SDCRAA Ground Transportation Fully Allocated Costs
- 4 Plaintiffs' Exhibit 3: 2008 Attorney General Memorandum of Understanding (AGMOU)
- 5 Plaintiffs' Exhibit 4: December 3, 2009, SDCRAA Resolution 2009-150R (Upon Discovery)
- 6 Plaintiffs' Exhibit 5: January 7, 2010, SDCRAA Resolution 2010-0006 &
- 7 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa010710>>
- 8 Plaintiffs' Exhibit 6: January 7, 2010, Cost Recovery Calculations Tables and Slides
- 9 Plaintiffs' Exhibit 7: March 4, 2010, SDCRAA Resolution 2010-0027R &
- 10 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa030410>>
- 11 Plaintiffs' Exhibit 8: June 29, 2010, Doreen Frasca Email to SDCRAA Staff
- 12 Plaintiffs' Exhibit 9: July 1, 2010, SDCRAA Resolution 2010-0082
- 13 Plaintiffs' Exhibit 10: July 1, 2010, SDCRAA Resolution 2010-0083 &
- 14 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa070110>>
- 15 Plaintiffs' Exhibit 11: September 15, 2010, SDCRAA CEO Memo to SDCRAA Board
- 16 Plaintiffs' Exhibit 12: May 16, 2011, City Attorney of the City of San Diego Legal Opinion
- 17 Plaintiffs' Exhibit 13A: January 5, 2012, SDCRAA Board Minutes &
- 18 SDCRAA Webcast <<http://webcast.sdcoe.net/sdcraa010614/>>
- 19 Plaintiffs' Exhibit 13B: February 9, 2012, SDCRAA Resolution 2012-0024 &
- 20 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa020912>>
- 21 Plaintiffs' Exhibit 14: March 7, 2012, SDCRAA Chairman "Pure" Cost Recovery Letter to MTS
- 22 & March 14, 2012, SDCRAA – MTS Indemnity Agreement
- 23 Plaintiffs' Exhibit 15: April 19, 2012, MTS Board Agenda Item 25: MTS Ord. No. 11 &
- 24 MTS Policy & Procedures No. 34
- 25 Plaintiffs' Exhibit 16: May 3, 2012, SDCRAA Resolution 2012-0056
- 26 Plaintiffs' Exhibit 17: May 3, 2012, SDCRAA Resolution 2012-0057 &
- 27 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa050312>>
- 28 Plaintiffs' Exhibit 18: July 12, 2012, SDCRAA Board Meeting Minutes &

- 1 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa071212>>
- 2 Plaintiffs' Exhibit 19: October 4, 2012, SDCRAA Board SDCRAA Resolution 2012-0114 &
- 3 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa100412>>
- 4 Plaintiffs' Exhibit 20: June 6, 2013, SDCRAA Board Meeting Minutes &
- 5 SDCRAA Webcast <<http://webcast.sdcoe.net/accordent/sdcraa060613>>
- 6 Plaintiffs' Exhibit 21: March 6, 2014, SDCRAA Webcast <<http://webcast.sdcoe.net/sdcraa030614>>
- 7 Plaintiffs' Exhibit 22: 2014, SDCRAA General Counsel Gift of Public Funds Letter
- 8 Plaintiffs' Exhibit 23: April 30, 2014, Photo of \$1.50 Non-Alternative Fuel Vehicle trip tax notice
- 9 Plaintiffs' Exhibit 24: June 5, 2014, SDCRAA Webcast <<http://webcast.sdcoe.net/sdcraa060514>>
- 10 Plaintiffs' Exhibit 25: SDCRAA Code § 9.12 (July 12, 2012)
- 11 Plaintiffs' Exhibit 26: October 2, 2014, SDCRAA Resolutions 2014-0108, 2014-0109 &
- 12 SDCRAA Webcast <<http://webcast.sdcoe.net/sdcraa100214>>
- 13 Plaintiffs' Exhibit 27: May 11, 2015, SDCRAA FY 2016 Budget Workshop
- 14 Plaintiffs' Exhibit 28: July 1, 2015, SDCRAA Resolution 2015-0066
- 15 Plaintiffs' Exhibit 29: January 21, 2016, SDCRAA Webcast
- 16 <<http://stream1.sdcoe.net/wc/sdcraa012116/index.php>>
- 17 Plaintiffs' Exhibit 30: March 17, 2016, SDCRAA Webcast
- 18 <<http://stream1.sdcoe.net/wc/sdcraa031716>>
- 19 Plaintiffs' Exhibit 31: June 13, 2016, SDCRAA FY 2017 & FY 2018 Budget Workshop
- 20 Plaintiffs' Exhibit 32: October 20, 2016, SDCRAA Webcast
- 21 <<http://stream1.sdcoe.net/wc/sdcraa102016/index.php>>
- 22 Plaintiffs' Exhibit 33: November 17, 2016, K.S.A.N. L.L.C. v. SCRAA – Claim # 1,
- 23 2 additional receipts referenced, & November 17, 2016 SDCRAA Webcast
- 24 < <http://stream1.sdcoe.net/wc/sdcraa111716/index.php>>
- 25 Plaintiffs' Exhibit 34: December 15, 2016, SDCRAA Board Meeting Agenda, Minutes, &
- 26 SDCRAA Webcast <<http://stream1.sdcoe.net/wc/sdcraa121516/index.php>>
- 27 Plaintiffs' Exhibit 35: January 13, 2017, SDCRAA Rejection Notice of November 17, 2016,
- 28 K.S.A.N. L.L.C. v. SCRAA – Claim # 1