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INTRODUCTION

- 1. This is an action by Plaintiffs Enterprise Rent-A-Car Co. of Los Angeles, LLC ("Enterprise") and the Hertz Corporation ("Hertz" and, together with Enterprise, "Plaintiffs") for a refund of monies illegally calculated, assessed, and collected by Defendant San Diego Unified Port District ("San Diego Port" or "Defendant").
- 2. On April 10, 2018, Defendant's Board of Port Commissioners ("Board") adopted Resolution 2018-065 (the "Resolution"), which purported to re-enact San Diego Port Ordinance 2030 and imposed a special tax, disguised as a "user fee," on Plaintiffs' rental car customers. The special tax imposed through Resolution 2018-065 and Ordinance 2030 is a charge of \$3.50 that rental car customers must pay for each rental car transaction ("the Charge") that takes place on San Diego Port tidelands ("Port Property").
- 3. Resolution 2018-065 and Ordinance 2030 call the Charge a "user fee" to be collected from rental car customers by rental car companies, including Plaintiffs, for the benefit of the San Diego Port so that the San Diego Port can use the funds to pay for the construction of a new parking structure in Chula Vista. The Charge, however, is not a legal "user fee" but rather is an illegal special tax that has been imposed in violation of Propositions 13 and 218, which require that any special tax be approved by two-thirds of voters. Because the Charge was not approved by local voters, it is an unconstitutional tax and therefore unlawful and invalid.
- 4. The Charge is also unlawful and invalid for other reasons, including violation of the dormant Commerce Clause of the Unites States Constitution. The Charge is invalid under the dormant Commerce Clause because it does not fairly approximate the use of the facilities for whose benefit they are imposed, as only a minute percentage of the rental car customers who pay the Charge will benefit from the to-be-constructed parking garage that will be funded by the Charge. Rental car customers who are traveling from out-of-state, many of whom are out-of-state residents arriving at the San Diego Airport, bear disproportionate costs in comparison to the negligible level of "quantifiable services" they receive.

- 5. In short, the \$3.50 Charge is an unlawful and unconstitutional tax for financing the construction of the proposed Chula Vista parking garage, not a legal "user fee" for either the use of the proposed Chula Vista parking garage or any other property of the San Diego Port.
- 6. Pursuant to the unlawful and unconstitutional Resolution, Plaintiffs collected the Charge from their rental car customers and paid the amounts collected to the San Diego Port for the monthly periods of May 2018 through February 2019 ("Periods at Issue"). Defendant has refused to refund the amounts paid by Plaintiffs.

PARTIES

- 7. Plaintiff Enterprise is, and at all times mentioned herein was, a Delaware limited liability company, duly organized and existing under the laws of Delaware and duly authorized to conduct business in California. Enterprise is engaged in the business of renting cars to customers from various locations, including certain locations on Port Property.
- 8. Plaintiff Hertz is, and at all times mentioned herein was, a Delaware corporation, duly organized and existing under the laws of Delaware and duly authorized to conduct business in California. Hertz is engaged in the business of renting cars to customers from various locations, including certain locations on Port Property.
- 9. Defendant is, and at all times mentioned herein was, a public corporation created by the Legislature in 1962 pursuant to the Harbors and Navigation Code.
- 10. Plaintiffs are unaware of the true names and capacities of DOES 1-100 and therefore sue them by such fictitious names. Plaintiffs are informed and believe and thereon allege that each DOE Defendant is responsible for the acts, violations and injuries alleged herein. Plaintiffs will amend this Complaint to allege the true names and capacities of the DOE Defendants when their identities are ascertained.
- 11. Plaintiffs are informed and believe and thereon allege, that at all times, each of the DOE Defendants was the agent, employee, representative, partner, joint venturer, and/or alter ego of each other Defendant and, in doing the things alleged herein, was acting within the course and scope of such agency, employment and representation on behalf of such partnership or joint

venture, and/or as such alter ego, with the authority, permission, consent, and/or ratification of each other Defendant.

JURISDICTION AND VENUE

- 12. Jurisdiction is proper under Harbors and Navigation Code, Appendix 1, section 23 and Government Code sections 911.2 and 945.6.
- 13. Venue is proper in this Court under Code of Civil Procedure section 394, which provides that an action against a city, county, or local agency may be brought in the county itself or county in which the city of local agency is situated.

JOINDER

14. In the interest of judicial economy, Plaintiffs file this action jointly under Code of Civil Procedure section 378. The questions of law and the relevant facts are common to both Plaintiffs and a decision on the questions of law involved will necessarily determine the rights of both Plaintiffs. If successful, both Plaintiffs will be entitled to the same relief, differing only as to amount each Plaintiff will be entitled to.

GENERAL ALLEGATIONS

Resolution 2018-065

- 15. On April 10, 2018, the Board adopted the Resolution, a true copy of which is attached hereto as **Exhibit 1**. As of May 10, 2018, the Resolution has required rental car companies conducting business on Port Property, such as Plaintiffs, to collect a "user fee" of \$3.50 per rental car transaction from all rental car customers, on behalf of the San Diego Port, and to pay all the funds collected to the San Diego Port.
- 16. Pursuant to the Resolution, these purported "user fees" are to be collected in accordance with Ordinance 2030, which was enacted approximately twenty years ago to fund a parking structure near the San Diego Convention Center and Airport. A true copy of Ordinance 2030 is attached hereto as **Exhibit 2**. Collection of fees under Ordinance 2030 was suspended over a decade ago.
- 17. The Resolution provides that the monies raised by the Charge and paid to the San Diego Port will be used to pay for the construction of a parking structure adjacent to the planned

Plaintiffs' Operations on Port Property

- 18. Enterprise is in the business of renting cars to customers. Enterprise conducts business under the Enterprise, National, and Alamo car rental brands. Enterprise enters into rental car transactions on Port Property, including at the common car rental facility located at the San Diego Airport (which is rented to the San Diego Airport Authority by Defendant and, in turn, leased to Enterprise and others), at counters located in hotels near the San Diego Convention Center and the San Diego Airport, and at branches in the vicinity of the San Diego Airport that are strategically located to serve customers whose personal automobiles are being serviced or repaired at nearby car dealerships and repair shops.
- 19. Hertz is in the business of renting cars to customers. Hertz conducts business under the Hertz, Dollar, and Thrifty car rental brands. Hertz enters into rental car transactions on Port Property, including at the common car rental facility located at the San Diego Airport (which is rented to the San Diego Airport Authority by Defendant and, in turn, leased to Hertz and others), at counters located in hotels near the San Diego Convention Center and the San Diego Airport, and at branches in the vicinity of the San Diego Airport that are strategically located to serve customers whose personal automobiles are being serviced or repaired at nearby car dealerships and repair shops.

Plaintiffs' Prior Verified Complaint for Invalidation of the Resolution

20. On June 8, 2018, Plaintiffs timely filed a Verified Complaint commencing a reverse validation proceeding against the San Diego Port and seeking to declare the Resolution unlawful and invalid, including because it imposes an unconstitutional special tax in violation of Proposition 218 and the dormant Commerce Clause of the United States Constitution. That action, *Enterprise Rent-A-Car Co. of Los Angeles, LLC, et al. v. San Diego Unified Port District*, remains pending in San Diego County Superior Court before the Honorable Katherine A. Bacal, Department C-69, as Case No. 37-2018-00028276-CU-MC-CTL.

Collection of the Charge and Plaintiffs' Claims for Refund

21. This action for refund is for the entire amounts of the Charge collected by Plaintiffs

from their customers pursuant to the Resolution for the Periods at Issue, and paid to Defendant.

- 22. Enterprise seeks a refund in the amount of \$1,209,659.50 (or according to proof), plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law.
- 23. Hertz seeks a refund in the amount of \$963,455.45 (or according to proof), plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law.
- 24. Since May 10, 2018, both Enterprise and Hertz have collected the Charge from their respective rental car customers renting cars from Plaintiffs' locations on Port Property and paid the amounts collected to Defendant on a monthly basis.
- 25. For the Periods at Issue, Plaintiff Enterprise has collected from its customers and paid to Defendant the amount of \$1,209,659.50 (or according to proof).
- 26. For the Periods at Issue, Plaintiff Hertz has collected from its customers and paid to Defendant the amount of \$963,455.45 (or according to proof).
- 27. On or about October 25, 2018, Plaintiff Enterprise filed a timely claim for refund of the entire amount of the Charge paid to Defendant for the monthly periods May through September 2018. A true copy of that claim for refund is attached as **Exhibit 3**.
- 28. On or about October 25, 2018, Plaintiff Hertz filed a timely claim for refund of the entire amount of the Charge paid to Defendant for the monthly periods May through September 2018. A true copy of that claim for refund is attached as **Exhibit 4**.
- 29. On or about December 7, 2018, Defendant issued a Notice of Rejection or Denial of Claim denying Enterprise's claim for refund dated October 25, 2018. A true copy of Defendant's Notice of Rejection or Denial of Claim issued to Enterprise and dated December 7, 2018 is attached as **Exhibit 5**.
- 30. On or about December 7, 2018, Defendant issued a Notice of Rejection or Denial of Claim denying Hertz's claim for refund dated October 25, 2018. A true copy of Defendant's Notice of Rejection or Denial of Claim issued to Hertz and dated December 7, 2018 is attached as **Exhibit** 6.
- 31. On or about March 29, 2019, Plaintiff Enterprise filed a timely claim for refund of the entire amount of the Charge paid to Defendant for the monthly periods October 2018 through

February 2019. A true copy of that claim for refund is attached as **Exhibit 7**.

- 32. On or about March 29, 2019, Plaintiff Hertz filed a timely claim for refund of the entire amount of the Charge paid to Defendant for the monthly periods October 2018 through February 2019. A true copy of that claim for refund is attached as **Exhibit 8**.
- 33. On or about May 10, 2019, Defendant issued a Notice of Rejection or Denial of Claim, denying Plaintiff Enterprise's claim for refund dated March 29, 2019. A true copy of Defendant's Notice of Rejection or Denial of Claim issued to Enterprise and dated May 10, 2019 is attached as **Exhibit 9**.
- 34. On or about May 10, 2019, Defendant issued a Notice of Rejection or Denial of Claim, denying Plaintiff Hertz's claim for refund dated March 29, 2019. A true copy of Defendant's Notice of Rejection or Denial of Claim issued to Hertz and dated May 10, 2019 is attached as **Exhibit 10**.
- 35. Plaintiff Enterprise has exhausted its administrative remedies for the Periods at Issue.
 - 36. Plaintiff Hertz has exhausted its administrative remedies for the Periods at Issue.

The Charge Is an Unlawful and Illegal Special Tax

- 37. Proposition 218, known as the "Right to Vote on Taxes Act," amended the California Constitution to ensure that citizens would have the right to vote on whether local governments should enact taxes, such as the Charge at issue here.
- 38. Proposition 218 was in response to actions by local governments to circumvent existing requirements for voter approval of special taxes and assessments contained in Proposition 13, including California Constitution Article XIII A, Section 4, requiring that special taxes be approved by a two-thirds vote.
- 39. Article XIII C of the California Constitution (enacted as part of Proposition 218) requires that all "special taxes" imposed by local governments be approved by two-thirds of local voters. Section 1 of Article XIII C defines "tax" to mean "any levy, charge, or exaction of any kind imposed by a local government," with only seven specifically enumerated exceptions.
 - 40. On April 10, 2018, the Board adopted the Resolution.

- 41. The Resolution requires rental car companies conducting business on Port Property, such as Plaintiffs, to collect from all rental car customers a "user fee" of \$3.50 for each rental car transaction on Port Property and to pay the monies to Defendant.
- 42. The Resolution provides that monies generated by the Charge will be used to pay for the construction of parking structures adjacent to the planned Chula Vista Bayfront Convention Center on Port Property in Chula Vista in South San Diego County.
- 43. Although the Resolution labels the Charge a "user fee," the Charge is in fact a special tax.
- 44. The Resolution violates Article XIII C of the California Constitution, as the Charge was never submitted for and never received the requisite approval by a two-thirds vote of the electorate.
- 45. Further, the Charge does not fall within *any* of the seven exceptions to the definition of "tax" in Section 1 of Article XIII C.
- 46. For example, the Charge does not fall within the exceptions defined by Sections 1(e)(1) and (e)(2) of Article XIII C, as it is not "imposed for a specific government" benefit, privilege, service, or product provided "directly" to customers renting cars on Port Property "that is not provided to those not charged, and which does not exceed the reasonable costs to the [San Diego Port] of providing the service," benefit, privilege, or product.
- 47. The Resolution requires Plaintiffs to collect the Charge from *all* of their rental car customers who rent vehicles from Plaintiffs on Port Property, whether at the San Diego Airport (which is located on Port Property) or at Plaintiffs' various branch offices on Port Property, including branch offices located near auto repair shops (which too are located on Port Property). Yet the vast majority of customers who pay the Charge at these various locations will *not* use the Chula Vista parking structure—located at least seven miles away from these locations—that the San Diego Port plans to build in the future using the funds collected pursuant to the Resolution.
- 48. Indeed, according to an analysis conducted by an outside consultant retained by the San Diego Port, 96.7% to 98.5% of rental car customers at the San Diego Airport will *not* use the planned Chula Vista parking structures. The Board relied on this analysis in considering and voting

to approve the Resolution.

- 49. The San Diego Port's consultant (and, thus, the San Diego Port) did not conduct, and the Board did not rely upon, any analysis of the value of the use of any Port Property to the rental car customers who must pay the Charge. Nor did the Board rely upon any analysis of the San Diego Port's "costs" attributable to allowing customers to rent cars on any Port Property when the Board voted to approve the Resolution.
- 50. The Charge is imposed upon rental car customers who will not make use of the planned Chula Vista parking structure. Imposition of the Charge on rental car customers is not—as California law requires—limited to those who will actually use the Chula Vista parking structure or in amounts reasonably reflecting the value of benefits conferred by the San Diego Port on those customers. While the Charge may benefit the general public, it does not confer any specific benefit upon customers who rent cars on Port Property.
- 51. Similarly, the Charge does not fall within the exception in Section 1(e)(4) for "charge[s] imposed for entrance to or use of local government property, or the purchase, rental, or lease of local government property." Nor can the Charge be re-characterized and justified as a "user fee" for the San Diego Airport Consolidated Rental Car Facility, given that, among other things, Plaintiffs and their customers already pay for the use of that Port Property by way of rent paid by Plaintiffs and by way of car rental charges, including a Customer Facility Charge paid by rental car customers.
- 52. Accordingly, the Charge is a special tax within the meaning of the California Constitution. It is not a "user fee" for the use of Port Property or any other kind of legitimate fee. And because the Charge was not submitted to or approved by local voters, it is unlawful.

The Charge Violates the Dormant Commerce Clause of the United States Constitution

53. To be valid under the dormant Commerce Clause of the United States Constitution, a user fee "must 'reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed," [citation]; second, the fee must not 'be excessive in relation to costs incurred by the taxing authorities." [citation]." (*Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 906 F.2d 516, 518 (11th Cir. 1990) [citing *Evansville-Vanderburgh Airport Authority District v. Delta*

Airlines, 405 U.S. 707, 717-719 (1972)].) User fees "purportedly assessed to reimburse the State for costs incurred in providing specific quantifiable services" thus violate the dormant Commerce Clause if such fees are "disproportionate to the services rendered" (Alamo Rent-A-Car, Inc., supra, 906 F.2d at p. 518, quoting Commonwealth Edison Co. v. Montana (1981) 453 U.S. 609, 622-23 & n.12.)

- 54. Many of the customers who rent from Plaintiffs at their locations on Port Property, including the Consolidated Rental Car Facility at the San Diego International Airport, are traveling in interstate commerce and are not California residents.
- 55. The Charge is invalid under the dormant Commerce Clause because it does not fairly approximate the use of the facilities for whose benefit they are imposed, as only a small percentage of the rental car customers who pay the Charge will benefit from the to-be-constructed parking garage that will be funded by the Charge.
- 56. Rental car customers who are traveling from out-of-state, many of whom are out-of-state residents arriving at the San Diego Airport, bear disproportionate costs in comparison to the negligible level of "quantifiable services" they receive. The Charge thus violates the dormant Commerce Clause.

FIRST CAUSE OF ACTION

Tax Refund to Plaintiff Enterprise

- 57. Plaintiff Enterprise hereby incorporates by reference each of the preceding allegations as though fully set forth herein.
- 58. The Charge is unlawful and illegal, including because it violates Propositions 13 and 218 of the California Constitution and the dormant Commerce Clause of the United States Constitution.
- 59. The Charge is a special tax, not a user fee, because it does not fall within any of the seven exceptions to Article XIII C's definition of "tax." The Charge thus violates Article XIII C of the California Constitution, as it was never submitted for and never received the requisite approval by a two-thirds vote of the electorate, as required for special taxes. As such, the Charge is illegal.
 - 60. The Charge also violates the dormant Commerce Clause of the United States

Constitution because it does not fairly approximate the use of the facilities for which it is imposed, and the rental car customers who are out-of-state residents bear disproportionate costs in comparison to the negligible level of quantifiable services they receive.

- 61. Because the Charge is unlawful and invalid on at least these grounds, Plaintiff
 Enterprise is entitled to a refund of the full amount of the Charge collected from its customers and
 paid to the San Diego Port for the Periods at Issue.
 - 62. For these reasons, Plaintiff Enterprise requests judgment as set forth below.

SECOND CAUSE OF ACTION

Tax Refund to Plaintiff Hertz

- 63. Plaintiff Hertz hereby incorporates by reference each of the preceding allegations as though fully set forth herein.
- 64. The Charge is unlawful and illegal, including because it violates Propositions 13 and 218 of the California Constitution and the dormant Commerce Clause of the United States Constitution.
- 65. The Charge is a special tax, not a user fee, because it does not fall within any of the seven exceptions to Article XIII C's definition of "tax." The Charge thus violates Article XIII C of the California Constitution, as it was never submitted for and never received the requisite approval by a two-thirds vote of the electorate, as required for special taxes. As such, the Charge is illegal.
- 66. The Charge also violates the dormant Commerce Clause of the United States

 Constitution because it does not fairly approximate the use of the facilities for which it is imposed,
 and the rental car customers who are out-of-state residents bear disproportionate costs in

 comparison to the negligible level of quantifiable services they receive.
- 67. Because the Charge is unlawful and invalid on at least these grounds, Plaintiff Hertz is entitled to a refund of the full amount of the Charge collected from its customers and paid to the San Diego Port for the Periods at Issue.
 - 68. For these reasons, Plaintiff Hertz requests judgment as set forth below.

COMPLAINT FOR REFUND OF TAXES

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PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray as follows:

- 1. For a refund of monies erroneously or illegally collected or received by Defendant pursuant to the Resolution;
 - 2. For prejudgment and post judgment interest on the above amounts;
- 3. For an award of attorneys' fees under Code of Civil Procedure section 1021.5 and as otherwise authorized by law;
 - 4. For costs of suit as authorized by law; and
 - 5. For any other relief that the Court deems proper.

DATED: June 6, 2019

DAKESSIAN LAW, LTD.

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ву:__

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Attorneys for Plaintiffs
Enterprise Rent-A-Car Co. of Los Angeles, LLC
and The Hertz Corporation

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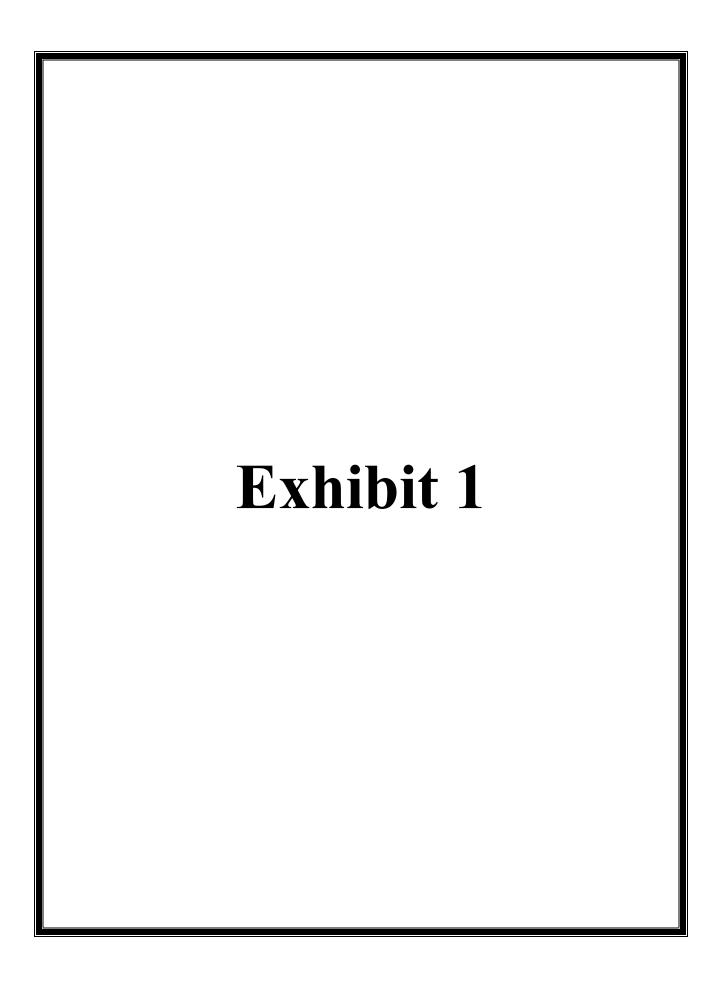
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RESOLUTION 2018-065

RESOLUTION RESUMING COLLECTION OF PREVIOUSLY ADOPTED USER FEE TO BE COLLECTED BY TRANSPORTATION VENDORS DOING BUSINESS ON TIDELANDS

WHEREAS, the San Diego Unified Port District (District) is a public corporation created by the legislature in 1962 pursuant to Harbors and Navigation Code Appendix 1, (Port Act); and

WHEREAS, on December 15, 1998, the Board of Port Commissioners (Board) adopted Ordinance 2030, An Ordinance Adopting a User Fee to be Collected by Transportation Vendors Doing Business on Tidelands to be used to fund parking structures on District property intended to serve convention centers (User Fee); and

WHEREAS, between 1999 and 2006, collected User Fees paid for 100% of the construction of the parking facility built adjacent to the San Diego Convention Center (SDCC) and collection was suspended once all recoverable costs for that project were collected, and

WHEREAS, the District adopted and collected the User Fee during the time it operated the San Diego International Airport, and continued collection after operation of the San Diego International Airport was transferred by the California legislature to the newly-created San Diego County Regional Airport Authority (SDCRAA); and

WHEREAS, the District's Chula Vista Bayfront project represents one of the last truly significant large-scale waterfront development opportunities in Southern California. It seeks to transform a largely vacant and underutilized industrial landscape into a thriving destination including convention center facilities, a resort hotel, marinas, restaurants, and public spaces on the Chula Vista waterfront; and

WHEREAS, in 2012, the California Coastal Commission approved the Chula Vista Bayfront Master Plan (CVBMP), a joint planning effort between the District, the City of Chula Vista, and Pacifica Companies. The purpose of developing a master plan, which included certification of the CVBMP Final Environmental Impact Report (FEIR) and Port Master Plan Amendment (PMPA), was to create a blueprint for the transformation of the Chula Vista waterfront into a world-class destination for local residents and visitors; and

WHEREAS, a significant aspect of the Chula Vista Bayfront is the construction of an approximately 275,000 square foot convention center, including a 1,600-space parking garage primarily intended to serve the convention center; and

WHEREAS, a significant number of cars rented from rental car companies conducting business on District tidelands will have the Chula Vista Bayfront convention center facilities on District-owned land as a destination and, therefore, will have a significant impact on the requirement for parking facilities; and

WHEREAS, an analysis conducted by Keyser Marston & Associates, Inc., evidences the connection between cars rented from rental car companies conducting business on District tidelands and the requirements for parking at the Chula Vista Bayfront convention center facilities, that the Chula Vista Bayfront convention center facilities will increase the demand for rental cars on District tidelands, that collection of the previously adopted User Fee will not negatively impact the demand for rental cars from rental car companies conducting business on District tidelands, and, finally, that the overall project will have significant economic benefits to the entire region; and

WHEREAS, District staff recommends resuming collection of the previously adopted User Fee to fund one or more parking structures located on District-owned property and adjacent to and intended principally to serve the convention center facilities on District-owned land in Chula Vista. Use of this fee is consistent with the principle that users of District facilities who enjoy the opportunities and benefits that such facilities create, pay for such opportunities and benefits – including, in this case, car renters utilizing District property related to rental car transactions and, additionally, a portion of these car renters utilizing the parking facilities to be funded by the fee and the adjacent convention center.

NOW, THEREFORE, BE IT RESOLVED that the Board of Port Commissioners of the San Diego Unified Port District, as follows:

Section 1. The Board finds that a significant number of cars rented from rental car companies conducting business on District tidelands will have the Chula Vista Bayfront convention center facilities on District-owned land as a destination and, therefore, will have a significant impact on the requirement for parking facilities, and that the previously-adopted user fee amount is a reasonable amount to charge for the benefit of using District tidelands related to rental car transactions and, additionally, the availability of the parking facilities to be funded by the fee.

Section 2. Beginning May 10, 2018, in accordance with Ordinance 2030, each rental car company conducting business on District tidelands shall commence collection of the User Fee previously adopted by Ordinance 2030 on behalf of the District and pay collected User Fees to the District.

2018-065

Section 3. Collected User Fees shall be used to fund one or more parking structures located on District-owned property and adjacent to and intended principally to serve the Chula Vista Bayfront convention center facilities on District-owned land.

APPROVED AS TO FORM AND LEGALITY: GENERAL COUNSEL

By Assistant/Deputy

PASSED AND ADOPTED by the Board of Port Commissioners of the San Diego Unified Port District, this 10th day of April, 2018, by the following vote:

AYES: Bonelli, Castellanos, Malcolm, Merrifield, Moore, Valderrama, and Zucchet

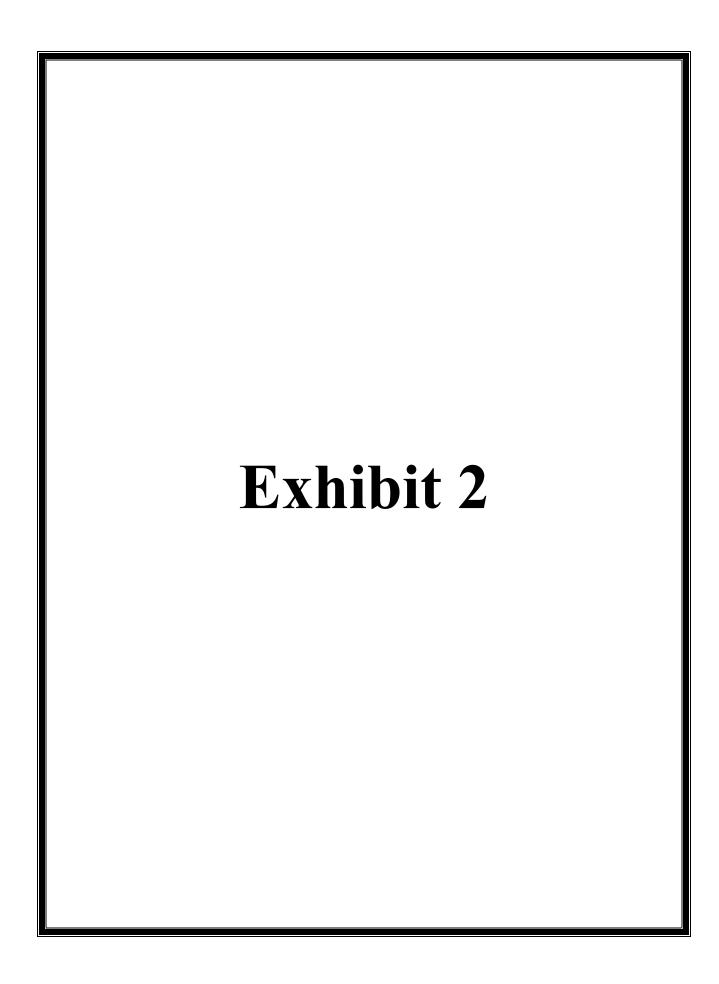
NAYS: None. EXCUSED: None. ABSENT: None. ABSTAIN: None.

> Rafael Castellanos, Chairman Board of Port Commissioners

ATTEST:

Donna Morales District Clerk

(Seal)



SAN DIEGO UNIFIED PORT DISTRICT

ORDINANCE 2030

AN ORDINANCE ADOPTING A USER FEE TO BE COLLECTED BY TRANSPORTATION VENDORS DOING BUSINESS ON DISTRICT TIDELANDS

WHEREAS, the San Diego Unified Port District (District) was established to manage San Diego Harbor, operate San Diego International Airport, Lindbergh Field, (Airport) and administer non-military tideland areas on San Diego Bay; and

WHEREAS, the Board of Port Commissioners governs the District and Twenty Seven (27) miles of coastal property in the member cities of Chula Vista, Coronado, Imperial Beach, National City and San Diego; and

WHEREAS, the District is the owner, joint operator and proprietor of the San Diego Convention Center (Convention Center); and

WHEREAS, many transportation vendors such as car rental companies operate on District property, both at the Airport and off-Airport on District tidelands; and

WHEREAS, some car rental companies, though not located on District tidelands, serve customers originating on District tidelands, including the Airport; and

WHEREAS, many of these rental cars have the Convention Center as a destination and, therefore, have a significant impact on the Convention Center parking facilities; and

WHEREAS, this impact will be exacerbated by the expansion of the Convention Center which is currently ongoing; and WHEREAS, these policies and practices require that the costs and expenses for facilities be paid by the users of such facilities who enjoy the commercial opportunities and benefits that such facilities create, and that such users also pay fees for such opportunities and benefits; and

WHEREAS, Government Code Section 50474 has been amended to allow the District to require a transportation vendor conducting business on District tidelands, including the Airport, to collect a fee from its customers to finance parking structures and would specify further conditions if the vendor is a car rental agency; and

WHEREAS, any parking structures to be constructed with revenues produced from such a fee will be located on District-owned property and will be intended to serve the Convention Center, NOW, THEREFORE,

The Board of Port Commissioners of the San Diego Unified Port District does ordain as follows:

Section 1. Each rental car company conducting business on District tidelands shall collect, in addition to any other charges and fees, a fee of Three Dollars and Fifty Cents (\$3.50) on each rental car transaction. For purposes of this ordinance, a rental car transaction is a contract between the rental car company and its customer for the rental of a vehicle, regardless of the term of the rental period. Each individual contract shall be a separate rental car transaction for which the fee will be payable.

Section 2. If a rental car company conducting business on District tidelands operates a facility not located on District tidelands, then the rental car company shall be subject to the fee requirement of this Section if either of the following occurs:

a. The customer is picked up from a location on District tidelands,

- b. The customer enters into a car rental agreement with the rental car company within Twenty Four (24) hours of arrival at the Airport and rental car arrangements or reservations were made by the customer using a telephone located at the Airport information board.
- Section 3. In addition to the requirements of Civil Code Section 1936, the rental car company shall do all of the following:
 - a. Collect the fee on the District's behalf.
 - b. Disclose the fee in any quotation, communication or advertisement.
 - c. Disclose the amount of the fee and the location where it will be imposed.
 - d. Separately identify the fee on its rental agreement.
 - Section 4. Each rental car company shall:
 - a. Segregate and earmark each transaction fee imposed pursuant to this ordinance as property of the District.
 - b. Pay to the District, on a monthly basis, all transaction fees imposed on its customers as required by this ordinance.
 - c. Comply with such other rules or regulations as may be established by the Executive Director from time to time for the collection, handling and remittance of transaction fees.
- Section 5. That the proposed project is statutorily exempt under the California Environmental Quality Act, Resources Agency Guidelines, Section 15273 and District Resolution 97-191.

Section 7. This ordinance shall take effect on the 31st day from its passage by the Board of Port Commissioners; upon becoming effective, the provisions of said ordinance shall be operative and implemented commencing January 15, 1999.

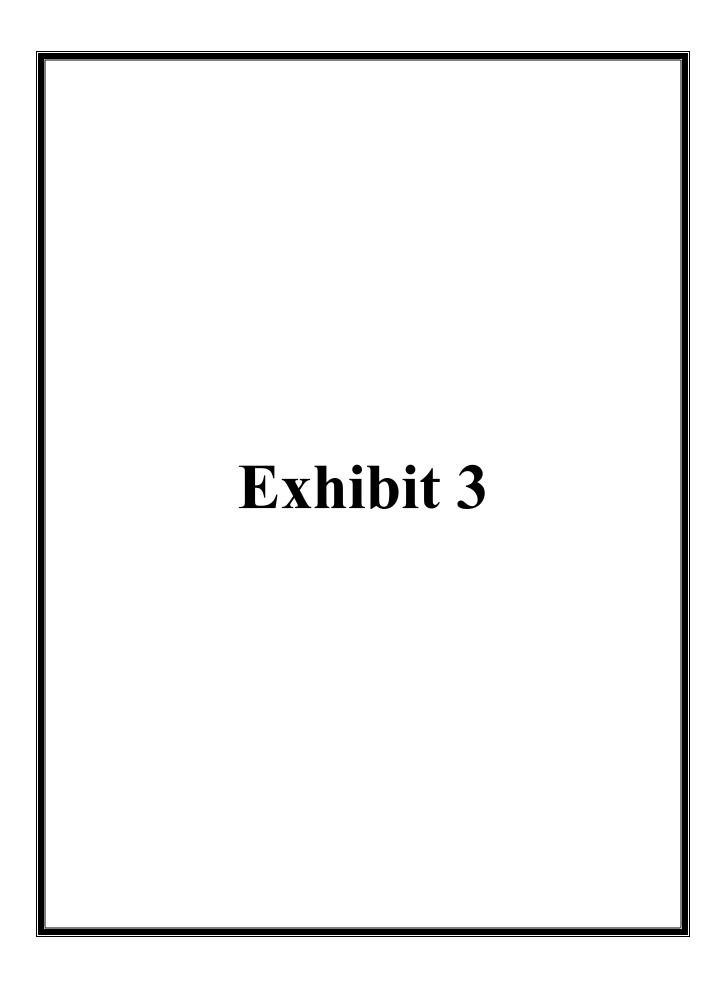
RG:sw 12/15/98

San Diego Unified Port District

Office of the Clerk

CERTIFICATION OF VOTE

Passed and	d adopted by	y the B	oard of Port C	Commissioners	of the San Die	go Unified Por
District on	December	15,	1998, by the following vote:			
Commissioners	<u>Ye</u>	<u>as</u>	<u>Nays</u>	Excused	<u>Absent</u>	Abstained
Susan Lew		<u> </u>				*****
David Malcolm		<u> </u>				
J. Michael McDad	de <u> </u>	<u> </u>	e	**************************************		•
Patricia McQuate	er <u>></u>	<u> </u>		*	•	**************************************
Paul H. Speer	<u> </u>	<u> </u>	***************************************			
Frank J. Urtasun	<u> </u>	<u> </u>	-			
Jess Van Devent	er <u>></u>	<u> </u>	dischard Maryon	-	***************************************	
AUTHENTICATE	DBY:		Chair of th	Muluf ne Board of Port	Commissione	 rs
		<u></u> Ву:	Clerk of th	RISTINE M. STI le San Diego Ur	nified Port Dist	rict
(Seal)				Deputy Cleri	<	
Resolution Numbe or Ordinance Number	0000					





445 S. FIGUEROA STREET SUITE 2210 LOS ANGELES, CA 90071 213.516.5500 (O) 213.516.5502 (F) 1215 K STREET SUITE 1700 SACRAMENTO, CA 95814 916.307.6900

www.dakessianlaw.com

Ruben Sislyan

Direct Phone: 213.516.5504 Email: ruben@dakessianlaw.com

October 25, 2018

VIA PERSONAL SERVICE; AND CERTIFIED MAIL WITH RETURN RECEIPT

Clerk of the San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Re: Claim for Refund of Rental Car "User Fees"

Claimant: Enterprise Rent-A-Car Co. of Los Angeles, LLC

Amount Claimed: \$565,446.00 or more

Dear Sir or Madam:

Our office represents Enterprise Rent-A-Car Co. of Los Angeles, LLC ("Claimant") in this matter. Claimant's address is 333 City Boulevard West, Suite 1101, Orange, CA 92868. However, we ask that you direct any and all correspondence regarding this matter to our office at the following address:

Attn: Ruben Sislyan Dakessian Law, Ltd. 445 South Figueroa Street, Suite 2210 Los Angeles, CA 90071

Please also send a copy of any and all correspondence regarding this matter to Douglas W. Sullivan, who also represents Claimant in this matter, to the following address:

Attn: Douglas W. Sullivan Crowell & Moring LLP 3 Embarcadero Center, 26th Floor San Francisco, CA 94111

In accordance with Board of Port Commissioners Policy No. 640 (filed July 24, 2013 as Document Number 60576) and Part 3 of Division 3.6 of Title 1 of the California Government

Clerk of the San Diego Unified Port District October 25, 2018 Page 2 of 6

Code (commencing with section 900) regarding Claims Against Public Entities—particularly Chapter 2 (commencing with section 910) regarding Presentation and Consideration of Claims—this is a claim for refund of the entire amount of the alleged rental car "user fees," imposed by the San Diego Unified Port District ("District") under Resolution 2018-065, collected by Claimant from its rental car customers and remitted to the District to date, in the amount of \$565,446.00 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. This claim is a non-limited civil case. The details of the claim are discussed below.

I. Background Regarding The Occurrences And Transactions Giving Rise To The Claim

A. The District's Imposition Of The Rental Car "User Fee"

By way of background, on April 10, 2018, the District's Board of Port Commissioners adopted Resolution 2018-065, which, as of May 10, 2018, has required rental car companies conducting business on District tidelands ("Port Property"), such as Claimant, to collect a "user fee" of \$3.50 per rental car transaction (the "Charge") from all rental car customers, on behalf of the District, and to pay the collected "user fees" to the District, in accordance with an ordinance under which fee collection ended over a decade ago, Ordinance 2030. Resolution 2018-065 provides that the new monies generated by this new Charge will be used to pay for the construction of a parking structure adjacent to the planned Chula Vista Bayfront Convention Center on Port Property in Chula Vista in San Diego County.

B. Claimant's Business Operations On Port Property

Claimant is in the business of renting cars to customers. It conducts business under the Enterprise, National, and Alamo car rental brands. Claimant enters into car rental transactions on Port Property, including at the common car rental facility located at the San Diego Airport, at counters located in hotels near the San Diego Convention Center and the San Diego Airport, and at branches in the vicinity of the San Diego Airport that are strategically located to serve customers whose personal automobiles are being serviced or repaired at nearby car dealerships and repair shops.

[Continued on next page.]

C. Collection And Remittance Of The Charge And Refund Amount

With respect to rental car transactions occurring on Port Property, as required under Resolution 2018-065, since May 10, 2018, Claimant has collected the Charge from its rental car customers renting cars from Claimant's locations on Port Property, and remitted it to the District on a monthly basis. To date, Claimant has collected the Charge and remitted it to the District in the following amounts, broken down by month:

Charge Amount Collected By Claimant And Remitted to District					
Month	Month Date of Payment Amount (\$)				
May 2018	Jun. 19, 2018	44,439.50			
Jun. 2018	Jul. 19, 2018	114,852.50			
Jul. 2018	Aug. 17, 2018	129,195.50			
Aug. 2018	Sep. 18, 2018	146,307.00			
Sep. 2018	Oct. 18, 2018	130,651.50			
Total		565,446.00			

Copies of Claimant's monthly remittance statements submitted to the District and proof of payment of the amounts stated above to the District are enclosed as **Exhibit A**. This claim for refund is for the entire amount of the Charge collected by Claimant from its rental car customers and remitted to the District to date in the amount of \$565,446.00 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. For the reasons discussed below, Claimant claims this refund in order to return the amounts to its rental car customers who paid the Charge.

II. Grounds For Claim For Refund

Claimant is entitled to a refund on at least three separate and independently dispositive grounds. Each ground is discussed below.

A. The Charge Is An Unlawful And Illegal Special Tax

First, a refund is due because the Charge is an unlawful and illegal special tax disguised as a "user fee," in violation of the California Constitution, for the reasons discussed below.

When customers rent vehicles from Claimant at the San Diego Airport (which is located on Port Property) or at Claimant's various branch offices on Port Property, including branch offices located near auto repair shops (which too are located on Port Property), Claimant must collect the alleged "user fees" to fund a Chula Vista parking structure that the District plans to build in the future. Claimant must collect the Charge from rental car customers even though those customers may never go to Chula Vista, and even though it is impossible for those customers to use a parking garage that does not yet exist. Thus, the Charge is imposed upon rental car customers who will not make use of the planned Chula Vista parking structure. Said differently, imposition of the Charge on rental car customers is not—as California law requires—limited to

Clerk of the San Diego Unified Port District October 25, 2018 Page 4 of 6

those who will actually use the Chula Vista parking structure or in amounts reasonably reflecting the value of benefits conferred by the District on those customers. It is false that a significant number of rental cars from transactions on Port Property will have the Chula Vista Bayfront convention center as their destination and will use the convention center's parking structure. Rather, the overwhelming majority of rental cars will not use the convention center's parking facilities (even when completed), and the overwhelming majority of cars that will use the convention center's parking facilities will not be rental cars originating from rental car companies on Port Property. Thus, while the Charge may benefit the general public, it does not confer any specific benefit upon customers of rental car companies situated on Port Property. For this reason, the Charge is not a "user fee" and is unlawful.

The Charge also does not constitute a regulatory fee, as a stated purpose of Resolution 2018-065 does not include the regulation of rental car companies, and Resolution 2018-065, by its terms, does not regulate Claimant's activities. The Charge also does not represent a development fee in return for building permits or other governmental privileges.

Under California law, the label "user fee" used by the District in Resolution 2018-065 does not determine the character of the Charge. Both legally and factually, the Charge is a special tax. Specifically, Proposition 218, known as the "Right to Vote on Taxes Act," amended the California Constitution to ensure that citizens would have the right to vote on whether local governments should enact taxes, such as the Charge at issue here. Under California Constitution Article 13C, Section 2 (enacted as part of Proposition 218), all taxes imposed by any local government shall be deemed to be either general taxes or special taxes. A special tax means any tax imposed for specific purposes. Any general tax must be approved by a majority of the electorate.

The purpose of Proposition 218 was to protect the voters' fundamental power to decide whether to enact taxes. Proposition 218 was motivated by the actions of local governments to circumvent then existing requirements for voter approval of special taxes and assessments contained in Proposition 13, including California Constitution Article 13A, Section 4, requiring that special taxes be approved by a two-thirds vote. The Charge is a special tax within the meaning of Proposition 218 and Proposition 13. It is not a "user fee" or any other kind of legitimate fee. And the Charge was not submitted to or approved by the voters of the District. As such, it is unlawful. For this reason, Claimant is entitled to a refund.

B. The Charge Violates The "Fair Approximation" Requirement Under the Commerce Clause

Claimant's entitlement to a refund also follows from established Commerce Clause jurisprudence. To be valid under the Commerce Clause of the United States Constitution, a user fee "must 'reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed,' [citation]; second, the fee must not 'be excessive in relation to costs incurred by the taxing authorities.' [citation]." (*Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 906 F.2d 516, 518 (11th Cir. 1990) [citing *Evansville-Vanderburgh Airport Authority District v. Delta Airlines*, 405 U.S. 707, 717-719 (1972)].)

Here, for reasons already discussed, the Charge is not reasonably related to rental car customers' use of the to-be-constructed Chula Vista parking structure. Nor does the amount of the charge reasonably reflect the value of benefits conferred by the District on those customers. Accordingly, the Charge does not "reflect a fair...approximation of the use of the facilities," and is illegal in violation of the Commerce Clause. For this reason too, Claimant is entitled to a refund.

C. The Charge Is Illegal Because It Violates Federal Law Prohibiting Use of Airport Revenue For Non-Airport Purposes

Finally, the charge violates federal law prohibiting use of airport revenue for non-airport purposes. Specifically, the District is prohibited from imposing a tax, fee, or charge "exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes." (49 U.S.C.A. § 40116(d)(2)(A)(iv).) This is because such acts "unreasonably burden and discriminate against interstate commerce[.]" (*Id.* at 40116(d)(2)(A).)

The Charge is imposed only on rental car companies that have a business location at the San Diego Airport, and, as such, the Charge is "exclusively upon any business located at a commercial service airport." And because the amounts collected will be used to construct a parking structure in Chula Vista, and not for any airport purpose, the Charge is not "wholly utilized for airport or aeronautical purposes." The Charge accordingly violates 49 U.S.C.A. § 40116(d)(2)(A)(iv) and "unreasonably burden[s] and discriminate[s] against interstate commerce[,]" in violation of the Commerce Clause, and is unlawful. For this reason too, Claimant is entitled to a refund.

III. Conclusion

For the reasons discussed, Claimant is entitled to a refund of \$565,446.00 or more, plus applicable interest, expenses, litigation costs, and attorneys' fees as provided by law. Due to the continuing nature of the Charge, the amount subject to refund will continue to increase over time. This claim is a non-limited civil case.

* * *

Should you have any questions, please feel free to call me at (213) 516-5504. Thank you for your attention to this important matter.

Sincerely,

Ruben Sislyan Attorney at Law Clerk of the San Diego Unified Port District October 25, 2018 Page 6 of 6

Enclosure: As stated

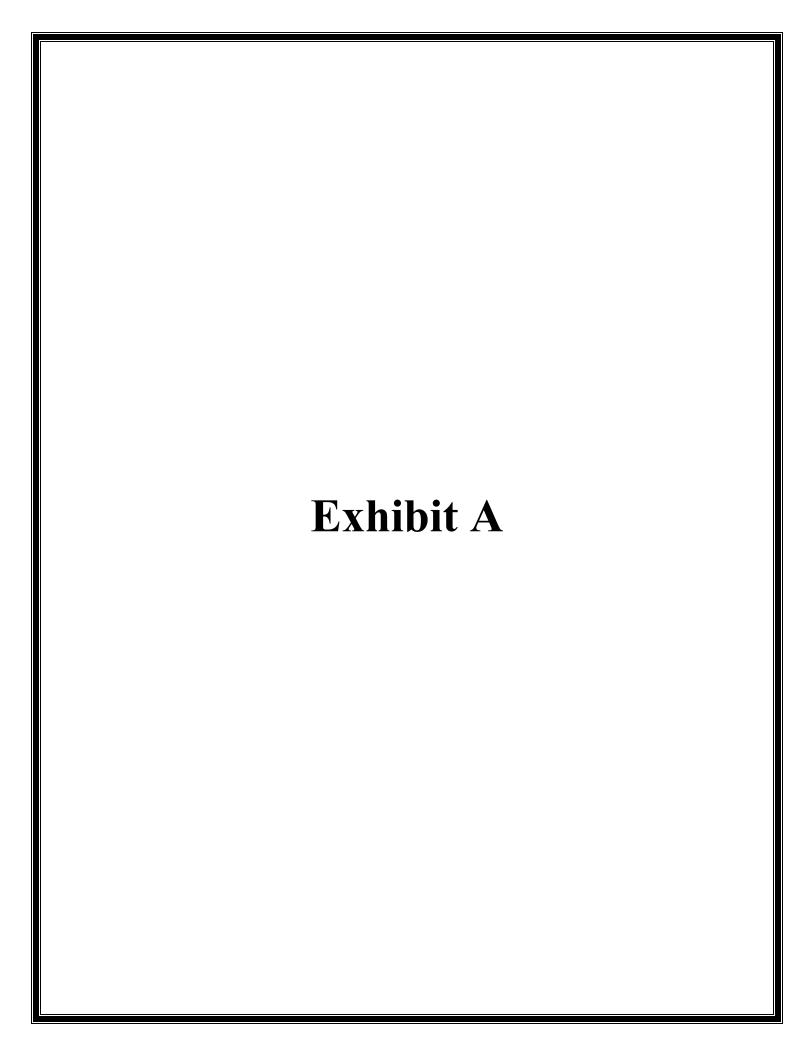
cc via certified mail:

Mr. Robert Monson Auditor of the San Diego Unified Port District San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Ms. Ann Moore Secretary of the Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

cc via email:

Mr. Douglas W. Sullivan dsullivan@crowell.com





PORT OF SAN DIEGO

Finance Department
P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488
(619)886-6258

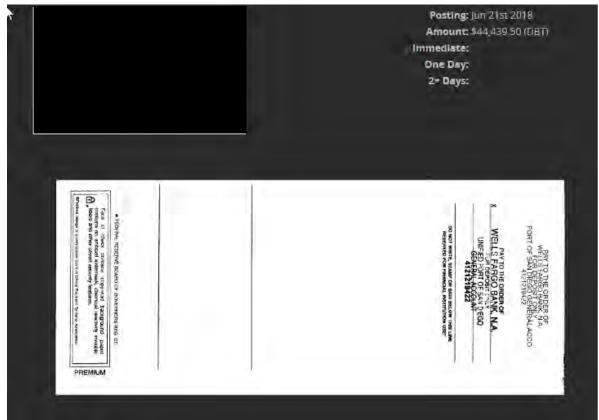
Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number	0007.0063.001	
Customer Number	866	
DATE:	06/18/18	

DESC	RIPTION		AMOUNT
	Lease Effective Date	5/10/18	
CONCESSION	N INVOICE PERIOD COVERED:	05/10/18 - 05/31/18	
RENTA	DESCRIPTION L CAR TRANSACTION	GROSS AMOUNT RATE(EA 12.697 3.50	DUE & REMIT 44,439.50
		TOTAL DUE AND REMIT	TED: 44,439.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.		
SIGNED	Albert Aguilar	DATE:	06/18/18

Checks may be made payable to the San Diego Unified Port District and mail to the following address: Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488







PORT OF SAN DIEGO

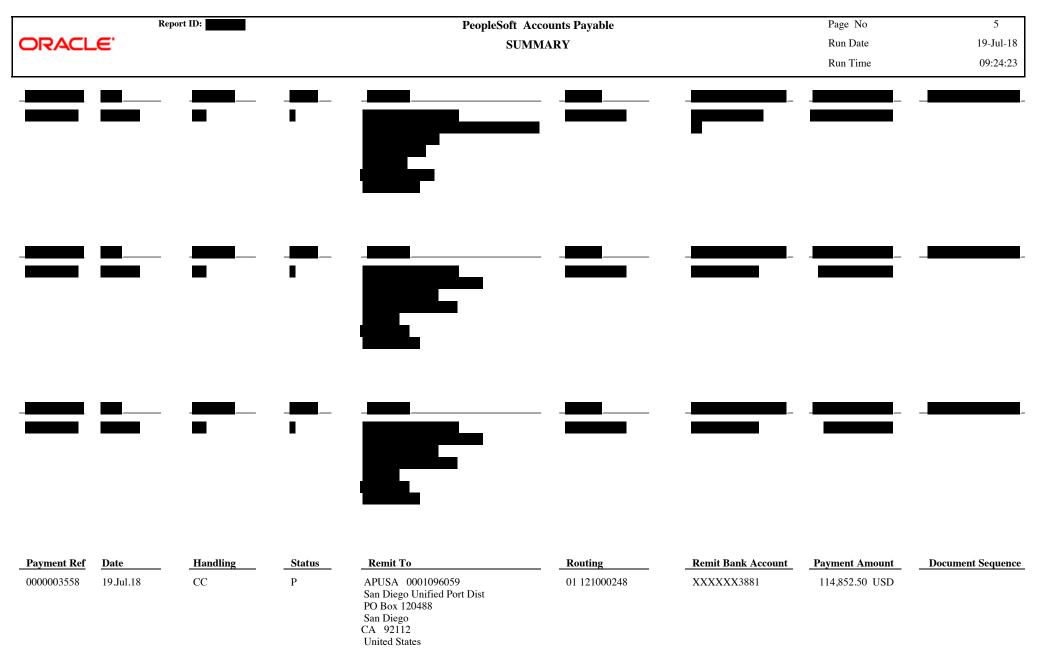
Finance Department
P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488
(619)686-6258

Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number	0007.0063.001	
Customer Number	866	
DATE:	07/18/18	

DESCR	RIPTION		AMOUNT
	Lease Effective Date	5/10/18	
CONCESSION	I INVOICE PERIOD COVERED:	06/01/18 - 06/30/18	
RENTAL	DESCRIPTION	GROSS AMOUNT RATE(EA) 32,815 3.50	DUE & REMIT 114,852.50
		TOTAL DUE AND REMITTE	D: 114,852.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.		
SIGNED	Albert Aguilar	DATE:	06/18/18

Checks may be made payable to the San Diego Unified Port District and mail to the following address: Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488





PORT OF SAN DIEGO

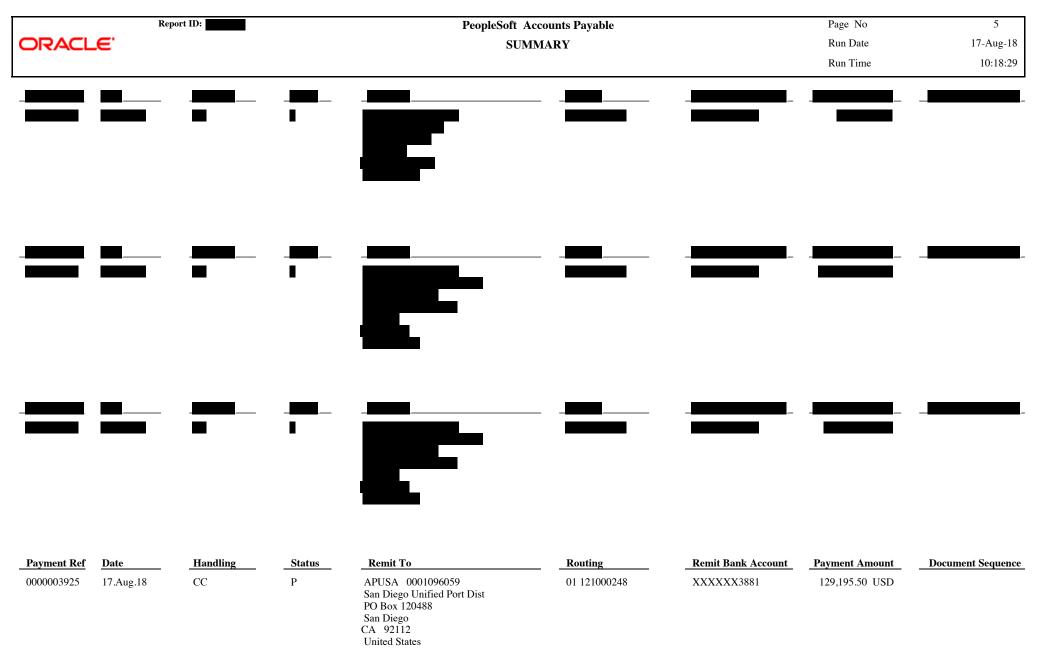
Finance Department
P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488
(619)686-6258

Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number	0007.0063.001	
Customer Number	866	
DATE:	08/16/18	

	RIPTION	AMOUNT	
	Lease Effective Date	5/10/18	
CONCESSION	I INVOICE PERIOD COVERED:	07/01/18 - 07/31/18	
RENTAL	DESCRIPTION	GROSS AMOUNT RATE(EA) DUE & RE. 36,913 3.50 129,19	:
		TOTAL DUE AND REMITTED: 129,19	5.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.		
SIGNED	Albert Aguilar	DATE: 08/11	6/18

Checks may be made payable to the San Diego Unified Port District and mail to the following address: Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488



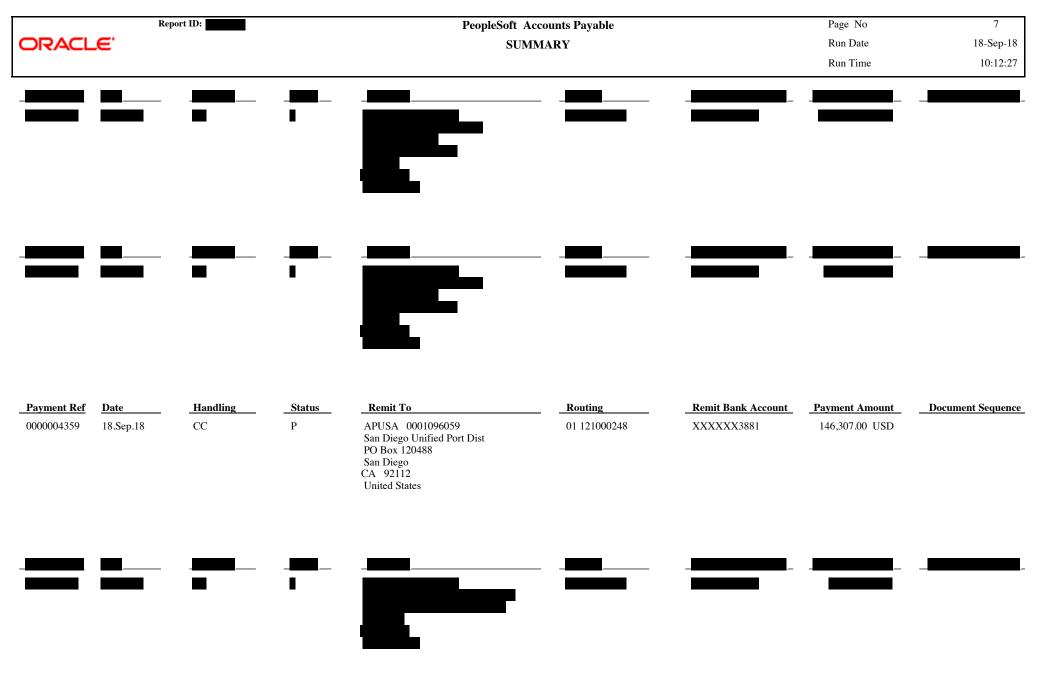


Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number	0007.0063.001	
Customer Number	866	
DATE:	09/13/18	

DESCI	RIPTION		AMOUNT
	Lease Effective Date	5/10/18	
CONCESSION	N INVOICE PERIOD COVERED:	08/01/18 - 08/31/18	
RENTA	DESCRIPTION L CAR TRANSACTION	GROSS AMOUNT RATE(EA) 3.50	DUE & REMIT 146,307.00
		TOTAL DUE AND REMITTE	D: 146,307.00
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.		
SIGNED	Albert Aguilar	DATE:	09/13/18



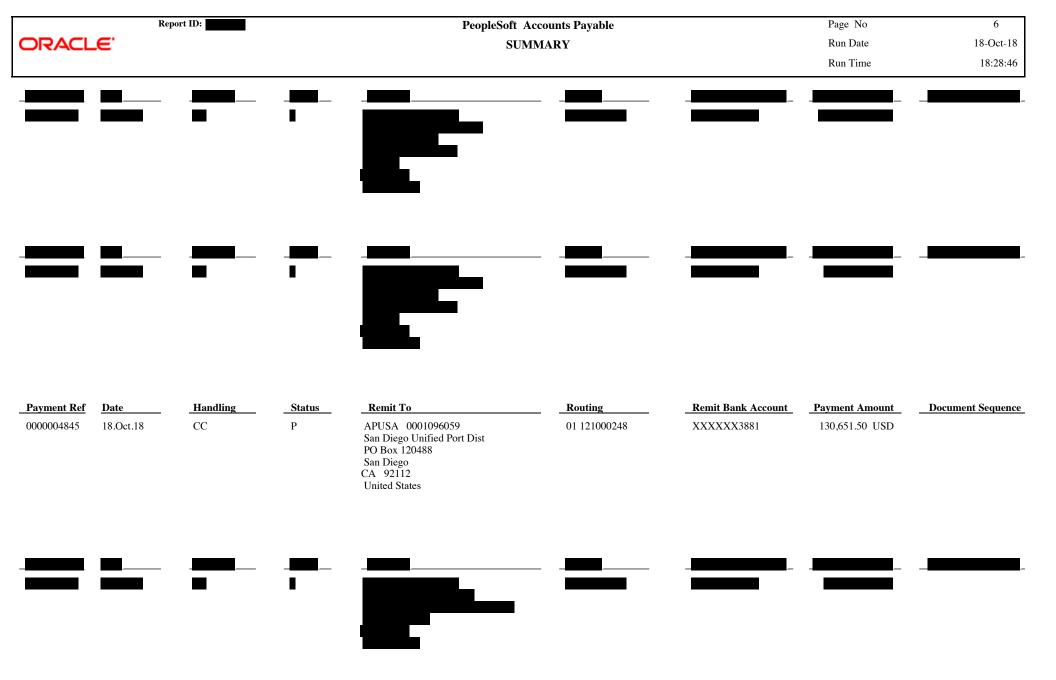


Finance Department
P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488
(619)686-6258

Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number_	0007.0063.001	
Customer Number	866	_
DATE:	10/16/18	

DESCR	RIPTION	Α	MOUNT
	Lease Effective Date	5/10/18	
CONCESSION	I INVOICE PERIOD COVERED:	09/01/18 - 09/30/18	
RENTAL	CAR TRANSACTION DESCRIPTION	GROSS AMOUNT RATE(EA) 37,329 3.50	DUE & REMIT 130,651.50
		TOTAL DUE AND REMITTED:	130,651.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.		
SIGNED	Albert Aguilar	DATE:	10/16/18



			For Court Use Only
Ref.	No. or File No	<i>:</i>	
and Branch Court:			
Hearing Date:	Time:	Dept/Div:	Case Number:
	and Branch Court:	and Branch Court:	

- 1. At the time of service I was at least 18 years of age and not a party to this action.
- 2. I served copies of the Letter dated October 25, 2018 (Re: Claim for Refund of Rental Car "User Fees", Claimant: Enterprise Rent-A-Car Co. of Los Angeles, LLC)
- 3. a. Party served: Clerk of the San Diego Unified Port District

Office of the District Clerk

San Diego Unified Port District

- b. Person served: Gabby Livingston, Document Management Associate
- 4. Address where the party was served: 3165 Pacific Highway, San Diego, CA 92101
- 5. *I served the party:*
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu, Oct 25 2018 (2) at: 03:24 PM

Recoverable cost Per CCP 1033.5(a)(4)(B)

- 6. Person Who Served Papers:
 - a. Jacob Gardner (3173, San Diego County)
 - b. FIRST LEGAL

1517 W. Beverly Blvd. LOS ANGELES, CA 90026

c. (213) 250-1111

- **d.** *The Fee* for Service was:
- e. I am: A Registered California Process Server

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/26/2018

(Date)

(Signature)



VOID

9490 9118 9956 0749 0660 04

445 S. Figueroa Street

Los Angeles CA 90071

CERTIFIED MAIL

CERTIFIED MAIL

CERTIFIED MAIL

Marty Dakessian Dakessian Law, Ltd.

Suite 2210

PS Form 3800 6/02

Certified Mail stam WITHOUT Physical Return icos Mon

Receipt Service (No Return Receipt Card) Instructions

- 1. Apply this label to the TOP EDGE of the mailpiece.
- 2. Apply address label below to the CENTER of the mailpiece.
- 3. Peel the Certified Mail label below and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Delivery Address when used with (a) or Return Address when used with (1)

← Fold and Tear →

OUTBOUND TRACKING NUMBER

9414 7118 9956 0749 0660 24 RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0749 0660 04

FEES

Postage per piece Certified Fee

\$1.840 \$3,450 \$2.750

Return Receipt Fee Total Postage & Fees:

\$8.040

ARTICLE ADDRESS TO:

Clerk of San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

Postmark Here

COMPLETE THIS SECTION ON DELIVERY

- Ensure items 1, 2, and 3 are completed.
- Attach this card to the back of the mailpiece, or on the front if space permits.

SENDER: COMPLETE THIS SECTION

X

B. Received By: (Printed Name)

✓ Certified Mail®

1. Article Addressed to:

Clerk of San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0749 0660 04

2. Article Number (Transfer from service label) 9414 7118 9956 0749 0660 24

A. Signature: (Addressee or Agent)

3. Service Type

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

9414 7118 9956 0749 0660 24

Clerk of San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

B

Certified Mail WITH Physical Return Receipt Service

(Uses Return Receipt Card) Instructions

- 1. Apply address label above to the back of this card.
- 2. Apply this card to the TOP EDGE of the mailpiece.
- 3. Peel the Certified Mail label above and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Certified Mail Labels (SDC-3930) .406; 7,216,110; 7,236,956; 7,236,970 926; 8,027,927; 8,027,935; 8,041,644; 943 and 8,843,464,

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stamps com

CERTIFIED MAIL

Certified Mail Receipt

Postal Service

PS Form 3811 Facsimile, July 2015 (SDC 3930)

Domestic Return Receipt

VOID

Certified Mail WITHOUT Physical Return Receipt Service

(No Return Receipt Card) Instructions

- 1. Apply this label to the TOP EDGE of the mailpiece.
- 2. Apply address label below to the CENTER of the mailpiece.
- 3. Peel the Certified Mail label below and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Delivery Address when used with (a) or Return Address when used with (1)

← Fold and Tear →

B

9490 9118 9956 0749 0891 57

445 S. Figueroa Street

Los Angeles CA 90071

CERTIFIED MAIL

CERTIFIED MAIL

Marty Dakessian Dakessian Law, Ltd.

Suite 2210

PS Form 3800 6/02

OUTBOUND TRACKING NUMBER 9414 7118 9956 0749 0891 15

RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0749 0891 57

FEES

\$1.840 Postage per piece Certified Fee \$3,450 \$2,750 Return Receipt Fee Total Postage & Fees: \$8,040

ARTICLE ADDRESS TO:

Certified Mail Receipt

CERTIFIED MAIL

S

Postal Service

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

Postmark

X

3. Service Type

Here

B. Received By: (Printed Name)

A. Signature: (☐ Addressee or ☐ Agent)

D. Is delivery address different from item 1?

If YES, enter delivery address below:

✓ Certified Mail®

COMPLETE THIS SECTION ON DELIVERY

CERTIFIED MAIL





9414 7118 9956 0749 0891 15

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

SENDER: COMPLETE THIS SECTION

- Ensure items 1, 2, and 3 are completed.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0749 0891 57

2. Article Number (Transfer from service label)

9414 7118 9956 0749 0891 15

PS Form 3811 Facsimile, July 2015 (SDC 3930)

Domestic Return Receipt

C. Date of Delivery

☐ Yes

Certified Mail WITH Physical Return Receipt Service (Uses Return Receipt Card) Instructions

- 1. Apply address label above
- to the back of this card. 2. Apply this card to the TOP
- EDGE of the mailpiece.
- 3. Peel the Certified Mail label above and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

(4) Top of the page

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COM S

Certified Mail Labels (SDC-3930)

VOID

9490 9118 9956 0749 0828 20

445 S. Figueroa Street

Los Angeles CA 90071

CERTIFIED MAIL

CERTIFIED MAIL

CERTIFIED MAIL

Marty Dakessian Dakessian Law, Ltd.

Suite 2210

Certified Mail WITHOUT Physical Return Receipt Service

(No Return Receipt Card) Instructions

- 1. Apply this label to the TOP EDGE of the mailpiece.
- 2. Apply address label below to the CENTER of the mailpiece.
- 3. Peel the Certified Mail label below and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Delivery Address when used with (3) or Return Address when used with (3)

← Fold and Tear →

PS Form 3800 6/02

OUTBOUND TRACKING NUMBER

9414 7118 9956 0749 0828 64

RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0749 0828 20

FEES

Postage per piece \$1.840 Certified Fee \$3.450 \$2.750 Return Receipt Fee

Total Postage & Fees: \$8.040

ARTICLE ADDRESS TO:

Ms Ann Moore Secretary of Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

Postmark Here

COMPLETE THIS SECTION ON DELIVERY

- Ensure items 1, 2, and 3 are completed.
- Attach this card to the back of the mailpiece, or on the front if space permits.

SENDER: COMPLETE THIS SECTION

X

3. Service Type

B. Received By: (Printed Name)

✓ Certified Mail®

1. Article Addressed to:

Ms Ann Moore Secretary of Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0749 0828 20

2. Article Number (Transfer from service label) 9414 7118 9956 0749 0828 64

A. Signature: (☐ Addressee or ☐ Agent)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

☐ Yes



9414 7118 9956 0749 0828 64

Ms Ann Moore Secretary of Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

B

Certified Mail

WITH Physical Return Receipt Service

(Uses Return Receipt Card) Instructions

- 1. Apply address label above to the back of this card.
- 2. Apply this card to the TOP EDGE of the mailpiece.
- 3. Peel the Certified Mail label above and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

,406; 7,216,110; 7,236,956; 7,236,970 926; 8,027,927; 8,027,935; 8,041,644; 943 and 8,843,464.

PS Form 3811 Facsimile, July 2015 (SDC 3930)

Domestic Return Receipt

stamps .com

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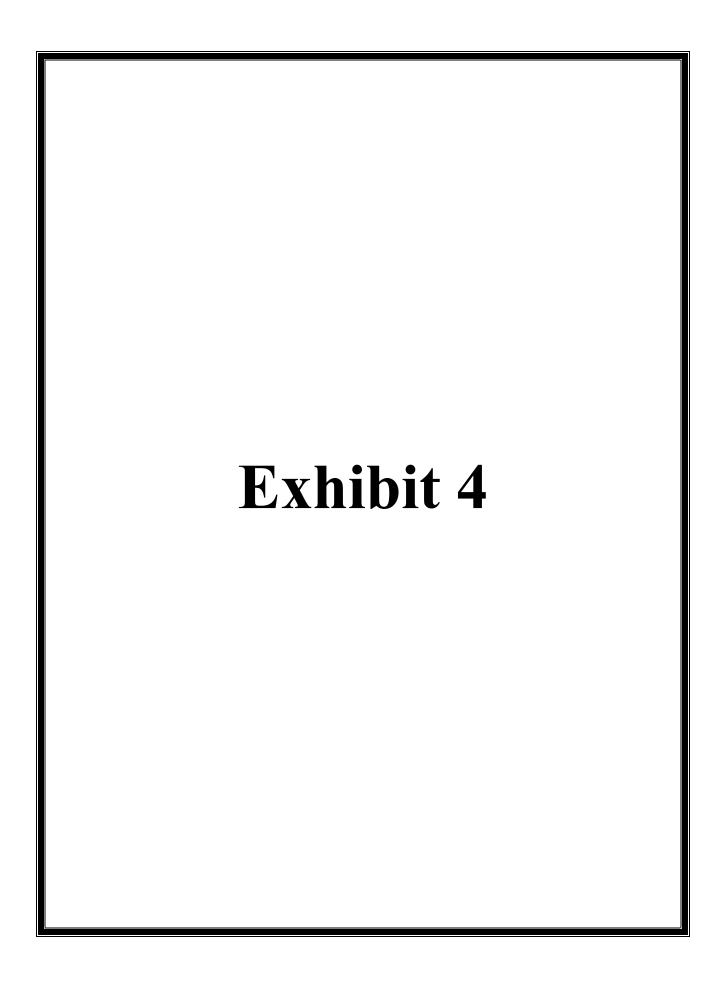
* 1-UP Laser Form * * WUSA CMF - 134 04/17

stamps com

U.S. Postar C.

Certified Mail Receipt

CERTIFIED MAIL





445 S. FIGUEROA STREET SUITE 2210 LOS ANGELES, CA 90071 213.516.5500 (O) 213.516.5502 (F) 1215 K STREET SUITE 1700 SACRAMENTO, CA 95814 916.307.6900

www.dakessianlaw.com

Ruben Sislyan

Direct Phone: 213.516.5504 Email: ruben@dakessianlaw.com

October 25, 2018

VIA PERSONAL SERVICE; AND CERTIFIED MAIL WITH RETURN RECEIPT

Clerk of the San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Re: Claim for Refund of Rental Car "User Fees"

Claimant: The Hertz Corporation Amount Claimed: \$451,328.50 or more

Dear Sir or Madam:

Our office represents The Hertz Corporation ("Claimant") in this matter. Claimant's address is 8501 Williams Road, Estero, FL 33928. However, we ask that you direct any and all correspondence regarding this matter to our office at the following address:

Attn: Ruben Sislyan Dakessian Law, Ltd. 445 South Figueroa Street, Suite 2210 Los Angeles, CA 90071

Please also send a copy of any and all correspondence regarding this matter to Douglas W. Sullivan, who also represents Claimant in this matter, to the following address:

Attn: Douglas W. Sullivan Crowell & Moring LLP 3 Embarcadero Center, 26th Floor San Francisco, CA 94111

In accordance with Board of Port Commissioners Policy No. 640 (filed July 24, 2013 as Document Number 60576) and Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with section 900) regarding Claims Against Public Entities—particularly

Clerk of the San Diego Unified Port District October 25, 2018 Page 2 of 6

Chapter 2 (commencing with section 910) regarding Presentation and Consideration of Claims—this is a claim for refund of the entire amount of the alleged rental car "user fees," imposed by the San Diego Unified Port District ("District") under Resolution 2018-065, collected by Claimant from its rental car customers and remitted to the District to date, in the amount of \$451,328.50 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. This claim is a non-limited civil case. The details of the claim are discussed below.

I. Background Regarding The Occurrences And Transactions Giving Rise To The

A. The District's Imposition Of The Rental Car "User Fee"

By way of background, on April 10, 2018, the District's Board of Port Commissioners adopted Resolution 2018-065, which, as of May 10, 2018, has required rental car companies conducting business on District tidelands ("Port Property"), such as Claimant, to collect a "user fee" of \$3.50 per rental car transaction (the "Charge") from all rental car customers, on behalf of the District, and to pay the collected "user fees" to the District, in accordance with an ordinance under which fee collection ended over a decade ago, Ordinance 2030. Resolution 2018-065 provides that the new monies generated by this new Charge will be used to pay for the construction of a parking structure adjacent to the planned Chula Vista Bayfront Convention Center on Port Property in Chula Vista in San Diego County.

B. Claimant's Business Operations On Port Property

Claimant is in the business of renting cars to customers. It conducts business under the Hertz, Dollar, and Thrifty car rental brands. Claimant enters into car rental transactions on Port Property, including at the common car rental facility located at the San Diego Airport, at counters located in hotels near the San Diego Convention Center and the San Diego Airport, and at branches in the vicinity of the San Diego Airport that are strategically located to serve customers whose personal automobiles are being serviced or repaired at nearby car dealerships and repair shops.

[Continued on next page.]

C. Collection And Remittance Of The Charge And Refund Amount

With respect to rental car transactions occurring on Port Property, as required under Resolution 2018-065, since May 10, 2018, Claimant has collected the Charge from its rental car customers renting cars from Claimant's locations on Port Property, and remitted it to the District on a monthly basis. To date, Claimant has collected the Charge and remitted it to the District in the following amounts, broken down by month and rental brand:

C	Charge Amount Collected By Claimant And Remitted to District					
Month	Month Date of Payment Rental Brand Amount (\$)					
May 2018	Aug. 10, 2018	Hertz	23,415.00	9819064		
May 2018	Aug. 10, 2018	Dollar	4,966.50	15209		
May 2018	Aug. 10, 2018	Thrifty	4,018.00	15209		
Jun. 2018	Aug. 10, 2018	Hertz	65,702.00	9819064		
Jun. 2018	Aug. 10, 2018	Dollar	18,144.00	15209		
Jun. 2018	Aug. 10, 2018	Thrifty	10,790.50	15209		
Jul. 2018	Aug. 24, 2018	Hertz	68,554.50	9823959		
Jul. 2018	Aug. 24, 2018	Dollar	16,632.00	16312		
Jul. 2018	Aug. 24, 2018	Thrifty	14,511.00	16312		
Aug. 2018	Sep. 26, 2018	Hertz	83,881.00	9835957		
Aug. 2018	Sep. 26, 2018	Dollar	17,510.50	18785		
Aug. 2018	Sep. 26, 2018	Thrifty	12,946.50	18785		
Sep. 2018	Oct. 12, 2018	Hertz	79,474.50	20008, 9842988		
Sep. 2018	Oct. 12, 2018	Dollar	17,783.50	20008, 9842988		
Sep. 2018	Oct. 12, 2018	Thrifty	12,999.00	20008, 9842988		
Total			451,328.50			

Copies of Claimant's monthly remittance statements submitted to the District and proof of payment of the amounts stated above to the District are enclosed as **Exhibit A**¹. This claim for refund is for the entire amount of the Charge collected by Claimant from its rental car customers and remitted to the District to date in the amount of \$451,328.50 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. For the reasons discussed below, Claimant claims this refund in order to return the amounts to its rental car customers who paid the Charge.

fact that cancelled check number 9835957 dated September 26, 2018 in the amount of \$191,959.18 was in satisfaction of not only the Charge in the amount of \$83,881.00, but also an unrelated rent payment, invoiced on September 25, 2018, by Claimant to the District in the amount of \$108,078.18.

¹ Please note that the sum of the payments to the District represented by the cancelled checks enclosed as Exhibit A is \$559,406.68, which is in excess of the \$451,328.50 total amount of the Charge collected by Claimant and remitted to the District to date. This discrepancy is due to the

Clerk of the San Diego Unified Port District October 25, 2018 Page 4 of 6

II. Grounds For Claim For Refund

Claimant is entitled to a refund on at least three separate and independently dispositive grounds. Each ground is discussed below.

A. The Charge Is An Unlawful And Illegal Special Tax

First, a refund is due because the Charge is an unlawful and illegal special tax disguised as a "user fee," in violation of the California Constitution, for the reasons discussed below.

When customers rent vehicles from Claimant at the San Diego Airport (which is located on Port Property) or at Claimant's various branch offices on Port Property, including branch offices located near auto repair shops (which too are located on Port Property), Claimant must collect the alleged "user fees" to fund a Chula Vista parking structure that the District plans to build in the future. Claimant must collect the Charge from rental car customers even though those customers may never go to Chula Vista, and even though it is impossible for those customers to use a parking garage that does not yet exist. Thus, the Charge is imposed upon rental car customers who will not make use of the planned Chula Vista parking structure. Said differently, imposition of the Charge on rental car customers is not—as California law requires—limited to those who will actually use the Chula Vista parking structure or in amounts reasonably reflecting the value of benefits conferred by the District on those customers. It is false that a significant number of rental cars from transactions on Port Property will have the Chula Vista Bayfront convention center as their destination and will use the convention center's parking structure. Rather, the overwhelming majority of rental cars will not use the convention center's parking facilities (even when completed), and the overwhelming majority of cars that will use the convention center's parking facilities will not be rental cars originating from rental car companies on Port Property. Thus, while the Charge may benefit the general public, it does not confer any specific benefit upon customers of rental car companies situated on Port Property. For this reason, the Charge is not a "user fee" and is unlawful.

The Charge also does not constitute a regulatory fee, as a stated purpose of Resolution 2018-065 does not include the regulation of rental car companies, and Resolution 2018-065, by its terms, does not regulate Claimant's activities. The Charge also does not represent a development fee in return for building permits or other governmental privileges.

Under California law, the label "user fee" used by the District in Resolution 2018-065 does not determine the character of the Charge. Both legally and factually, the Charge is a special tax. Specifically, Proposition 218, known as the "Right to Vote on Taxes Act," amended the California Constitution to ensure that citizens would have the right to vote on whether local governments should enact taxes, such as the Charge at issue here. Under California Constitution Article 13C, Section 2 (enacted as part of Proposition 218), all taxes imposed by any local government shall be deemed to be either general taxes or special taxes. A special tax means any tax imposed for specific purposes. Any general tax must be approved by a majority of the electorate.

Clerk of the San Diego Unified Port District October 25, 2018 Page 5 of 6

The purpose of Proposition 218 was to protect the voters' fundamental power to decide whether to enact taxes. Proposition 218 was motivated by the actions of local governments to circumvent then existing requirements for voter approval of special taxes and assessments contained in Proposition 13, including California Constitution Article 13A, Section 4, requiring that special taxes be approved by a two-thirds vote. The Charge is a special tax within the meaning of Proposition 218 and Proposition 13. It is not a "user fee" or any other kind of legitimate fee. And the Charge was not submitted to or approved by the voters of the District. As such, it is unlawful. For this reason, Claimant is entitled to a refund.

B. The Charge Violates The "Fair Approximation" Requirement Under the Commerce Clause

Claimant's entitlement to a refund also follows from established Commerce Clause jurisprudence. To be valid under the Commerce Clause of the United States Constitution, a user fee "must 'reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed," [citation]; second, the fee must not 'be excessive in relation to costs incurred by the taxing authorities." [citation]." (*Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.*, 906 F.2d 516, 518 (11th Cir. 1990) [citing *Evansville-Vanderburgh Airport Authority District v. Delta Airlines*, 405 U.S. 707, 717-719 (1972)].)

Here, for reasons already discussed, the Charge is not reasonably related to rental car customers' use of the to-be-constructed Chula Vista parking structure. Nor does the amount of the charge reasonably reflect the value of benefits conferred by the District on those customers. Accordingly, the Charge does not "reflect a fair...approximation of the use of the facilities," and is illegal in violation of the Commerce Clause. For this reason too, Claimant is entitled to a refund.

C. The Charge Is Illegal Because It Violates Federal Law Prohibiting Use of Airport Revenue For Non-Airport Purposes

Finally, the charge violates federal law prohibiting use of airport revenue for non-airport purposes. Specifically, the District is prohibited from imposing a tax, fee, or charge "exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes." (49 U.S.C.A. § 40116(d)(2)(A)(iv).) This is because such acts "unreasonably burden and discriminate against interstate commerce[.]" (*Id.* at 40116(d)(2)(A).)

The Charge is imposed only on rental car companies that have a business location at the San Diego Airport, and, as such, the Charge is "exclusively upon any business located at a commercial service airport." And because the amounts collected will be used to construct a parking structure in Chula Vista, and not for any airport purpose, the Charge is not "wholly utilized for airport or aeronautical purposes." The Charge accordingly violates 49 U.S.C.A. § 40116(d)(2)(A)(iv) and "unreasonably burden[s] and discriminate[s] against interstate commerce[,]" in violation of the Commerce Clause, and is unlawful. For this reason too, Claimant is entitled to a refund.

Clerk of the San Diego Unified Port District October 25, 2018 Page 6 of 6

III. Conclusion

For the reasons discussed, Claimant is entitled to a refund of \$451,328.50 or more, plus applicable interest, expenses, litigation costs, and attorneys' fees as provided by law. Due to the continuing nature of the Charge, the amount subject to refund will continue to increase over time. This claim is a non-limited civil case.

* * *

Should you have any questions, please feel free to call me at (213) 516-5504. Thank you for your attention to this important matter.

Sincerely,

Ruben Sislyan Attorney at Law

Enclosure: As stated

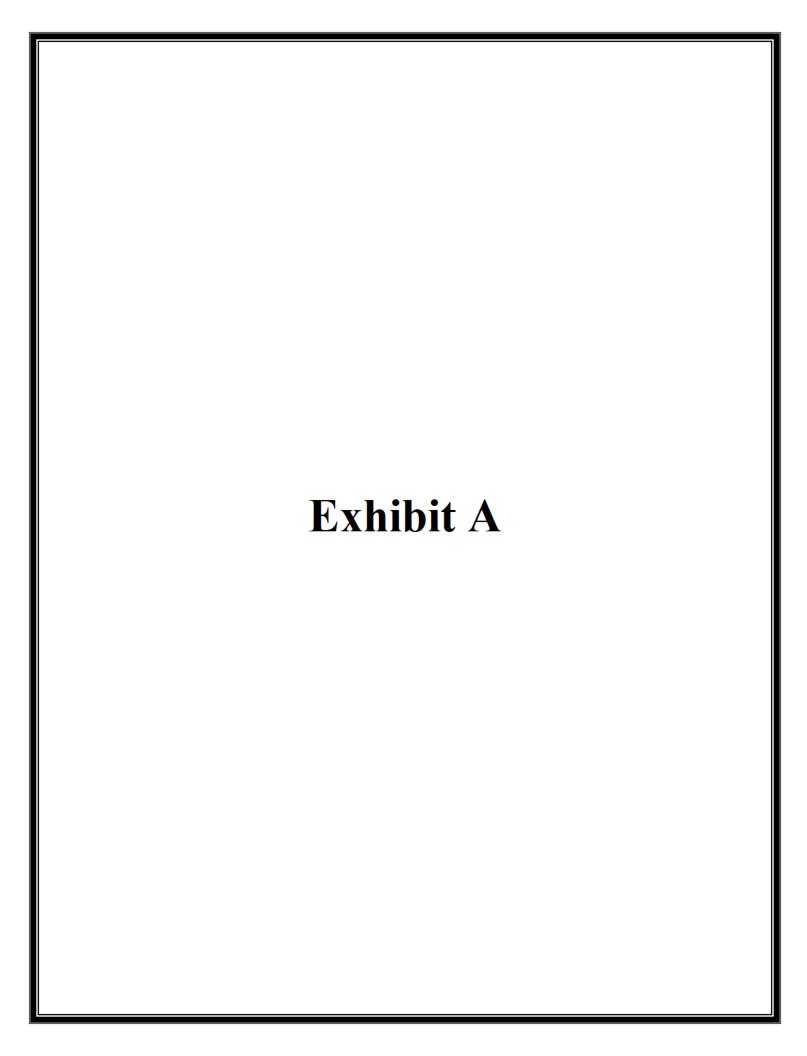
cc via certified mail:

Mr. Robert Monson Auditor of the San Diego Unified Port District San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Ms. Ann Moore Secretary of the Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

cc via email:

Mr. Douglas W. Sullivan dsullivan@crowell.com





Finance Department P.O. BOX 129488 SAN DIEGO, CALIFORNIA 92112-0488 (619)685-6258

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0070.001
Customer Number	863
DATE:	June 15, 2018

DESCR	RIPTION			AMOUNT
	Lease Effective Date	05/10/2018 -		
CONCESSION	N INVOICE PERIOD COVERED:	MAY, 2018		
RENTAI	DESCRIPTION . CAR TRANSACTIONS - HERTZ	TOTAL NUMBERS 6,690	RATE(EA) 3.50	DUE & REMIT 23,415.00
		TOTAL DUE A	ND REMITTED	23,415.00
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED		D	ATE:	06/15/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (519)686-6258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0062.001	
Customer Number	858	
DATE.	June 15, 2019	

DESC	RIPTION			AMOUNT
	Lease Effective Date	05/10/2018 -		
CONCESSIO	ON INVOICE PERIOD COVERED:	MAY, 2018		
	DESCRIPTION	TOTAL NUMBERS	RATE(EA)	DUE & REMIT
100000	AL CAR TRANSACTIONS - DOLLAR AL CAR TRANSACTIONS - THRIFTY	1,419 1,148	3,50 3,50	4,966.50 4,018.00
		TOTAL DUE	AND REMITTED	3,984.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED	Cl.Cl.2		DATE:	06/15/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0070.001
Customer Number	863
DATE:	July 13, 2018

DESCRIP	PTION		AMOUNT
	Lease Effective Date	Q5/10/2018 -	
CONCESSION I	INVOICE PERIOD COVERED:	JUNE, 2018	
RENTAL C	DESCRIPTION CAR TRANSACTIONS - HERTZ	TOTAL NUMBERS RA	ATE(EA) DUE & REN 3.50 65,702
		TOTAL DUE AND I	REMITTED: 65,702
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.		
SIGNED		DATE	E: 077/13



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0062.001	
Customer Number	858	
DATE	July 13, 2018	

DESCRIPTION			AMOUNT
Lease Effective Date	05/10/2018 -		
CONCESSION INVOICE PERIOD COVERED:	JUNE, 2018		
DESCRIPTION RENTAL CAR TRANSACTIONS - DOLLAR RENTAL CAR TRANSACTIONS - THRIFTY	TOTAL NUMBER 5,184 3,083	RATE(EA) 3.50 3.50	DUE & REMIT 18,144.00 10,790.50
	TOTAL DUE	AND REMITTED:	28,934.50
I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
101.0		DATE	07/13/18



Finance Department P.O. BOX 120468 SAN DIEGO, CALIFORNIA 92112-0486 (619)686-6258

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0070.001
Customer Number	863
DATE:	August 15, 2018

DESCR	IPTION		AMOUNT
	Lease Effective Date	05/10/2018 -	
CONCESSION	I INVOICE PERIOD COVERED:	JULY, 2018	
RENTAL	DESCRIPTION CAR TRANSACTIONS - HERTZ	TOTAL NUMBERS RATE	~~~~~~~~~~
		TOTAL DUE AND REM	MITTED: 68,554.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.	•	
SIGNED		DATE:	08/15/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6268

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0062.001	
Customer Number	858	
DATE:	August 15, 2018	

DESCR	RIPTION			AMOUNT
	Lease Effective Date	05/10/2018 -		1000
CONCESSION	N INVOICE PERIOD COVERED:	JULY, 2018		
	DESCRIPTION	TOTAL NUMBER	RATE(EA)	DUE & REMIT
RENTAL	L CAR TRANSACTIONS - DOLLAR	4,752	3.50	16,632.00
RENTA	L CAR TRANSACTIONS - THRIFTY	4,146	3.50	14,511.00
		TOTAL DUE	AND REMITTED	31,143.00
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED	Cc.Cc.Q		DATE:	08/15/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0070.001	
Customer Number	863	_
DATE:	September 14, 2018	

DESCR	RIPTION			AMOUNT
	Lease Effective Date	05/10/2018 -		
CONCESSIO	N INVOICE PERIOD COVERED:	AUGUST, 2018		
RENTA	DESCRIPTION L CAR TRANSACTIONS - HERTZ	TOTAL NUMBERS 23,966	RATE(EA)_ 3,50	DUE & REMIT 83,881.00
		TOTAL DUE	AND REMITTED	0: 83,881.00
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED	CC.CC.	EE	DATE:	09/14/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007,0062,001	
Customer Number	858	_
DATE:	September 14, 2018	

DESCR	RIPTION			AMOUNT
	Lease Effective Date	05/10/2018 -		The state of the s
CONCESSIO	N INVOICE PERIOD COVERED:	AUGUST, 2018		
	DESCRIPTION	TOTAL NUMBER	RATE(EA)	DUE & REMIT
	L CAR TRANSACTIONS - DOLLAR L CAR TRANSACTIONS - THRIFTY	5,003 3,699	3.50 3.50	17,510.50 12,946.50
		TOTAL DUE	AND REMITTE	30,457.00
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED	N.O.L. 2		DATE:	09/14/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0070.001	
Customer Number	863	
DATE:	October 12, 2018	

DESCRIPTION				AMOUNT
	Lease Effective Date	05/10/2018 -		
CONCESSION INVOICE PERIOD CO	VERED:	SEPTEMBER, 2018		
	DESCRIPTION	TOTAL NUMBERS	RATE(EA)	DUE & REMIT
RENTAL CAR TRANSACTIONS -	HERTZ	22,705	3.50	79,467.50
			OVERPAYMENT	7.00
		TOTAL DUE	AND REMITTED:	79,474.50
	THAT I HAVE EXAMINED THIS INVOICE AND THAT TO NOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE			
SIGNED ALC	26-2		DATE:	10/12/18



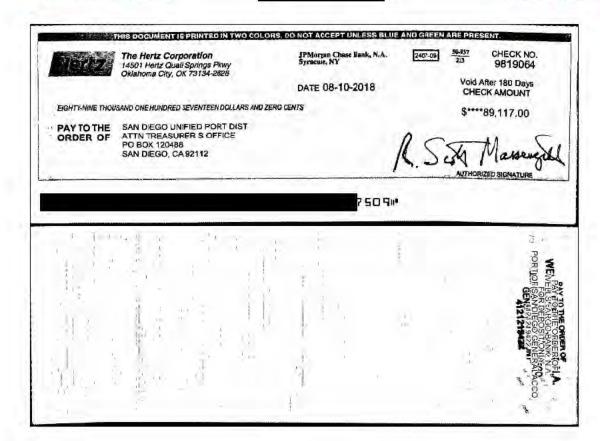
Finance Department P.O. BOX. 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101
 Lease-Out Number
 0007,0062.001

 Customer Number
 858

 DATE:
 October 12, 2018

DESCRIPTION			AMOUNT	
Lease Effective Date	05/10/2018 -		1	
CONCESSION INVOICE PERIOD COVERED:	SEPTEMBER, 2018			
	TOTAL NUMBER 5,081	RATE(EA) 3.50	DUE & REMIT 17,783,50	
RENTAL CAR TRANSACTIONS - THRIFTY	3,714	3.50	12,999.00	
	TOTAL DUE AND REMITTED:		30,782.50	
I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.				
SIGNED CLCL2	-	DATE:	10/12/18	



Amount: 37,919.00

THIS DOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT UNLESS BLUE AND GREEN ARE PRESENT.

DTG Operations, Inc. 14501 Hertz Quall Springs Pkwy Cklahoma City, OK 73134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

50-937/213

CHECK NO. 15209

DATE 08-10-2018

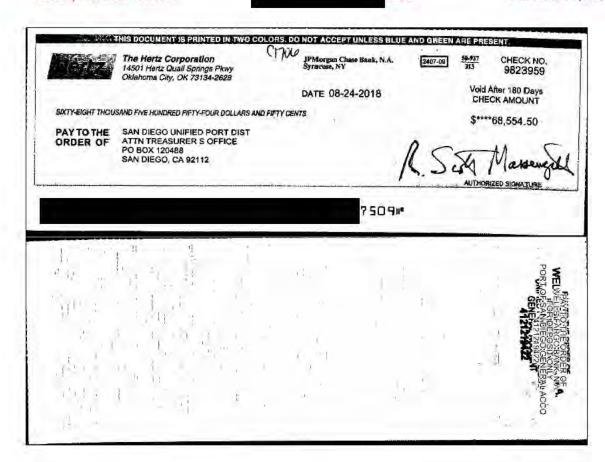
Void After 180 Days CHECK AMOUNT

\$****37,919.00

**** THIRTY-SEVEN THOUSAND NINE HUNDRED NINETEEN DOLLARS AND ZERO CENTS

PAY TO THE SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE PO BOX 120488 SAN DIEGO, CA 92112

506m



Amount: 31,143.00

THIS DOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT LINLESS BLUE AND GREEN ARE PRESENT.

DTG Operations, inc. 14501 Hertz Quail Springs Pkwy Oklahoma City, OK 73134-2628 JPMorgan Chase Bank, N.A. Syracuse, NY

50-937/213

CHECK NO. 16312

DATE 08-24-2018

Void After 160 Days CHECK AMOUNT

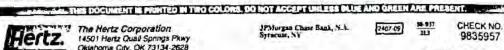
**** THIRTY-ONE THOUSAND ONE HUNDRED FORTY-THREE DOLLARS AND ZERO CENTS

PAY TO THE SAN DIEGO UNIFIED PORT DIST ORDER OF ATTN TREASURER S OFFICE

PO BOX 120488 SAN DIEGO, CA 92112

\$****31,143.00

506"



The Hertz Corporation 14501 Hertz Qual Springs Pkwy Oklahoma City, OK 73134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

2407-09

55-957 21.3

CHECK NO. 9835957

DATE 09-26-2018

Void After 180 Days CHECK AMOUNT

5***191,959.18

PAY TO THE SAN DIEGO UNIFIED PORT DIST ATTN TREASURER'S OFFICE PO BOX 120488 SAN DIEGO, CA 92112

ONE HUNDRED NINETY-ONE THOUSAND NINE HUNDRED FIFTY-NINE DOLLARS AND EIGHTEEN CENTS

AUTHORIZED SIGNATURE

750911

WELLS FARCO BANK NA ENT 20181601 E0018 PKT 63 ▶ 1221-0527-84

THE DOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT UNLESS BLUE AND GREEK ARE PRESENT.

DTG Operations, Inc. 14501 Hertz Quail Springs Pkwy Ociahoma City, OK 73134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

50-937/213

CHECK NO. 18785

DATE 09-26-2018

Void After 180 Days CHECK AMOUNT

*** THIRTY THOUSAND FOUR HUNDRED FIFTY-SEVEN DOLLARS AND ZERO CENTS

\$****30,457.00

PAY TO THE SAN DIEGO UNIFIED PORT DIST ATTN TREASURER'S OFFICE PO BOX 120488

SAN DIEGO, CA 92112

AUTHORIZED SIGNATURE

50611º

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The Hertz Corporation 14501 Hertz Quail Springs Pkwy Oklahoma Crty, OK 73134-2628

2407-09

39.917

9842988

DATE 10-12-2018

Void After 180 Days CHECK AMOUNT

\$****88,396.00

BIGHTY-EIGHT THOUSAND THREE HUNDRED NINETY SIX DOLLARS AND ZERO CENTS

PAY TO THE SAN DIEGO UNIFIED PORT DIST ATTN TREASURER'S OFFICE PO BOX 120488 SAN DIEGO, CA 92112

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DTG Operations, Inc. 14501 Hertz Ottal Springs Pkey Oktahoma Cdy, OK 73134-2628 JPMorgan Chase Bank, N.A. Зугасиве, NY

50-937/213

CHECK NO. 20008

DATE 10-12-2018

Void After 180 Days CHECK AMOUNT

**** TWENTY-ONE THOUSAND EIGHT HUNDRED SIXTY-ONE DOLLARS AND ZERO CENTS

\$****21,861.00

ORDER OF

PAY TO THE SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE PO BOX 120488

SAN DIEGO, CA 92112

AUTHORIZED SIGNATURE

402 a

			For Court Use Only
Ref.	No. or File No	<i>:</i>	
Insert name of Court, and Judicial District and Branch Court:			
Hearing Date:	Time:	Dept/Div:	Case Number:
	and Branch Court:	and Branch Court:	

- 1. At the time of service I was at least 18 years of age and not a party to this action.
- 2. I served copies of the Letter dated October 25, 2018 (Re: Claim for Refund of Rental Car "User Fees", Claimant: The Hertz Corporation)
- 3. a. Party served: Clerk of the San Diego Unified Port District

Office of the District Clerk

San Diego Unified Port District

- b. Person served: Gabby Livingston, Document Management Associate
- 4. Address where the party was served: 3165 Pacific Highway, San Diego, CA 92101
- 5. *I served the party:*
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Thu, Oct 25 2018 (2) at: 03:24 PM

Recoverable cost Per CCP 1033.5(a)(4)(B)

- 6. Person Who Served Papers:
 - a. Jacob Gardner (3173, San Diego County)
 - b. FIRST LEGAL

1517 W. Beverly Blvd. LOS ANGELES, CA 90026

c. (213) 250-1111

- d. The Fee for Service was:
- e. I am: A Registered California Process Server

7. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

10/26/2018

(Date)

(Signature)



PS Form 3800 6/02

VOID

9490 9118 9956 0749 0878 32

445 S. Figueroa Street

Los Angeles CA 90071

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CERTIFIED MAIL

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Marty Dakessian Dakessian Law, Ltd.

Suite 2210

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OUTBOUND TRACKING NUMBER 9414 7118 9956 0749 0878 83

RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0749 0878 32

FEES

Postage per piece \$2.050 Certified Fee \$3.450 \$2,750 Return Receipt Fee Total Postage & Fees: \$8.250

ARTICLE ADDRESS TO:

Clerk of San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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3. Service Type

C. Date of Delivery

1. Article Addressed to:

Clerk of San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0749 0878 32

2. Article Number (Transfer from service label) 9414 7118 9956 0749 0878 83

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B. Received By: (Printed Name)

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9414 7118 9956 0749 0878 83

Clerk of San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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Certified Mail

Receipt Service

Instructions

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(Uses Return Receipt Card)

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9490 9118 9956 0749 0875 11

445 S. Figueroa Street

Los Angeles CA 90071

CERTIFIED MAIL

CERTIFIED MAIL

Marty Dakessian Dakessian Law, Ltd.

Suite 2210

OUTBOUND TRACKING NUMBER

9414 7118 9956 0749 0874 70 RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0749 0875 11

FEES

\$2.050 Postage per piece \$3,450 Certified Fee \$2.750 Return Receipt Fee \$8.250 Total Postage & Fees:

ARTICLE ADDRESS TO:

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

Postmark

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SENDER: COMPLETE THIS SECTION

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1. Article Addressed to:

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0749 0875 11

2. Article Number (Transfer from service label) 9414 7118 9956 0749 0874 70

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A. Signature: (☐ Addressee or ☐ Agent)

X

3. Service Type

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B. Received By: (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below

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9414 7118 9956 0749 0874 70

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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EDGE of the mailpiece. 3. Peel the Certified Mail label above and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

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Certified Mail Receipt

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Domestic Return Receipt

CERTIFIED MAIL

VOID

9490 9118 9956 0749 0866 82

445 S. Figueroa Street

Los Angeles CA 90071

CERTIFIED MAIL

CERTIFIED MAIL

CERTIFIED MAIL

Marty Dakessian Dakessian Law, Ltd. WITHOUT Physical Return **Receipt Service** (No Return Receipt Card) Instructions

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OUTBOUND TRACKING NUMBER 9414 7118 9956 0749 0866 40

RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0749 0866 82

FEES

Postage per piece \$2.050 \$3.450 Certified Fee \$2.750 Return Receipt Fee Total Postage & Fees: \$8.250

ARTICLE ADDRESS TO:

Ms Ann Moore Secretary of Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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B. Received By: (Printed Name)

- 1. Article Addressed to:
 - Ms Ann Moore Secretary of Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0749 0866 82

2. Article Number (Transfer from service label) 9414 7118 9956 0749 0866 40

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A. Signature: (☐ Addressee or ☐ Agent)

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C. Date of Delivery

- D. Is delivery address different from item 1? If YES, enter delivery address below:
- ☐ Yes

9414 7118 9956 0749 0866 40

Ms Ann Moore Secretary of Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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Certified Mail Labels (SDC-3930) 168,406; 7,216,110; 7,236,956; 7,236,970; 17,926; 8,027,927; 8,027,935; 8,041,644; 18,943 and 8,843,464.

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Domestic Return Receipt

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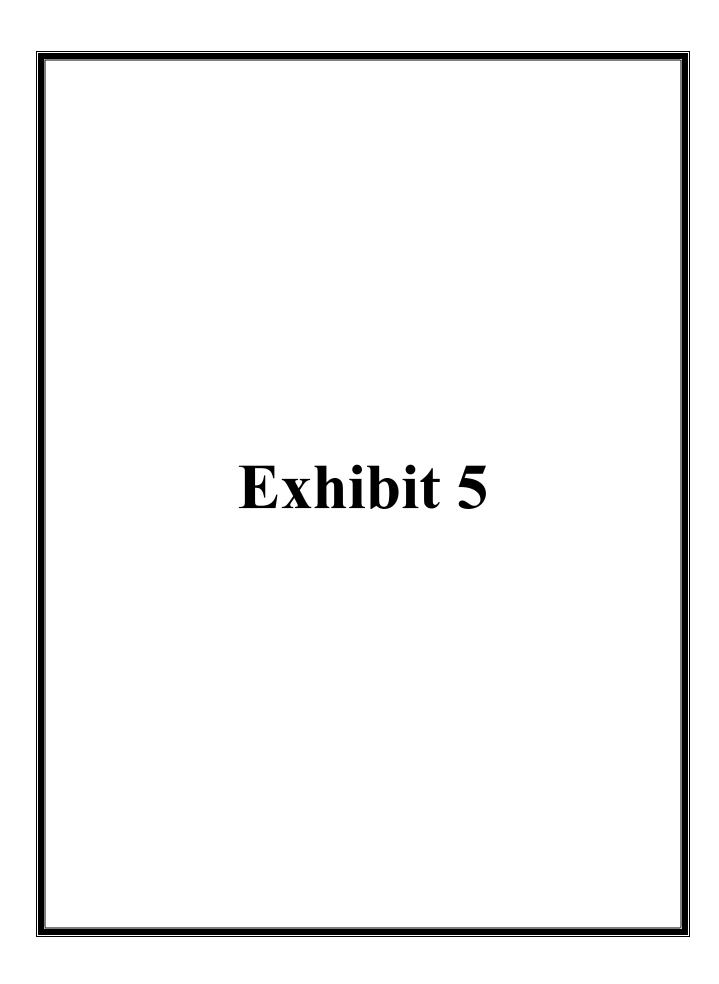
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SAN DIEGO UNIFIED PORT DISTRICT

OFFICE OF THE GENERAL COUNSEL

NOTICE OF REJECTION OR DENIAL OF CLAIM

December 7, 2018

(Sent via U.S. Mail)

Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street

Attn: Douglas W. Sullivan Crowell & Moring LLP

Suite 2210

3 Embarcadero Center, 26th Floor

Los Angeles, CA 90071

San Francisco, CA 94111

RE: Claim presented by Enterprise Rent-A-Car Co. of Los Angeles, LLC

District Document No. 69036

Dear Mr. Sislyan:

Please be advised that notice is hereby given, that the claim which you presented to the San Diego Unified Port District (District) (Document No. 69036) and received by the District on or about October 25, 2018, was reviewed and considered, and said claim was rejected or denied.

WARNING

Subject to certain exceptions, a court action on this claim may be filed by the claimant within six (6) months from the date this notice was personally delivered or deposited in the mail. (See Government Code Section 945.6.)

If an attorney has not already been consulted by the claimant, the advice of an attorney of the claimant's choice may be sought in connection with this matter. If an attorney is desired, the claimant should contact an attorney immediately.

Respectfully.

Rosemarie Morgans

Paralegal

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PROOF OF SERVICE BY MAIL

- I, Rosemarie Morgans, declare:
- 1. I am over the age of 18 years and not a party to the within action.
- 2. I am employed in the County of San Diego by the San Diego Unified Port District and my business address is: 3165 Pacific Highway, San Diego, California, 92101.
- On the date executed below, I served a NOTICE OF DENIAL OR REJECTION OF CLAIM on Enterprise Rent A Car Co. of Los Angeles, LLC concerning Claim No. 69036, via U.S.P.S. Mail at the following address:

Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street

Suite 2210

Los Angeles, CA 90071

Attn: Douglas W. Sullivan Crowell & Moring LLP

3 Embarcadero Center, 26th Floor

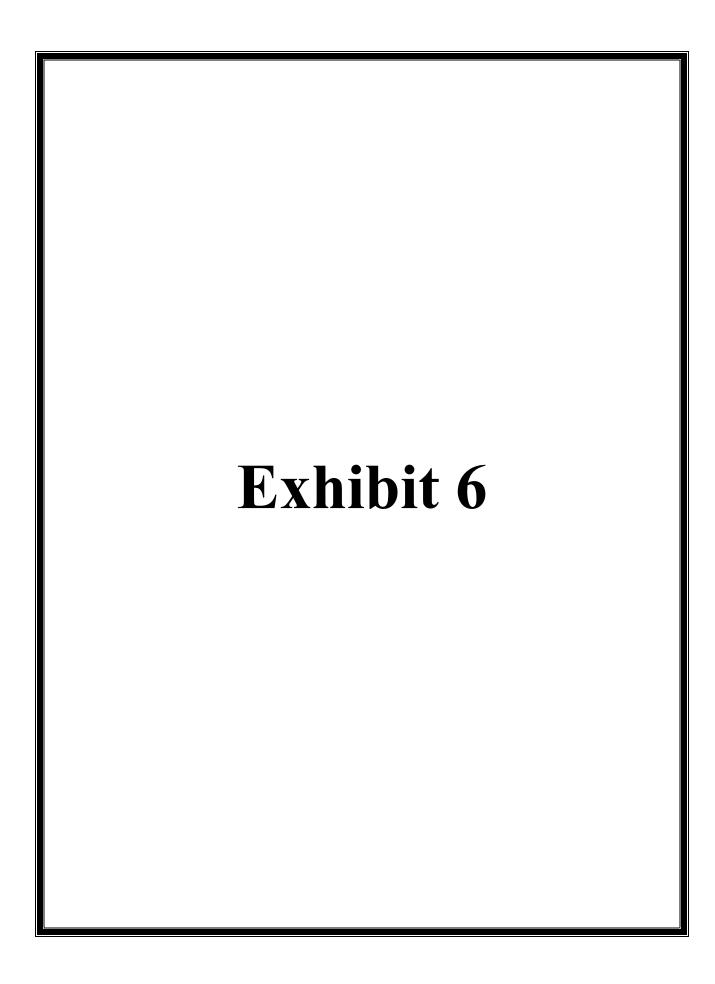
San Francisco, CA 94111

4. I am readily familiar with our business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 7, 2018 at San Diego, California

Rosemarie Morgans





SAN DIEGO UNIFIED PORT DISTRICT

OFFICE OF THE GENERAL COUNSEL

NOTICE OF REJECTION OR DENIAL OF CLAIM

December 7, 2018

(Sent via U.S. Mail)

Car Pa S San Fig. 12

Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street

Suite 2210

Los Angeles, CA 90071

Attn: Douglas W. Sullivan Crowell & Moring LLP 3 Embarcadero Center, 26th Floor

San Francisco, CA 94111

RE: Claim presented by The Hertz Corporation

District Document No. 69037

Dear Mr. Sislyan:

Please be advised that notice is hereby given, that the claim which you presented to the San Diego Unified Port District (District) (Document No. 69037) and received by the District on or about October 25, 2018, was reviewed and considered, and said claim was rejected or denied.

WARNING

Subject to certain exceptions, a court action on this claim may be filed by the claimant within six (6) months from the date this notice was personally delivered or deposited in the mail. (See Government Code Section 945.6.)

If an attorney has not already been consulted by the claimant, the advice of an attorney of the claimant's choice may be sought in connection with this matter. If an attorney is desired, the claimant should contact an attorney immediately.

Respectfully.

Rosemarie Morgans

Paralegal

PROOF OF SERVICE BY MAIL

- I, Rosemarie Morgans, declare:
- 1. I am over the age of 18 years and not a party to the within action.
- I am employed in the County of San Diego by the San Diego Unified Port District and my business address is: 3165 Pacific Highway, San Diego, California, 92101.
- On the date executed below, I served a NOTICE OF DENIAL OR REJECTION OF CLAIM on The Hertz Corporation concerning Claim No. 69037, via U.S.P.S. Mail at the following address:

Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street

Suite 2210 Los Angeles, CA 90071 Attn: Douglas W. Sullivan Crowell & Moring LLP

3 Embarcadero Center, 26th Floor

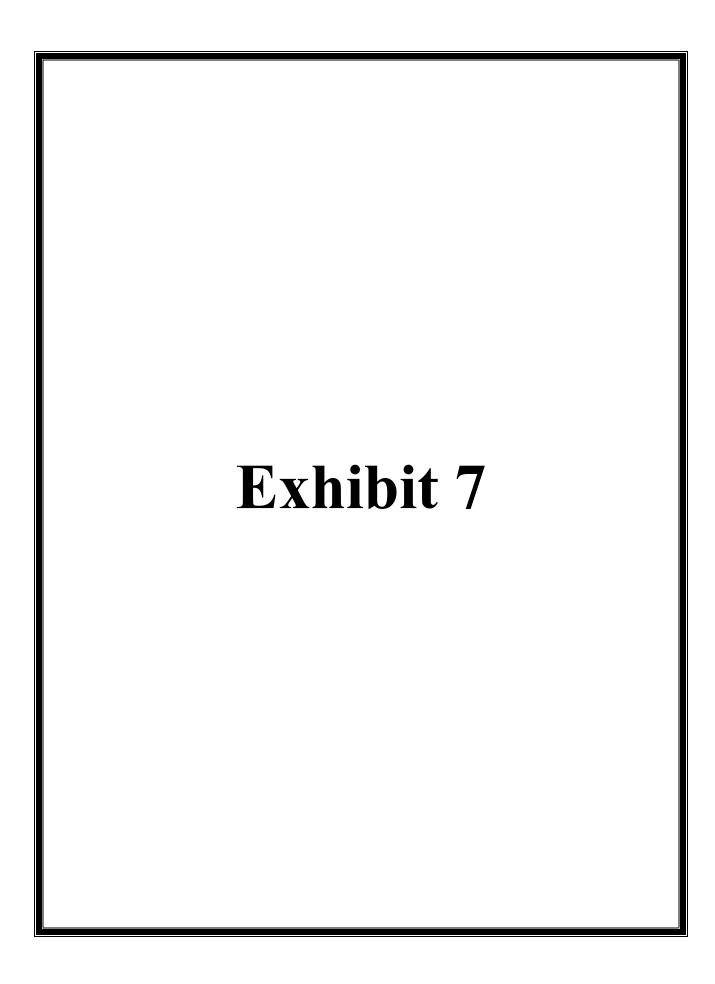
San Francisco, CA 94111

4. I am readily familiar with our business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

i declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 7, 2018 at San Diego, California

Rosemarie Morgans





445 S. FIGUEROA STREET SUITE 2210 LOS ANGELES, CA 90071 213.516.5500 (O) 213.516.5502 (F) 1215 K STREET SUITE 1700 SACRAMENTO, CA 95814 916.307.6900

www.dakessianlaw.com

Ruben Sislyan

Direct Phone: 213.516.5504 Email: ruben@dakessianlaw.com

March 29, 2019

VIA PERSONAL SERVICE; AND CERTIFIED MAIL WITH RETURN RECEIPT

Ms. Donna Morales Clerk of the San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Re: Claim for Refund of Rental Car "User Fees"

Claimant: Enterprise Rent-A-Car Co. of Los Angeles, LLC

Amount Claimed: \$644,213.50 or more

Dear Ms. Morales:

Our office represents Enterprise Rent-A-Car Co. of Los Angeles, LLC ("Claimant") in this matter. Claimant's address is 333 City Boulevard West, Suite 1101, Orange, CA 92868. However, we ask that you direct any and all correspondence regarding this matter to our office at the following address:

Attn: Ruben Sislyan Dakessian Law, Ltd. 445 South Figueroa Street, Suite 2210 Los Angeles, CA 90071

Please also send a copy of any and all correspondence regarding this matter to Douglas W. Sullivan, who also represents Claimant in this matter, to the following address:

Attn: Douglas W. Sullivan Crowell & Moring LLP 3 Embarcadero Center, 26th Floor San Francisco, CA 94111

In accordance with Board of Port Commissioners Policy No. 640 (filed July 24, 2013 as Document Number 60576) and Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with section 900) regarding Claims Against Public Entities—particularly Chapter 2

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 2 of 9

(commencing with section 910) regarding Presentation and Consideration of Claims—this is a claim for refund of the entire amount of the alleged rental car "user fees," imposed by the San Diego Unified Port District ("District") under Resolution 2018-065 (the "Resolution"), collected by Claimant from its rental car customers during the period October 1, 2018 through February 28, 2019 and remitted to the District, in the amount of \$644,213.50 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. This claim is a non-limited civil case. The details of the claim are discussed below.

I. Background Regarding The Occurrences And Transactions Giving Rise To The Claim

A. The District's Imposition Of The Rental Car "User Fee"

By way of background, on April 10, 2018, the District's Board of Port Commissioners adopted the Resolution, which, as of May 10, 2018, has required rental car companies conducting business on District tidelands ("Port Property"), such as Claimant, to collect a "user fee" of \$3.50 per rental car transaction (the "Charge") from all rental car customers, on behalf of the District, and to pay the collected "user fees" to the District, in accordance with an ordinance under which fee collection ended over a decade ago, Ordinance 2030. The Resolution provides that the new monies generated by this new Charge will be used to pay for the construction of a parking structure adjacent to the planned Chula Vista Bayfront Convention Center on Port Property in Chula Vista in San Diego County.

B. Claimant's Business Operations On Port Property

Claimant is in the business of renting cars to customers. It conducts business under the Enterprise, National, and Alamo car rental brands. Claimant enters into car rental transactions on Port Property, including at the common car rental facility located at the San Diego Airport, at counters located in hotels near the San Diego Convention Center and the San Diego Airport, and at branches in the vicinity of the San Diego Airport that are strategically located to serve customers whose personal automobiles are being serviced or repaired at nearby car dealerships and repair shops.

[Continued on next page.]

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 3 of 9

C. Collection And Remittance Of The Charge And Refund Amount

With respect to rental car transactions occurring on Port Property, as required under the Resolution, Claimant has collected the Charge from its rental car customers renting cars from Claimant's locations on Port Property and remitted it to the District on a monthly basis since May 10, 2018. For the monthly periods covered by this claim for refund (i.e., October 2018 through February 2019), Claimant has collected and remitted the Charge to the District in the following amounts:

Charge Amount Collected By Claimant And Remitted to District					
Month	Date of Payment	Amount (\$)			
Oct. 2018	Nov. 19, 2018	143,069.50			
Nov. 2018	Dec. 19, 2018	129,199.00			
Dec. 2018	Jan. 15, 2019	115,531.50			
Jan. 2018	Feb. 14, 2019	129,234.00			
Feb. 2018	Mar. 14, 2019	127,179.50			
Total		644,213.50			

Copies of Claimant's monthly remittance statements submitted to the District and proof of payment of the amounts stated above to the District are enclosed as **Exhibit A**. This claim for refund is for the entire amount of the Charge collected by Claimant from its rental car customers during the period October 1, 2018 through February 28, 2019 and remitted to the District, in the amount of \$644,213.50 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. For the reasons discussed below, Claimant claims this refund in order to return the amounts to its rental car customers who paid the Charge.

II. Grounds For Claim For Refund

Claimant is entitled to a refund on at least four separate and independently dispositive grounds. Each ground is discussed below.

A. The Charge Is An Unconstitutional Special Tax

First, a refund is due because the Charge is an unlawful and illegal special tax disguised as a "user fee," in violation of the California Constitution, for the reasons discussed below.

By way of background, Proposition 218, known as the "Right to Vote on Taxes Act," amended the California Constitution to ensure that citizens would have the right to vote on whether local governments should enact taxes, such as the Charge at issue here. Proposition 218 was motivated by the actions of local governments to circumvent then existing requirements for voter approval of special taxes and assessments contained in Proposition 13, including California Constitution Article 13A, Section 4, requiring that special taxes be approved by a two-thirds vote.

Article XIII C of the California Constitution (enacted as part of Proposition 218) requires that all special taxes—*i.e.*, taxes imposed for special purposes—imposed by local governments be approved by two-thirds of local voters. Here, despite the Charge's label as a "user fee," the Charge

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 4 of 9

is actually a tax, for the reasons discussed below. The Resolution thus violates Article XIII C of the California Constitution, as the Charge was never submitted for and never received the requisite approval by a two-thirds vote of the electorate, as the Constitution requires for special taxes. (Cal. Const., Art. XIII C, §§ 2(b), 2(d).)

Turning to the tax versus fee issue, generally, under California law, "taxes are imposed for revenue purposes, [whereas] fees are collected to cover the costs of services or regulatory activities." (*Cal. Tow Truck Assn. v. City & Cnty. of San Francisco* (2014) 225 Cal.App.4th 846, 859.) The defining characteristic of a valid "fee," as distinct from a tax, "is the relationship between the charge imposed and a benefit or cost related to the payor." (*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 261.) Charges are only "allowable" as fees to the extent restricted to the "special benefit received by the payor": If the people who pay a supposed "fee" do not receive such a benefit, then the charge has "become a vehicle for generating revenue independent of the purpose of the fees"—that is, a tax. (*Ibid.*) "Therefore, to the extent charges exceed the rationale underlying the charges, they are taxes." (*Ibid.*)

To qualify as a "user fee," a charge must be "charged to the person using the service and its amount [must be] related to the goods and services actually provided." (*Bay Area Cellular Tel. Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 694.) But if, on the other hand, the charge is imposed on members of the public other than the "users" receiving the benefits, local voters must have a say in whether they will bear such a charge.

Consistent with these principles, Article XIII C defines "tax" expansively to include "any levy, charge, or exaction of any kind imposed by a local government," with only seven exceptions. In other words, any charge imposed by a local government like the District is considered a tax, unless the local government can establish that it falls within one of these seven specifically enumerated exceptions. (Cal. Const., Art. XIII C, § l(e).) "The local government bears the burden of establishing the[se] exceptions" to the constitutional definition of "tax." (*Jacks*, *supra*, 3 Cal.5th at p. 260.)²

As noted, the Charge is a "user fee" of \$3.50 per rental car transaction on Port Property. Under the well-settled principles outlined above, it is a "levy, charge or exaction" imposed by a "local

^{1&}quot;Local government" is defined to include "any special district," meaning "an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries" (Cal. Const., art. XIII C, § 1 (b), (c).) The District meets this definition, as it is a "special district" created by the San Diego Unified Port District Act to manage the harbor, navigable waters, and tidelands of the San Diego Bay. (Cal. Harb. & Nav. Code, Appx. I, § 4.)

²The label the local government gives to a charge, moreover, does not control whether a charge is a "tax." (*See generally Flynn v. City of San Francisco* (1941) 18 Cal.2d 210, 214-15 ["The nomenclature is of minor importance, for the court will look beyond the mere title or the bare legislative assertion . . . to see and determine the real object, purpose and result of the enactment."].)

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 5 of 9

government," and thus a tax, unless it falls into one of the seven exceptions. None of the exceptions apply here.

The Charge plainly does not fall within exceptions 3, 4, 5, 6, or 7 to Article XIII C's definition of "tax." According to the Resolution, the sole purpose of the Charge is to fund the construction of parking structures at the Chula Vista Bayfront Convention Center. The Charge thus has nothing to do with the District's "reasonable regulatory costs" of issuing permits or performing inspections (exception #3), or with the use, purchase, or rental of local government property (exception #4). Nor is the Charge a fine or penalty imposed by the judicial branch for a violation of law (exception #5), or a fee imposed as a condition of property development (exception #6), or an assessment or property-related fee imposed in accordance with the provisions of Article XIII D (exception #7).

The District is thus relegated to arguing that the Charge comes under either exception #1 or #2. Both of these exceptions, however, require that the Charge be imposed only on those rental car customers who will use the to-be-constructed parking structure, which is not the case here.

Specifically, when customers rent vehicles from Claimant at the San Diego Airport (which is located on Port Property) or at Claimant's various branch offices on Port Property, including branch offices located near auto repair shops (which too are located on Port Property), Claimant must collect the alleged "user fees" to fund a Chula Vista parking structure that the District plans to build in the future. Claimant must collect the Charge from rental car customers even though those customers may never go to Chula Vista, and even though it is impossible for those customers to use a parking garage that does not yet exist. Thus, the Charge is imposed upon rental car customers who will not make use of the planned Chula Vista parking structure. Said differently, imposition of the Charge on rental car customers is not—as California law requires—limited to those who will actually use the Chula Vista parking structure or in amounts reasonably reflecting the value of benefits conferred by the District on those customers. Rather, the overwhelming majority of rental cars will not use the convention center's parking facilities (even when completed), and the overwhelming majority of cars that will use the convention center's parking facilities will not be rental cars originating from rental car companies on Port Property. Thus, while the Charge may benefit the general public, it does not confer any specific benefit upon customers of rental car companies situated on Port Property.

Based on these facts, the Charge does not come within either exception #1 or #2. With respect to exception #1, the Charge is not "imposed for a specific benefit conferred or privilege granted directly to the payor[s]"—that is, customers who rent cars on Port Property—"that is not provided to those not charged." (Cal. Const., Art. XIII C, \S l(e)(1).) Nor is the Charge "imposed for a specific government service or product provided directly to [rental car customers on Port Property] that is not provided to those not charged" (exception #2). (*Id.*, \S 1(e)(2).)

This is precisely the type of case in which other courts have found charges to be taxes—where, as here, "those who paid the [f]ee received no benefit not received by those who did not pay (and thus by the general public), thereby negating the distinguishing feature of a user fee." (See, e.g., Bay Area Cellular, supra, 162 Cal.App.4th at p. 695; see also Isaac v. City of Los Angeles (1998) 66 Cal.App.4th 586, 596-97 [user fees are "those which are charged only to the person[s] actually using the service"].) In Bay Area Cellular, for example, the court found that a purported "user fee"

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 6 of 9

was a special tax because the benefit funded by the charge—the City's 911 system—benefitted other members of the general public, "whether or not subject to the [f]ee." (*Bay Area Cellular*, *supra*, 162 Cal.App.4th at pp. 695-96.) The court reached a similar conclusion in *Weisblat v. City of San Diego*, finding that a charge imposed on owners of residential rental property to pay for the cost of collecting business taxes was a tax, not a fee. This is because the charge did not confer any direct benefit on the payers, as it was not exacted in return for permits or other governmental privileges. (*Weisblat v. City of San Diego* (2009) 176 Cal.App.4th 1022, 1043.)

Accordingly, the Charge is a special tax within the meaning of the California Constitution. It is not a "user fee" or any other kind of legitimate fee. And because the Charge was not submitted to or approved by the District's voters, is unlawful. For this reason, Claimant is entitled to a refund.

B. The Charge Violates The Dormant Commerce Clause Of The United States Constitution

Claimant's entitlement to a refund also follows from established Commerce Clause jurisprudence. Although the Commerce Clause of the United States Constitution is phrased as a grant of regulatory power to Congress, it "has long been seen as a limitation on state regulatory powers, as well as an affirmative grant of congressional authority." (*Cutler v. Franchise Tax Board* (2012) 208 Cal.App.4th 1247, 1253, quoting *Fulton Corp. v. Faulkner* (1996) 516 U.S. 325, 330.) This negative aspect, referred to as the "dormant commerce clause," prohibits "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." (*Ibid.*) A local ordinance can violate the dormant Commerce Clause either by facially discriminating against out of state interests or by imposing "a burden on interstate commerce that is 'clearly excessive in relation to the putative local benefits,' [citation]." (*C & A Carbone, Inc. v. Town of Clarkstown* (1994) 511 U.S. 383, 390.)

"User fees"—that is, charges "purportedly assessed to reimburse the State for costs incurred in providing specific quantifiable services"—violate the "dormant Commerce Clause" if the fees are "disproportionate to the services rendered" (*Alamo Rent-A-Car, Inc. v. Sarasota-Manatee Airport Auth.* (11th Cir. 1990) 906 F.2d 516, 518, quoting *Commonwealth Edison Co. v. Montana* (1981) 453 U.S. 609, 622-23 & n.12.) In making this determination, courts follow the two-pronged test set forth by the United States Supreme Court:

first, the [user] fee charged must "reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed," [citation]; [and] second, the fee must not "be excessive in relation to costs incurred by the taxing authorities."

(*Ibid.*, quoting *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines* (1972) 405 U.S. 707, 717, 719, emphasis added.)

Many of the customers who rent from Claimant at the San Diego Airport common car rental facility are traveling in interstate commerce and are not California residents. The same reasoning that dooms the Charge under the California Constitution renders it invalid under the Commerce Clause: the Charge does not "fairly approximate" the "use of the facilities for whose benefit they are

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 7 of 9

imposed," as only a vanishingly small percentage of the rental car customers who pay the Charge will ever benefit from the to-be-constructed parking garage that will be funded by the Charge. Rental car customers who are traveling from out-of-state, many of whom are out-of-state residents arriving at the San Diego Airport, will thus bear "disproportionate" costs in comparison to the negligible level of "quantifiable services" they might receive from the Chula Vista parking garage. This violates the dormant Commerce Clause. For this reason too, Claimant is entitled to a refund.

C. Even If Local Voters Were To Approve The Charge, The District Has No Legislative Authority To Impose Such a Tax

Claimant is also entitled to a refund because the Charge, even if it had been submitted to and approved by two-thirds of the District's voters (which it was not), would still be illegal, as it is a sales or use tax in disguise—and thus beyond the limited taxing authority conferred on the District by the California Legislature.

The California Constitution forbids special districts like the District from levying general taxes under any circumstance. (Cal. Const., art. XIII C, § 2(a).) Such districts may levy special taxes, but only with specific taxing authority from the Legislature. (Cal. Const., art. XIII A, § 4; Govt. Code § 53727; Santa Clara Cnty. Local Transp. Auth. v. Guardino (1995) 11 Cal.4th 220, 248 [legislative "grant of power is an essential prerequisite to all local taxation, because local governments have no inherent power to tax."].)

Here, the Charge is a sales or use tax that applies to all rental car transactions on Port Property. Indeed, the California Attorney General has consistently concluded that analogous charges on rental car transactions are sales or use taxes. (*See* Attorney General Opinions 90-928, 94-807.)

The Legislature, however, has not granted the District the authority to impose such sales or use taxes. (See Govt. Code § 53727.) To the contrary, Section 7202 of the Revenue and Taxation Code authorizes only cities and counties to levy such taxes, in compliance with the Bradley-Burns Uniform Local Sales and Use Tax Law. (Cal. Rev. & Tax. Code, Part 1.5, § 7200, et seq.) Similarly, while the Legislature has conferred the power to levy transactions and use taxes on other special districts (including the Bay Area Rapid Transit District (Cal. Pub. Util. Code § 29140) and Santa Clara Valley Transportation Authority (Cal. Pub. Util. Code § 100250)), it has granted no such power to the District. The District's imposition of the Charge is thus ultra vires and invalid as a matter of law.

Further, Section 57.5 of the San Diego Unified Port District Act (Cal. Harb. & Nav. Code § App. 1, § 57.5), which acknowledges that the District may impose a "transaction fee" under certain circumstances but nowhere grants authority to impose a "tax" of any kind, also does not grant the District authority to impose the Charge. In fact, Section 57.5 would itself be illegal and unconstitutional to the extent it purported to authorize the District to impose a tax, rather than a fee, without voter approval. (See Cal. Const., art. XIIIA, § 4; see also Cal. Bldg. Indus. Assn. v. Gov. Bd. (1988) 206 Cal. App.3d 212, 227 [Legislature has "no authority to impose taxes and regulate the collection thereof" where "expressly eliminated by the Constitution"], internal quotations omitted.)

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 8 of 9

Accordingly, the District does not have authority to impose the Charge, even if it were to get voter approval. For this reason too, Claimant is entitled to a refund.

D. The Charge Is Illegal Because It Violates Federal Law Prohibiting Use of Airport Revenue For Non-Airport Purposes

Finally, Claimant is entitled to a refund because the Charge violates federal law prohibiting use of airport revenue for non-airport purposes. Specifically, the District is prohibited from imposing a tax, fee, or charge "exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes." (49 U.S.C.A. § 40116(d)(2)(A)(iv).) This is because such acts "unreasonably burden and discriminate against interstate commerce[.]" (*Id.* at 40116(d)(2)(A).)

The Charge is imposed only on rental car companies that have a business location at the San Diego Airport, and, as such, the Charge is "exclusively upon any business located at a commercial service airport." And because the amounts collected will be used to construct a parking structure in Chula Vista, and not for any airport purpose, the Charge is not "wholly utilized for airport or aeronautical purposes." The Charge accordingly violates 49 U.S.C.A. § 40116(d)(2)(A)(iv) and "unreasonably burden[s] and discriminate[s] against interstate commerce[,]" in violation of the Commerce Clause, and is unlawful. For this reason too, Claimant is entitled to a refund.

III. Conclusion

For the reasons discussed, Claimant is entitled to a refund of \$644,213.50 or more, plus applicable interest, expenses, litigation costs, and attorneys' fees as provided by law. Due to the continuing nature of the Charge, the amount subject to refund will continue to increase over time. This claim is a non-limited civil case.

* * *

Should you have any questions, please feel free to call me at (213) 516-5504. Thank you for your attention to this important matter.

Sincerely,

Ruben Sislyan

Attorney at Law

Enclosure: As stated

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 9 of 9

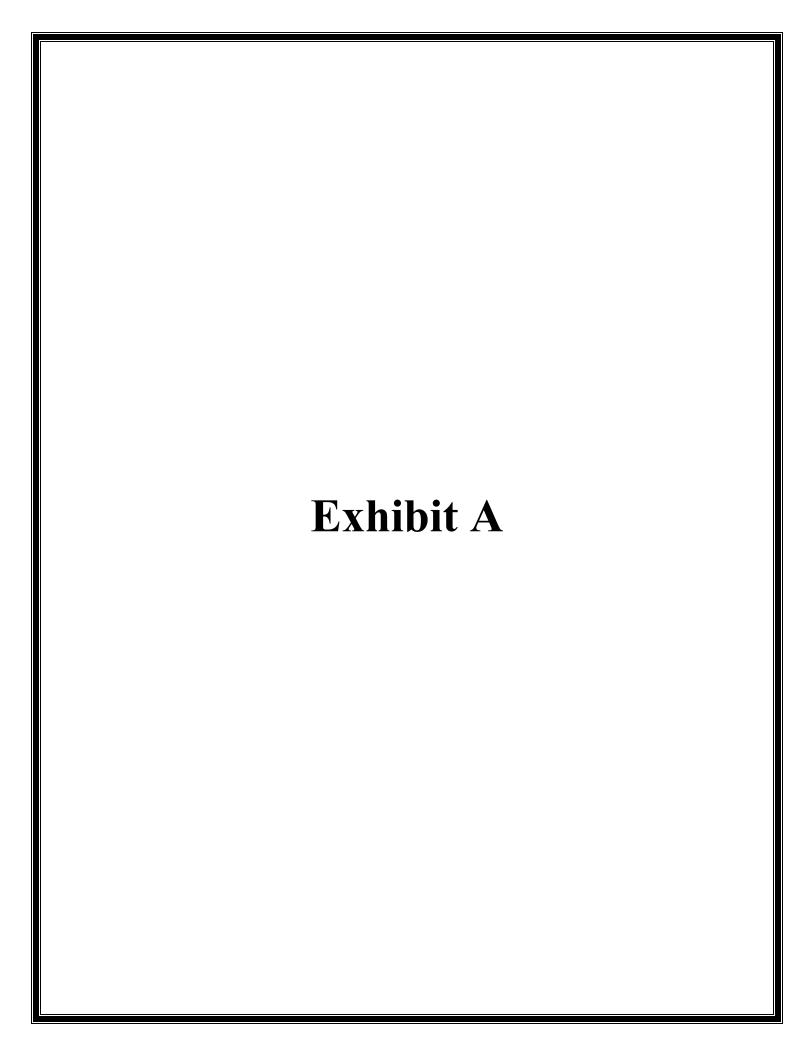
cc via certified mail:

Mr. Robert Monson Auditor of the San Diego Unified Port District San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Mr. Michael Zucchet Secretary of the Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

cc via email:

Mr. Douglas W. Sullivan dsullivan@crowell.com





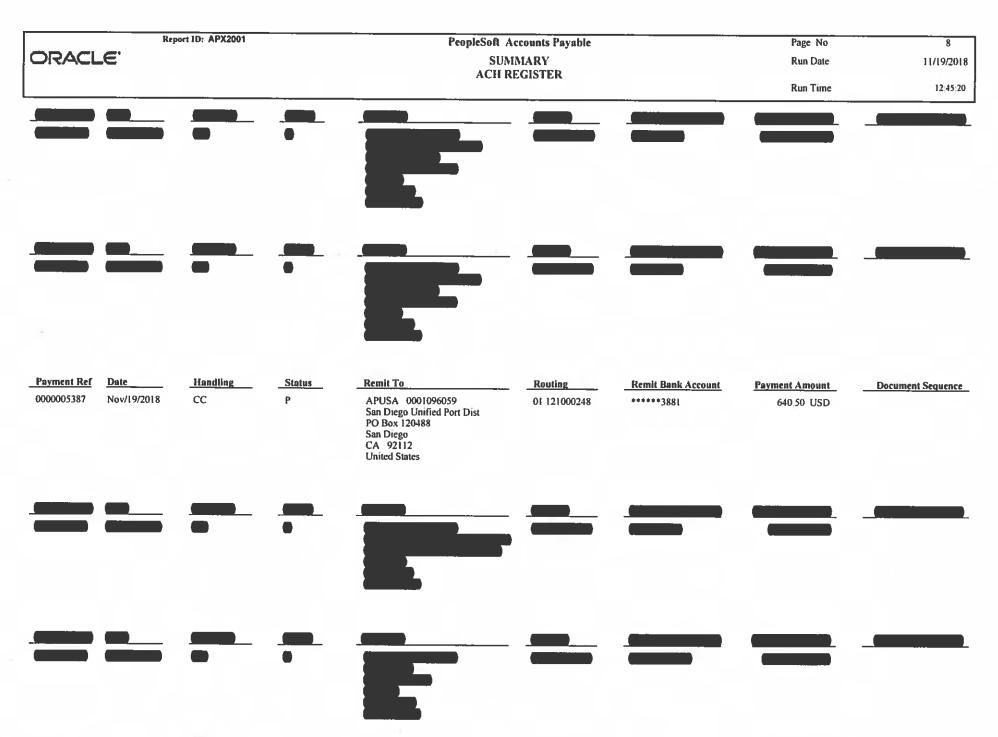
Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)666-6258

Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number	0007,0063.001	
Customer Number	866	
DATE:	10/16/18	

RIPTION	AMOUNT
Lease Effective Date	5/10/2018
N INVOICE PERIOD COVERED:	10/01/18 - 10/31/18
DESCRIPTION	GROSS AMOUNT RATE(EA) DUE & REMIT
E ONE TRANSPORTER	40,000.0
	TOTAL DUE AND REMITTED: 143,069.5
I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRI AND COMPLETE.	
Michael Powell	DATE: 10/16/1
	Lease Effective Date N INVOICE PERIOD COVERED: DESCRIPTION L CAR TRANSACTION I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRI AND COMPLETE.

Checks may be made payable to the San Diego Unified Port District and mail to the following address: Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488



Report ID: APX2001	PeopleSoft Accounts Payable	Page No	13
ORACLE'	SUMMARY ACH REGISTER	Run Date	11/19/2018
		Run Time	12:45,20

Pay Cycle: Pay Cycle Sequence: P8032A 708

Pay Cycle Run Date:

Nov/19/2018

Bank Account:

COM01 [932] *****7237

Payment Ref	<u>Date</u>	Handling	Status	Remit To	Routing	Remit Bank Account	Payment Amount	Document Sequence
0000005404	Nov/19/2018	cc	P	APUSA 0001096059 San Diego Unified Port Dist PO Box 120488 San Diego CA 92112	01 121000248	*****3881	142,429 00 USD	

Total Requirements for Bank Account: COM01 F932 *****7237 142,429.00 USD

Total Requirements for Currency: USD 142,429.90 USD

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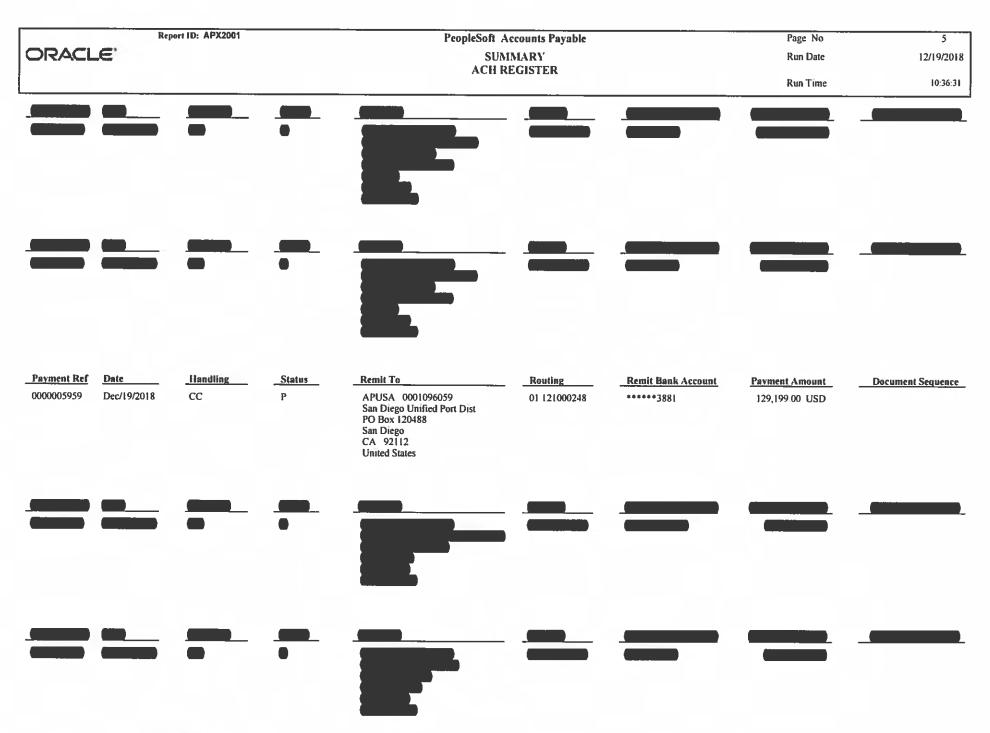
Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (519)686-6258

Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number_	0007.0063.001
Customer Number	866
DATE:	12/18/18

DESC	RIPTION		AMOUNT
	Lease Effective Date	5/10/2018	
CONCESSIO	N INVOICE PERIOD COVERED:	11/01/18 - 11/30/18	
	DESCRIPTION	GROSS AMOUNT R	ATE(EA) DUE & REMIT
		TOTAL DUE AND	REMITTED 129,199.00
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN A AND COMPLETE		
SIGNED	Michael Powell	DATI	12/16/18

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Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

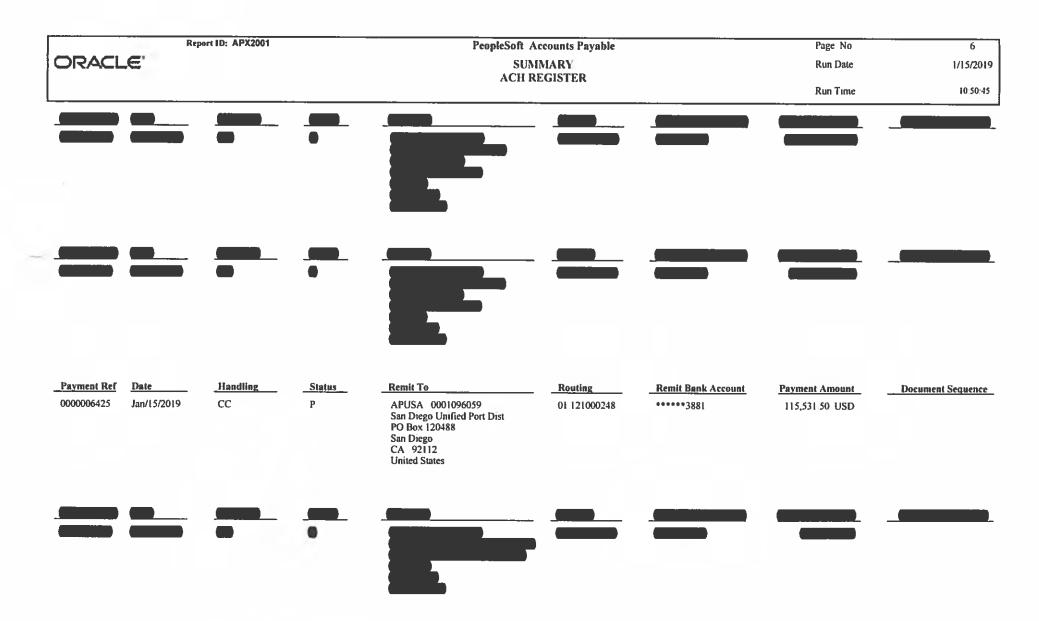
Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number	0007,0063.001				
Customer Number	866				
DATE:	01/14/19				

130

DESC	RIPTION	·		AMOUNT
	Lease Effective Date	5/10/2018		1
CONCESSIO	N INVOICE PERIOD COVERED;	12/01/18 - 12/31/18		
RENTA	DESCRIPTION L CAR TRANSACTION	GROSS AMOUNT 33,009	RATE(EA) 3.50	DUE & REMIT 115,531.50
		TOTAL DUE A	AND REMITTED	115,531.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED	Michael Powell		DATE:	01/14/19

Finance Department, P.O. Box. 120488, San Diego, Ca. 92112-0488





Finance Department P.O. BOX 129488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Enterprise Rent A Car Company 3355 Admiral Boland Way #147 San Diego, CA 92101

Lease-Out Number	0007.0063.001	
Customer Number	866	
DATE:	02/12/19	

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DESC	RIPTION		AMOUNT
	Lease Effective Date	5/10/2018	
CONCESSIO	N INVOICE PERIOD COVERED:	1/01/19 - 01/31/19	
RENTA	DESCRIPTION LI CAR TRANSACTION	GROSS AMOUNT RATE(E 38,924 3.50	(A) DUE & REMIT 129,234.00
		TOTAL DUE AND REMI	TED: 129,234.00
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.		
SIGNED	Michael Powell	DATE	02/12/19

Checks may be made payable to the San Diego Unified Port District and mall to the following address: Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488

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Finance Department
P.O. BOX: 120488 SAN DIEGO: CALIFORNIA 92112-0488
(819)686-8258

Lease-Out Number	0007,0063 001
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	Lease Effective Date	5/10/2018		
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RENTA	DESCRIPTION LE CAR TRANSACTION	GROSS AMOUNT 36,337	RATE(EA) 3.50	DUE & REMIT 127,179 50
		TOTAL DUE	AND REMITTED	127,179.50
	I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED	Michael Powell		DATE:	03/12/19

Checks may be made payable to the San Diego Unified Port District and mail to the following address Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488

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445 S. Figueroa Street

Los Angeles CA 90071

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Marty Dakessian Dakessian Law, Ltd.

Suite 2210

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RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0687 6114 03

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\$1,600 Postage per piece \$3,500 Certified Fee \$2.800 Return Receipt Fee Total Postage & Fees: \$7.900

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A. Signature: (□ Addressee or □ Agent)

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Ms Donna Morales Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



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2. Article Number (Transfer from service label) 9414 7118 9956 0687 6114 23

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Suite 2210

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RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0687 6457 67

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Postage per piece \$1,600 \$3.500 Certified Fee \$2.800 Return Receipt Fee Total Postage & Fees: \$7.900

ARTICLE ADDRESS TO:

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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B. Received By: (Printed Name)

D. Is delivery address different from item 1?

If YES, enter delivery address below:

A. Signature: (Addressee or Agent)

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C. Date of Delivery

1. Article Addressed to:

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



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2. Article Number (Transfer from service label) 9414 7118 9956 0687 6457 56

3. Service Type

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Los Angeles CA 90071

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Marty Dakessian Dakessian Law, Ltd.

Suite 2210

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9414 7118 9956 0687 6473 78 RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0687 6470 13

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Postage per piece \$1.600 \$3.500 Certified Fee \$2.800 Return Receipt Fee Total Postage & Fees: \$7,900

ARTICLE ADDRESS TO:

Mr Michael Zucchet Secretary of Board of Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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COMPLETE THIS SECTION ON DELIVERY

B. Received By: (Printed Name)

C. Date of Delivery

Mr Michael Zucchet Secretary of Board of Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0687 6470 13

2. Article Number (Transfer from service label) 9414 7118 9956 0687 6473 78

A. Signature: (Addressee or Agent)

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1. Article Addressed to: D. Is delivery address different from item 1? If YES, enter delivery address below:



3. Service Type

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Mr Michael Zucchet Secretary of Board of Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

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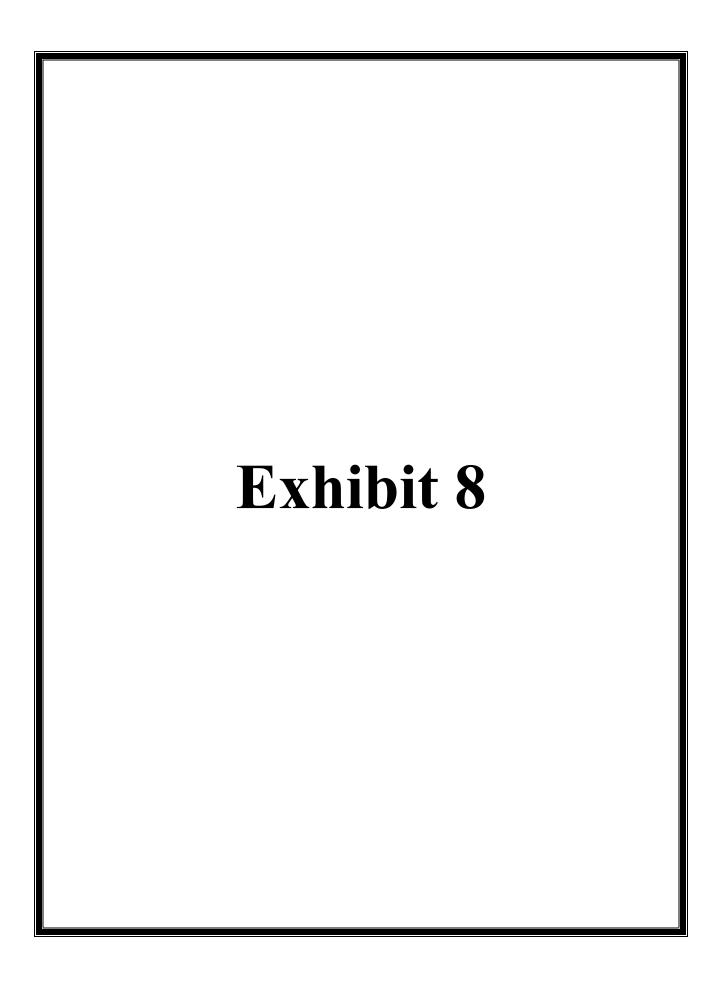
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Postal Service

PS Form 3811 Facsimile, July 2015 (SDC 3930)

Domestic Return Receipt





445 S. FIGUEROA STREET SUITE 2210 LOS ANGELES, CA 90071 213.516.5500 (O) 213.516.5502 (F) 1215 K STREET SUITE 1700 SACRAMENTO, CA 95814 916.307.6900

www.dakessianlaw.com

Ruben Sislyan

Direct Phone: 213.516.5504 Email: ruben@dakessianlaw.com

March 29, 2019

VIA PERSONAL SERVICE; AND CERTIFIED MAIL WITH RETURN RECEIPT

Ms. Donna Morales Clerk of the San Diego Unified Port District Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Re: Claim for Refund of Rental Car "User Fees"

Claimant: The Hertz Corporation Amount Claimed: \$512,126.95 or more

Dear Ms. Morales:

Our office represents The Hertz Corporation ("Claimant") in this matter. Claimant's address is 8501 Williams Road, Estero, FL 33928. However, we ask that you direct any and all correspondence regarding this matter to our office at the following address:

Attn: Ruben Sislyan Dakessian Law, Ltd. 445 South Figueroa Street, Suite 2210 Los Angeles, CA 90071

Please also send a copy of any and all correspondence regarding this matter to Douglas W. Sullivan, who also represents Claimant in this matter, to the following address:

Attn: Douglas W. Sullivan Crowell & Moring LLP 3 Embarcadero Center, 26th Floor San Francisco, CA 94111

In accordance with Board of Port Commissioners Policy No. 640 (filed July 24, 2013 as Document Number 60576) and Part 3 of Division 3.6 of Title 1 of the California Government Code (commencing with section 900) regarding Claims Against Public Entities—particularly Chapter 2 (commencing with section 910) regarding Presentation and Consideration of Claims—this is a

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 2 of 9

claim for refund of the entire amount of the alleged rental car "user fees," imposed by the San Diego Unified Port District ("District") under Resolution 2018-065 (the "Resolution"), collected by Claimant from its rental car customers during the period October 1, 2018 through February 28, 2019 and remitted to the District, in the amount of \$512,126.95 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. This claim is a non-limited civil case. The details of the claim are discussed below.

I. Background Regarding The Occurrences And Transactions Giving Rise To The Claim

A. The District's Imposition Of The Rental Car "User Fee"

By way of background, on April 10, 2018, the District's Board of Port Commissioners adopted the Resolution, which, as of May 10, 2018, has required rental car companies conducting business on District tidelands ("Port Property"), such as Claimant, to collect a "user fee" of \$3.50 per rental car transaction (the "Charge") from all rental car customers, on behalf of the District, and to pay the collected "user fees" to the District, in accordance with an ordinance under which fee collection ended over a decade ago, Ordinance 2030. The Resolution provides that the new monies generated by this new Charge will be used to pay for the construction of a parking structure adjacent to the planned Chula Vista Bayfront Convention Center on Port Property in Chula Vista in San Diego County.

B. Claimant's Business Operations On Port Property

Claimant is in the business of renting cars to customers. It conducts business under the Hertz, Dollar, and Thrifty car rental brands. Claimant enters into car rental transactions on Port Property, including at the common car rental facility located at the San Diego Airport, at counters located in hotels near the San Diego Convention Center and the San Diego Airport, and at branches in the vicinity of the San Diego Airport that are strategically located to serve customers whose personal automobiles are being serviced or repaired at nearby car dealerships and repair shops.

[Continued on next page.]

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 3 of 9

C. Collection And Remittance Of The Charge And Refund Amount

With respect to rental car transactions occurring on Port Property, as required under the Resolution, Claimant has collected the Charge from its rental car customers renting cars from Claimant's locations on Port Property, and remitted it to the District on a monthly basis since May 10, 2018. For the monthly periods covered by this claim for refund (i.e., October 2018 through February 2019), Claimant has collected and remitted the Charge to the District in the following amounts, broken down by rental brand:

Charge Amount Collected By Claimant And Remitted to District				
Month	Date of Payment	Rental	Amount (\$)	Check No.
	-	Brand		
Oct. 2018	Nov. 14, 2018	Hertz	82,344.50	22430, 9855077
Oct. 2018	Nov. 14, 2018	Dollar	18,672.50	22430, 9855077
Oct. 2018	Nov. 14, 2018	Thrifty	13,405.00	22430, 9855077
Nov. 2018	Dec. 14 & 21, 2018	Hertz	72,450.00	24988, 9865497
Nov. 2018	Dec. 14 & 21, 2018	Dollar	20,198.50	24988, 9865497
Nov. 2018	Dec. 14 & 21, 2018	Thrifty	13,762.00	24988, 9865497
Dec. 2018	Jan. 11, 2019	Hertz	63,577.50	9875017
Dec. 2018	Jan. 11, 2019	Dollar	16,873.50	26299
Dec. 2018	Jan. 11, 2019	Thrifty	13,797.00	26299
Jan. 2019	Feb. 15, 2019	Hertz	65,435.95	9887332
Jan. 2019	Feb. 15, 2019	Dollar	17,629.50	28590
Jan. 2019	Feb. 15, 2019	Thrifty	15,141.00	28590
Feb. 2019	Mar. 15, 2019	Hertz	67,028.50	9897370
Feb. 2019	Mar. 15, 2019	Dollar	18,630.50	30331
Feb. 2019	Mar. 15, 2019	Thrifty	13,181.00	30331
Total			512,126.95	

Copies of Claimant's monthly remittance statements submitted to the District and proof of payment of the amounts stated above to the District are enclosed as **Exhibit A**. This claim for refund is for the entire amount of the Charge collected by Claimant from its rental car customers during the period October 1, 2018 through February 28, 2019 and remitted to the District in the amount of \$512,126.95 or more, plus applicable refund interest, expenses, litigation costs, and attorneys' fees as provided by law. For the reasons discussed below, Claimant claims this refund in order to return the amounts to its rental car customers who paid the Charge.

II. Grounds For Claim For Refund

Claimant is entitled to a refund on at least four separate and independently dispositive grounds. Each ground is discussed below.

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 4 of 9

A. The Charge Is An Unconstitutional Special Tax

First, a refund is due because the Charge is an unlawful and illegal special tax disguised as a "user fee," in violation of the California Constitution, for the reasons discussed below.

By way of background, Proposition 218, known as the "Right to Vote on Taxes Act," amended the California Constitution to ensure that citizens would have the right to vote on whether local governments should enact taxes, such as the Charge at issue here. Proposition 218 was motivated by the actions of local governments to circumvent then existing requirements for voter approval of special taxes and assessments contained in Proposition 13, including California Constitution Article 13A, Section 4, requiring that special taxes be approved by a two-thirds vote.

Article XIII C of the California Constitution (enacted as part of Proposition 218) requires that all special taxes—*i.e.*, taxes imposed for special purposes—imposed by local governments be approved by two-thirds of local voters. Here, despite the Charge's label as a "user fee," the Charge is actually a tax, for the reasons discussed below. The Resolution thus violates Article XIII C of the California Constitution, as the Charge was never submitted for and never received the requisite approval by a two-thirds vote of the electorate, as the Constitution requires for special taxes. (Cal. Const., Art. XIII C, §§ 2(b), 2(d).)

Turning to the tax versus fee issue, generally, under California law, "taxes are imposed for revenue purposes, [whereas] fees are collected to cover the costs of services or regulatory activities." (Cal. Tow Truck Assn. v. City & Cnty. of San Francisco (2014) 225 Cal.App.4th 846, 859.) The defining characteristic of a valid "fee," as distinct from a tax, "is the relationship between the charge imposed and a benefit or cost related to the payor." (Jacks v. City of Santa Barbara (2017) 3 Cal.5th 248, 261.) Charges are only "allowable" as fees to the extent restricted to the "special benefit received by the payor": If the people who pay a supposed "fee" do not receive such a benefit, then the charge has "become a vehicle for generating revenue independent of the purpose of the fees"—that is, a tax. (Ibid.) "Therefore, to the extent charges exceed the rationale underlying the charges, they are taxes." (Ibid.)

To qualify as a "user fee," a charge must be "charged to the person using the service and its amount [must be] related to the goods and services actually provided." (*Bay Area Cellular Tel. Co. v. City of Union City* (2008) 162 Cal.App.4th 686, 694.) But if, on the other hand, the charge is imposed on members of the public other than the "users" receiving the benefits, local voters must have a say in whether they will bear such a charge.

Consistent with these principles, Article XIII C defines "tax" expansively to include "any levy, charge, or exaction of any kind imposed by a local government," with only seven exceptions. In

^{1&}quot;Local government" is defined to include "any special district," meaning "an agency of the state, formed pursuant to general law or a special act, for the local performance of governmental or proprietary functions with limited geographic boundaries" (Cal. Const., art. XIII C, § 1 (b), (c).) The District meets this definition, as it is a "special district" created by the San Diego Unified Port District Act to manage the harbor, navigable waters, and tidelands of the San Diego Bay. (Cal. Harb. & Nav. Code, Appx. I, § 4.)

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 5 of 9

other words, any charge imposed by a local government like the District is considered a tax, unless the local government can establish that it falls within one of these seven specifically enumerated exceptions. (Cal. Const., Art. XIII C, § l(e).) "The local government bears the burden of establishing the[se] exceptions" to the constitutional definition of "tax." (*Jacks*, *supra*, 3 Cal.5th at p. 260.)²

As noted, the Charge is a "user fee" of \$3.50 per rental car transaction on Port Property. Under the well-settled principles outlined above, it is a "levy, charge or exaction" imposed by a "local government," and thus a tax, unless it falls into one of the seven exceptions. None of the exceptions apply here.

The Charge plainly does not fall within exceptions 3, 4, 5, 6, or 7 to Article XIII C's definition of "tax." According to the Resolution, the sole purpose of the Charge is to fund the construction of parking structures at the Chula Vista Bayfront Convention Center. The Charge thus has nothing to do with the District's "reasonable regulatory costs" of issuing permits or performing inspections (exception #3), or with the use, purchase, or rental of local government property (exception #4). Nor is the Charge a fine or penalty imposed by the judicial branch for a violation of law (exception #5), or a fee imposed as a condition of property development (exception #6), or an assessment or property-related fee imposed in accordance with the provisions of Article XIII D (exception #7).

The District is thus relegated to arguing that the Charge comes under either exception #1 or #2. Both of these exceptions, however, require that the Charge be imposed only on those rental car customers who will use the to-be-constructed parking structure, which is not the case here.

Specifically, when customers rent vehicles from Claimant at the San Diego Airport (which is located on Port Property) or at Claimant's various branch offices on Port Property, including branch offices located near auto repair shops (which too are located on Port Property), Claimant must collect the alleged "user fees" to fund a Chula Vista parking structure that the District plans to build in the future. Claimant must collect the Charge from rental car customers even though those customers may never go to Chula Vista, and even though it is impossible for those customers to use a parking garage that does not yet exist. Thus, the Charge is imposed upon rental car customers who will not make use of the planned Chula Vista parking structure. Said differently, imposition of the Charge on rental car customers is not—as California law requires—limited to those who will actually use the Chula Vista parking structure or in amounts reasonably reflecting the value of benefits conferred by the District on those customers. Rather, the overwhelming majority of rental cars will not use the convention center's parking facilities (even when completed), and the overwhelming majority of cars that will use the convention center's parking facilities will not be rental cars originating from rental car companies on Port Property. Thus, while

²The label the local government gives to a charge, moreover, does not control whether a charge is a "tax." (*See generally Flynn v. City of San Francisco* (1941) 18 Cal.2d 210, 214-15 ["The nomenclature is of minor importance, for the court will look beyond the mere title or the bare legislative assertion . . . to see and determine the real object, purpose and result of the enactment."].)

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 6 of 9

the Charge may benefit the general public, it does not confer any specific benefit upon customers of rental car companies situated on Port Property.

Based on these facts, the Charge does not come within either exception #1 or #2. With respect to exception #1, the Charge is not "imposed for a specific benefit conferred or privilege granted directly to the payor[s]"—that is, customers who rent cars on Port Property—"that is not provided to those not charged." (Cal. Const., Art. XIII C, \S l(e)(1).) Nor is the Charge "imposed for a specific government service or product provided directly to [rental car customers on Port Property] that is not provided to those not charged" (exception #2). (*Id.*, \S 1(e)(2).)

This is precisely the type of case in which other courts have found charges to be taxes—where, as here, "those who paid the [f]ee received no benefit not received by those who did not pay (and thus by the general public), thereby negating the distinguishing feature of a user fee." (See, e.g., Bay Area Cellular, supra, 162 Cal.App.4th at p. 695; see also Isaac v. City of Los Angeles (1998) 66 Cal.App.4th 586, 596-97 [user fees are "those which are charged only to the person[s] actually using the service"].) In Bay Area Cellular, for example, the court found that a purported "user fee" was a special tax because the benefit funded by the charge—the City's 911 system—benefitted other members of the general public, "whether or not subject to the [f]ee." (Bay Area Cellular, supra, 162 Cal.App.4th at pp. 695-96.) The court reached a similar conclusion in Weisblat v. City of San Diego, finding that a charge imposed on owners of residential rental property to pay for the cost of collecting business taxes was a tax, not a fee. This is because the charge did not confer any direct benefit on the payers, as it was not exacted in return for permits or other governmental privileges. (Weisblat v. City of San Diego (2009) 176 Cal.App.4th 1022, 1043.)

Accordingly, the Charge is a special tax within the meaning of the California Constitution. It is not a "user fee" or any other kind of legitimate fee. And because the Charge was not submitted to or approved by the District's voters, is unlawful. For this reason, Claimant is entitled to a refund.

B. The Charge Violates The Dormant Commerce Clause Of The United States Constitution

Claimant's entitlement to a refund also follows from established Commerce Clause jurisprudence. Although the Commerce Clause of the United States Constitution is phrased as a grant of regulatory power to Congress, it "has long been seen as a limitation on state regulatory powers, as well as an affirmative grant of congressional authority." (Cutler v. Franchise Tax Board (2012) 208 Cal.App.4th 1247, 1253, quoting Fulton Corp. v. Faulkner (1996) 516 U.S. 325, 330.) This negative aspect, referred to as the "dormant commerce clause," prohibits "regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." (Ibid.) A local ordinance can violate the dormant Commerce Clause either by facially discriminating against out of state interests or by imposing "a burden on interstate commerce that is 'clearly excessive in relation to the putative local benefits,' [citation]." (C & A Carbone, Inc. v. Town of Clarkstown (1994) 511 U.S. 383, 390.)

"User fees"—that is, charges "purportedly assessed to reimburse the State for costs incurred in providing specific quantifiable services"—violate the "dormant Commerce Clause" if the fees are "disproportionate to the services rendered " (Alamo Rent-A-Car, Inc. v. Sarasota-Manatee

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 7 of 9

Airport Auth. (11th Cir. 1990) 906 F.2d 516, 518, quoting Commonwealth Edison Co. v. Montana (1981) 453 U.S. 609, 622-23 & n.12.) In making this determination, courts follow the two-pronged test set forth by the United States Supreme Court:

first, the [user] fee charged must "reflect a fair, if imperfect, approximation of the use of facilities for whose benefit they are imposed," [citation]; [and] second, the fee must not "be excessive in relation to costs incurred by the taxing authorities."

(*Ibid.*, quoting *Evansville-Vanderburgh Airport Auth. Dist. v. Delta Airlines* (1972) 405 U.S. 707, 717, 719, emphasis added.)

Many of the customers who rent from Claimant at the San Diego Airport common car rental facility are traveling in interstate commerce and are not California residents. The same reasoning that dooms the Charge under the California Constitution renders it invalid under the Commerce Clause: the Charge does not "fairly approximate" the "use of the facilities for whose benefit they are imposed," as only a vanishingly small percentage of the rental car customers who pay the Charge will ever benefit from the to-be-constructed parking garage that will be funded by the Charge. Rental car customers who are traveling from out-of-state, many of whom are out-of-state residents arriving at the San Diego Airport, will thus bear "disproportionate" costs in comparison to the negligible level of "quantifiable services" they might receive from the Chula Vista parking garage. This violates the dormant Commerce Clause. For this reason too, Claimant is entitled to a refund.

C. Even If Local Voters Were To Approve The Charge, The District Has No Legislative Authority To Impose Such a Tax

Claimant is also entitled to a refund because the Charge, even if it had been submitted to and approved by two-thirds of the District's voters (which it was not), would still be illegal, as it is a sales or use tax in disguise—and thus beyond the limited taxing authority conferred on the District by the California Legislature.

The California Constitution forbids special districts like the District from levying general taxes under any circumstance. (Cal. Const., art. XIII C, § 2(a).) Such districts may levy special taxes, but only with specific taxing authority from the Legislature. (Cal. Const., art. XIII A, § 4; Govt. Code § 53727; Santa Clara Cnty. Local Transp. Auth. v. Guardino (1995) 11 Cal.4th 220, 248 [legislative "grant of power is an essential prerequisite to all local taxation, because local governments have no inherent power to tax."].)

Here, the Charge is a sales or use tax that applies to all rental car transactions on Port Property. Indeed, the California Attorney General has consistently concluded that analogous charges on rental car transactions are sales or use taxes. (See Attorney General Opinions 90-928, 94-807.)

The Legislature, however, has not granted the District the authority to impose such sales or use taxes. (See Govt. Code § 53727.) To the contrary, Section 7202 of the Revenue and Taxation Code authorizes only cities and counties to levy such taxes, in compliance with the Bradley-Burns Uniform Local Sales and Use Tax Law. (Cal. Rev. & Tax. Code, Part 1.5, § 7200, et seq.)

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 8 of 9

Similarly, while the Legislature has conferred the power to levy transactions and use taxes on other special districts (including the Bay Area Rapid Transit District (Cal. Pub. Util. Code § 29140) and Santa Clara Valley Transportation Authority (Cal. Pub. Util. Code § 100250)), it has granted no such power to the District. The District's imposition of the Charge is thus ultra vires and invalid as a matter of law.

Further, Section 57.5 of the San Diego Unified Port District Act (Cal. Harb. & Nav. Code § App. 1, § 57.5), which acknowledges that the District may impose a "transaction fee" under certain circumstances but nowhere grants authority to impose a "tax" of any kind, also does not grant the District authority to impose the Charge. In fact, Section 57.5 would itself be illegal and unconstitutional to the extent it purported to authorize the District to impose a tax, rather than a fee, without voter approval. (See Cal. Const., art. XIIIA, § 4; see also Cal. Bldg. Indus. Assn. v. Gov. Bd. (1988) 206 Cal.App.3d 212, 227 [Legislature has "no authority to impose taxes and regulate the collection thereof" where "expressly eliminated by the Constitution"], internal quotations omitted.)

Accordingly, the District does not have authority to impose the Charge, even if it were to get voter approval. For this reason too, Claimant is entitled to a refund.

D. The Charge Is Illegal Because It Violates Federal Law Prohibiting Use of Airport Revenue For Non-Airport Purposes

Finally, Claimant is entitled to a refund because the Charge violates federal law prohibiting use of airport revenue for non-airport purposes. Specifically, the District is prohibited from imposing a tax, fee, or charge "exclusively upon any business located at a commercial service airport or operating as a permittee of such an airport other than a tax, fee or charge wholly utilized for airport or aeronautical purposes." (49 U.S.C.A. § 40116(d)(2)(A)(iv).) This is because such acts "unreasonably burden and discriminate against interstate commerce[.]" (*Id.* at 40116(d)(2)(A).)

The Charge is imposed only on rental car companies that have a business location at the San Diego Airport, and, as such, the Charge is "exclusively upon any business located at a commercial service airport." And because the amounts collected will be used to construct a parking structure in Chula Vista, and not for any airport purpose, the Charge is not "wholly utilized for airport or aeronautical purposes." The Charge accordingly violates 49 U.S.C.A. § 40116(d)(2)(A)(iv) and "unreasonably burden[s] and discriminate[s] against interstate commerce[,]" in violation of the Commerce Clause, and is unlawful. For this reason too, Claimant is entitled to a refund.

III. Conclusion

For the reasons discussed, Claimant is entitled to a refund of \$512,126.95 or more, plus applicable interest, expenses, litigation costs, and attorneys' fees as provided by law. Due to the continuing nature of the Charge, the amount subject to refund will continue to increase over time. This claim is a non-limited civil case.

* * *

Ms. Donna Morales Clerk of the San Diego Unified Port District March 29, 2019 Page 9 of 9

Should you have any questions, please feel free to call me at (213) 516-5504. Thank you for your attention to this important matter.

Sincerely,

Ruben Sislyan Attorney at Law

Enclosure: As stated

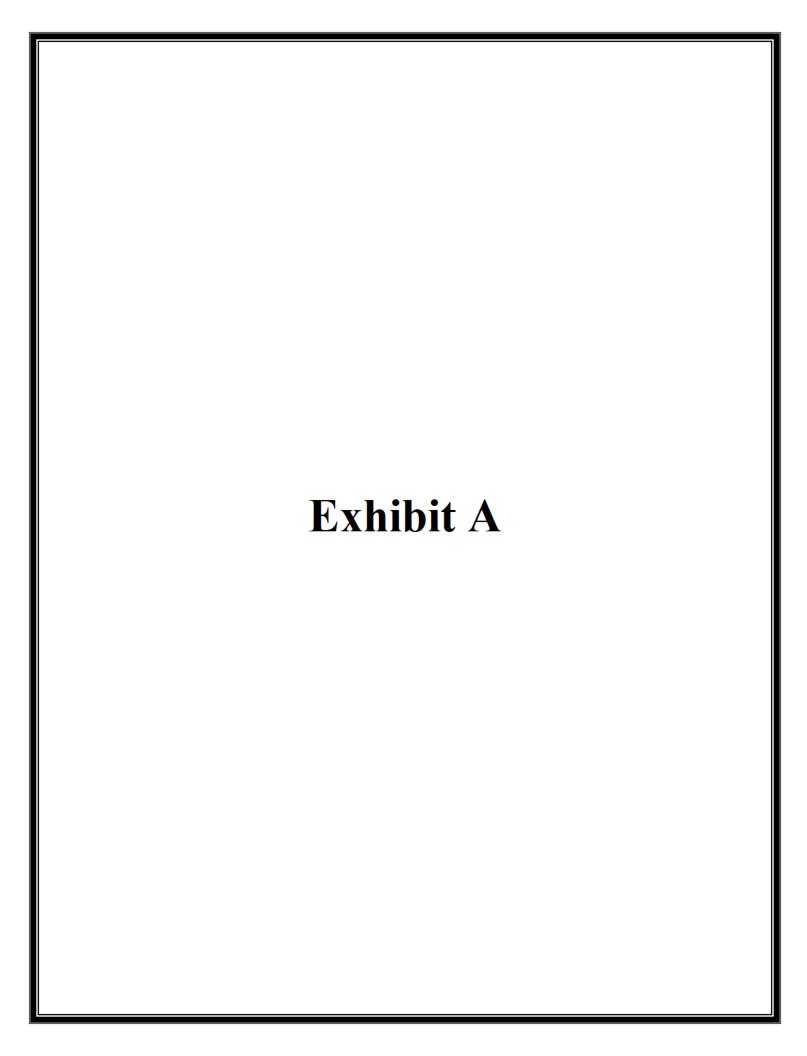
cc via certified mail:

Mr. Robert Monson Auditor of the San Diego Unified Port District San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

Mr. Michael Zucchet Secretary of the Board of Port Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego, CA 92101

cc via email:

Mr. Douglas W. Sullivan dsullivan@crowell.com





Finance Department
P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488
(6198-66-629)

(619)686-6258	1		Lease-Out Number Customer Number	r0007.00	
Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101			DATE:	November	14, 2018
DESCRIF	PTION				AMOUNT
		Lease Effective Date	05/10/2018 -		
CONCESSION II	NVOICE PERIOD COVERED:		OCTOBER, 2018	_	
RENTAL C	CAR TRANSACTIONS - HERTZ	DESCRIPTION	TOTAL NUMBERS 23,527	RATE(EA)	DUE & REMIT 82,344.50
				OVERPAYMENT	17.50
			TOTAL DI	UE AND REMITTED:	82,362.00
		HAVE EXAMINED THIS INVOICE AND THAT TO THE BES NTRIES MADE HEREIN ARE TRUE AND COMPLETE.	т		
SIGNED				DATE:	11/14/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (819)686-5258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0062.001 858		
Customer Number			
DATE:	November 14, 2018		
	·		

DESCRIP	PTION				AMOUNT
		Lease Effective Date	05/10/2018		
CONCESSION (NVOICE PERIOD COVERED:		OCTOBER, 2018	_	
	.==	DESCRIPTION	TOTAL NUMBER	RATE(EA)	DUE & REMIT
	AR TRANSACTIONS - DOLLAR		5,335	3.50	18,672.50
RENTAL	CAR TRANSACTIONS - THRIFTY		3,830	3.50	13,405.00
				OVERPAYMENT	21.00
			TOTAL D	UE AND REMITTED:	32,098.50
		AVE EXAMINED THIS INVOICE AND THAT TO THE BEST ITRIES MADE HEREIN ARE TRUE AND COMPLETE.	•		
SIGNED		· · · · · · · · · · · · · · · · · · ·		_DATE:	11/14/18



Finance Department
P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488
(619)686-6256

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0070.001		
Customer Number	863		
DATE:	December 14, 2018		

DESCR!F	PTION				AMOUNT
		Lease Effective Date	05/10/2018 -		
CONCESSION II	NVOICE PERIOD COVERED:		NOVEMBER, 2018		
RENTAL C	AR TRANSACTIONS - HERTZ	DESCRIPTION	TOTAL NUMBERS 20,700	RATE(EA) 3.50	DUE & REMIT 72,450.00
				OVERPAYMENT CR SEP ADDL CR OCT ADDL	45.50 -7.00 -17.50
			TOTAL DU	E AND REMITTED:	72,471.00
		IAVE EXAMINED THIS INVOICE AND THAT TO THE BEST ITRIES MADE HEREIN ARE TRUE AND COMPLETE.	г		
SIGNED				DATE:	12/14/18



P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619) 686-6258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

0007.0062.001		
858		
December 14, 2018		

12/14/18

DESCRIP	PTION				AMOUNT
		Lease Effective Date	05/10/2018 -		
CONCESSION II	NVOICE PERIOD COVERED:		NOVEMBER, 2018	_	
		DESCRIPTION	TOTAL NUMBER	RATE(EA)	DUE & REMIT
	CAR TRANSACTIONS - DOLLAR		5,771	3.50	20,198.50
RENTAL	CAR TRANSACTIONS - THRIFTY		3,932	3.50	13,762.00
				OVERPAYMENT	70.00
				CR OCT ADDL	-21.00
			TOTAL DU	JE AND REMITTED:	34,009.50
		IAVE EXAMINED THIS INVOICE AND THAT TO THE BEST ITRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED				_DATE:	12/14/18



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

CONCESSION INVOICE PERIOD COVERED:

RENTAL CAR TRANSACTIONS - HERTZ

DESCRIPTION

SIGNED

50 GRIT DIEGO, CALFORINA \$21 2-0400			
		Lease-Out Number	0007.0070.001
		Customer Number	863
poration Iral Boland Way o, CA 92101		DATE:	January 11, 2019
TION			AMOUNT
	Lease Effective Date	05/10/2018 -	
VOICE PERIOD COVERED:		DECEMBER, 2018	
AR TRANSACTIONS - HERTZ	DESCRIPTION	TOTAL NUMBERS 18,165	RATE(EA) DUE & REMIT 9.50 63,577.50
		TOTAL DUE A	ND REMITTED: 63,577.50
	HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST NTRIES MADE HEREIN ARE TRUE AND COMPLETE.	г	

DATE:

01/11/19

Checks may be made payable to the San Diego Unified Port District and mail to the following address: Finance Department, P.O. Box 120488, San Diego, Ca 92112-0488



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619) 888-8258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0062.001		
Customer Number	858		
DATE:	January 11, 2019		

DESCRIPTION	·				
DESCRIPTION		Lange Fifth Adv. But.	0540000		AMOUNT
		Lease Effective Date	05/10/2018 -		
CONCESSION INVOICE F	PERIOD COVERED:		DECEMBER, 2018		
		DESCRIPTION	TOTAL NUMBER	RATE(EA)	DUE & REMIT
	SACTIONS - DOLLAR SACTIONS - THRIFTY		4,821 3,942	3.50 3.50	16,873.50 13,797.00
			TOTAL DUE	E AND REMITTED:	30,670.50
					00,070.00
		AVE EXAMINED THIS INVOICE AND THAT TO THE BEST ITRIES MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED				DATE:	01/11/19



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)698-8258

Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101

CONCESSION INVOICE PERIOD COVERED:

RENTAL CAR TRANSACTIONS - HERTZ

DESCRIPTION

Lease-Out Number_	0007.0070.001		
Customer Number	86:	3	
DATE:	January 1	1, 2019	
		AMOUNT	
05/10/2019 -			
JANUARY, 2019			
TOTAL NUMBERS 28,059	RATE(EA) 3.50	DUE & REMIT 65,435.95	
	OVERPAYMENT	1.16	
TOTAL DUE	AND REMITTED:	65,437.11	
_			

DATE:

02/13/19

I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.

Lease Effective Date

DESCRIPTION

SIGNED



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)686-6258

Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101

Lease-Out Number	0007.0062.001	
Customer Number	858	
DATE:	January 11, 2019	

DESCRIPTION			AMOUNT
Lease Effective Date	05/10/2019 -	11 - 7 - 1	
CONCESSION INVOICE PERIOD COVERED:	JANUARY, 2019		
DESCRIPTION	TOTAL NUMBER	RATE(EA)	DUE & REMIT
RENTAL CAR TRANSACTIONS - DOLLAR RENTAL CAR TRANSACTIONS - THRIFTY	5,037 4,32 6	3.50 3.50	17,629.50 15,141.00
	SYSTEM	I ROUNDING ISSUE	0.05
	TOTAL DU	E AND REMITTED:	32,770.55
I HEREBY CERTIFY THAT I HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST OF MY KNOWLEDGE ALL ENTRIES MADE HEREIN ARE TRUE AND COMPLETE.	г		
SIGNED		DATE;	02/13/19



Finance Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619)688-6258

					7 0 10 0	
Hertz Corporation 3355 Admiral Boland Way San Diego, CA 92101			Customer Number	86	863 March 13, 2019	
			DATE:	March 1		
DESCRIP	TION				AMOUNT	
		Lease Effective Date	05/10/2019 -			
CONCESSION IN	NVOICE PERIOD COVERED:		FEBRUARY, 2019	_		
RENTAL C	AR TRANSACTIONS - HERTZ	DESCRIPTION	TOTAL NUMBERS 28,240	RATE(EA) 3.50	DUE & REMIT 67,028.50	
			TOTAL D	UE AND REMITTED:	67,028.50	
	I HEREBY CERTIFY THAT I HOOF MY KNOWLEDGE ALL EN	HAVE EXAMINED THIS INVOICE AND THAT TO THE BEST NTRIES MADE HEREIN ARE TRUE AND COMPLETE.	г			
SIGNED				DATE:	03/13/19	

Lease-Out Number_

0007.0070.001



F!nence Department P.O. BOX 120488 SAN DIEGO, CALIFORNIA 92112-0488 (619) 888-6258

			Customer Number	858	3
Dollar Rent A Car 3355 Admiral Boland Way San Diego, CA 92101			DATE:	March 13	, 2019
DESCRIPTION					AMOUNT
	Leas	se Effective Date	05/10/2019 -		
CONCESSION INVOICE PERIOD	COVERED:		FEBRUARY, 2019	_	
RENTAL CAR TRANSACTION RENTAL CAR TRANSACTION	NS - DOLLAR	CRIPTION	TOTAL NUMBER 5,323 3,766	RATE(EA) 3.50 3.50	DUE & REMIT 18,630.50
NEW PERSON OF THE PROPERTY OF	NO- III MI I I		3,700	3.30	13,181.00
			TOTAL DI	JE AND REMITTED:	31,811.50
		XAMINED THIS INVOICE AND THAT TO THE BEST MADE HEREIN ARE TRUE AND COMPLETE.			
SIGNED				DATE:	03/13/19

Lease-Out Number_

0007.0062.001

03/13/19

THIS DOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT UNLESS BLUE AND GREEN ARE PRESENT.

The Hertz Corporation 14501 Hertz Quail Springs Pkwy Oklahoma City, OK 73134-2628



JPMorgan Chase Bank, N.A. Syracuse, NY

2407-09

50-937

CHECK NO. 9855077

DATE 11-14-2018

Void After 180 Days CHECK AMOUNT

\$****83,167.00

AUTHORIZED SIGNATURE

PAY TO THE ORDER OF

SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE PO BOX 120488

EIGHTY-THREE THOUSAND ONE HUNDRED SIXTY-SEVEN DOLLARS AND ZERO DENTS.

SAN DIEGO, CA 92112

50911

THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS BLUE AND GREEN ARE PRESENT

DTG Operations, Inc. 14501 Hertz Quail Springs Pkwy Oklahoma City, OK 73134-2628



JPMorgan Chase Bank, N.A. Syracuse, NY

50-937/213

CHECK NO. 22430

DATE 11-14-2018

Void After 180 Days CHECK AMOUNT

**** THIRTY-ONE THOUSAND TWO HUNDRED NINETY-THREE DOLLARS AND FIFTY CENTS

\$****31,293.50

ORDER OF

PAY TO THE SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE

PO BOX 120488

SAN DIEGO, CA 92112

AUTHORIZED SIGNATURE

50 GII

Seq#

THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS BLUE AND GREEN ARE PRESENT.



The Hertz Corporation 14501 Hertz Quail Springs Pkwy Okiahoma City, OK 73134-2628 JPMorgan Chase Bank, N.A. Syracuse, NY

DATE 12-14-2018

2407-09

CHECK NO. 9865497

Void After 180 Days CHECK AMOUNT

\$****73,234.00

PAY TO THE ORDER OF

SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE PO BOX 120488

SEVENTY-THREE THOUSAND TWO HUNDRED THIRTY-FOUR DOLLARS AND ZERO CENTS

SAN DIEGO, CA 92112

50911

C + CK WITHOUT

*** THIRTY-THREE THOUSAND TWO HUNDRED FORTY-SIX DOLLARS AND FIFTY CENTS

DTG Operations, Inc.

14501 Hertz Quail Springs Pkwy Oklahoma City, OK 73134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

50-937/213

THIS DOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT UNLESS BLUE AND GREEN ARE PRESENT. CHECK NO. 24988

DATE 12-21-2018

Void After 180 Days CHECK AMOUNT

\$****33,246.50

PAY TO THE

SAN DIEGO UNIFIED PORT DIST

ORDER OF

ATTN TREASURER S OFFICE

PO BOX 120488

SAN DIEGO, CA 92112

506#

The Hertz Corporation 14501 Hertz Quail Springs Pkwy Oklahoma City, OK 73134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

DATE 01-11-2019

2407-09

THE BOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT UNLESS BLUE AND OWNER ARE PRESENT. CHECK NO. 9875017

> Vold After 180 Days CHECK AMOUNT

\$****63,577.50

SIXTY-THREE THOUSAND FIVE HUNDRED SEVENTY-SEVEN DOLLARS AND FIFTY CENTS

PAY TO THE ORDER OF

SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE PO BOX 120488

SAN DIEGO, CA 92112

AUTHORIZED SIGNATURE

5091

DTG Operations, Inc. 14501 Hertz Quali Springs Pkwy Oklahoma City, OK 78134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

THIS DOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT UNLESS BLUE AND GREEN ARE PRESENT.

50-937/213

1

CHECK NO. 26299

DATE 01-11-2019
**** THIRTY THOUSAND SIX MUNDRED SEVENTY DOLLARS AND FIFTY CENTS

Void After 180 Days
CHECK AMOUNT

\$****30,670.50

PAY TO THE SAN DIEGO UNIFIED PORT DIST ORDER OF ATTN TREASURER S OFFICE

PO BOX 120488 SAN DIEGO, CA 92112

506*

UNIFIED PORT OF SAN DIEGO
GENERAL ACCOUNT

4121219422

ASS BOCUMENT IS PRINTED IN TWO COLORS, DO NOT ACCEPT UNLESS BLUE AND GREEN ARE PRESENT.

The Hertz Corporation 14501 Hertz Quail Springs Pkwy Oklahoma City, OK 73134-2628 JPMorgan Chase Bank, N.A. Syracuse, NY

DATE 02-15-2019

2407-09

CHECK NO. 9887332

Void After 180 Days CHECK AMOUNT

\$****65,437.11

PAY TO THE ORDER OF

SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE PO BOX 120488 **SAN DIEGO, CA 92112**

SIXTY-FIVE THOUSAND FOUR HUNDRED THIRTY-SEVEN DOLLARS AND ELEVEN DENTS

509



Seq#

DTG Operations, Inc. 14501 Hertz Quail Springs Pkwy Okłahoma City, OK 73134-2628

ORDER OF

JPMorgan Chase Bank, N.A. Syrecuse, NY

THIS DOCUMENT IS PRINTED IN TWO COLORS. DO NOT ACCEPT UNLESS GLUE AND GREEN ARE PRESENT.

50-937/213

CHECK NO. 28590

DATE 02-15-2019

Void After 180 Days
CHECK AMOUNT

\$****32,770.55

**** THIRTY-TWO THOUSAND SEVEN HUNDRED SEVENTY DOLLARS AND FIFTY-FIVE CENTS
PAY TO THE SAN DIEGO UNIFIED PORT DIST

ATTN TREASURER S OFFICE PO BOX 120488 SAN DIEGO, CA 92112

& Massength

506#



ACONOMIS DO NON AGOS PARINDAS SELUE AND GREEN ARE PRESENT. The Hertz Corporation 14501 Hertz Quall Springs Pkwy Oklahoma City, OK 73134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

DATE 03-15-2019

2407-09

CHECK NO. 9897370

Void After 180 Days CHECK AMOUNT

\$****67,028.50

SOUTH SEVEN THOUSAND TWENTY EIGHT DOLLZAS AND FUTTY CENTS

PAY TO THE ORDER OF

SAN DIEGO UNIFIED PORT DIST ATTN TREASURER S OFFICE PO BOX 120488

SAN DIEGO, CA 92112

50911

Seq# :

r #

THE SAME OF TWO COLORS DO TON ASSETT UNITED BY AND GREET AND PRESENT OTG Operations, Inc. 1950: Hedz Quali Spinings Pkmy Okanoma City, OK 73134-2628

JPMorgan Chase Bank, N.A. Syracuse, NY

50-937/213

CHECK NO. 30331

Vold After 180 Days

CHECK AMOUNT.

DATE 03-15-2019

PAY TO THE SAN DIEGO UNIFIED PORT DIST

**** THIRTY-ONE THOUSAND EIGHT HUNDRED ELEVEN DOLLARS AND EIFTY CENTS

ORDER OF ATTN TREASURER S OFFICE PO BOX 120488 SAN DIEGO, CA 92112

\$****31,811.50

506"



CERTIFIED MAIL

VOID

Stamps .con Certified Mail WITHOUT Physical Return Receipt Service

(No Return Receipt Card) Instructions

- Apply this label to the TOP EDGE of the mailpiece.
- Apply address label below to the CENTER of the mailpiece.
- 3. Peel the Certified Mail label below and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Delivery Address when used with (1) or Return Address when used with (1)

← Fold and Tear →

9490 9118 9956 0687 9217 48

445 S. Figueroa Street

Los Angeles CA 90071

CEBLIFIED MAIL

Marty Dakessian Dakessian Law, Ltd.

Suite 2210

PS Form 3800 6/02

OUTBOUND TRACKING NUMBER 9414 7118 9956 0687 9217 99

RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0687 9217 48

FEES

\$1.900 Postage per piece \$3,500 Certified Fee \$2.800 Return Receipt Fee Total Postage & Fees: \$8.200

ARTICLE ADDRESS TO:

Ms Donna Morales Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

Postmark Here

SENDER: COMPLETE THIS SECTION

- Ensure items 1, 2, and 3 are completed.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

1. Article Addressed to:

Ms Donna Morales Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0687 9217 48

2. Article Number (Transfer from service label) 9414 7118 9956 0687 9217 99

A. Signature: (Addressee or Agent)

X

B. Received By: (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

3. Service Type

Certified Mail®

CERTIFIED MAIL

CERTIFIED MAIL





9414 7118 9956 0687 9217 99

Ms Donna Morales Office of the District Clerk San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

В

Certified Mail WITH Physical Return Receipt Service

(Uses Return Receipt Card) Instructions

- 1. Apply address label above to the back of this card.
- 2. Apply this card to the TOP EDGE of the mailpiece.
- 3. Peel the Certified Mail label above and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

PS Form 3811 Facsimile, July 2015 (SDC 3930)

Domestic Return Receipt

stamps com

Certified Mail Receipt

CERTIFIED MAIL

S

Postal Service

CERTIFIED MAIL

PS Form 3800 6/02

VOID

stamps .com Certified Mail WITHOUT Physical Return Receipt Service

(No Return Receipt Card) Instructions

- 1. Apply this label to the TOP EDGE of the mailpiece.
- Apply address label below to the CENTER of the mailpiece.
- 3. Peel the Certified Mail label below and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Delivery Address when used with (a) or Return Address when used with (1)

← Fold and Tear →

Certified Mail

Receipt Service

Instructions

WITH Physical Return

(Uses Return Receipt Card)

1. Apply address label above to the back of this card.

2. Apply this card to the TOP

9490 9118 9956 0687 9531 83

445 S. Figueroa Street

Los Angeles CA 90071

CERTIFIED MAIL

Marty Dakessian Dakessian Law, Ltd.

Suite 2210

OUTBOUND TRACKING NUMBER

9490 9118 9956 0687 9531 83

9414 7118 9956 0687 9531 41 RETURN RECEIPT TRACKING NUMBER FEES

Postage per piece \$1,900 \$3.500 Certified Fee \$2.800 Return Receipt Fee

Total Postage & Fees: \$8.200

ARTICLE ADDRESS TO:

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

Postmark Here

3. Service Type

SENDER: COMPLETE THIS SECTION COMPLETE THIS SECTION ON DELIVERY

- Ensure items 1, 2, and 3 are completed.
- Attach this card to the back of the mailpiece, or on the front if space permits.

✓ Certified Mail®

C. Date of Delivery

1. Article Addressed to:

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0687 9531 83

2. Article Number (Transfer from service label) 9414 7118 9956 0687 9531 41

A. Signature: (☐ Addressee or ☐ Agent)

X

B. Received By: (Printed Name)

D. Is delivery address different from item 1? If YES, enter delivery address below:

9414 7118 9956 0687 9531 41

Mr Robert Monson, Auditor San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

CERTIFIED MAIL

CERTIFIED MAIL



EDGE of the mailpiece. 3. Peel the Certified Mail label above and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Certified Mail Labels (SDC-3930)

Top of the page

stamps .

Certified Mail Receipt

CERTIFIED MAIL

S

Postal Service

PS Form 3811 Facsimile, July 2015 (SDC 3930)

Domestic Return Receipt

CERTIFIED MAIL

VOID

Certified Mail WITHOUT Physical Return Receipt Service

(No Return Receipt Card) Instructions

- Apply this label to the TOP EDGE of the mailpiece.
- 2. Apply address label below to the CENTER of the mailpiece.
- 3. Peel the Certified Mail label below and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Delivery Address when used with (a) or Return Address when used with (1)

← Fold and Tear →

Certified Mail

Receipt Service

Instructions

WITH Physical Return

(Uses Return Receipt Card)

1. Apply address label above to the back of this card.

2. Apply this card to the TOP

EDGE of the mailpiece.

9490 9118 9956 0687 9540 67

445 S. Figueroa Street

Los Angeles CA 90071

CERTIFIED MAIL

CERTIFIED MAIL

Marty Dakessian Dakessian Law, Ltd.

Suite 2210

PS Form 3800 6/02

OUTBOUND TRACKING NUMBER 9414 7118 9956 0687 9540 56

RETURN RECEIPT TRACKING NUMBER 9490 9118 9956 0687 9540 67

FEES

\$1.900 Postage per piece \$3.500 Certified Fee \$2.800 Return Receipt Fee \$8.200 Total Postage & Fees:

ARTICLE ADDRESS TO:

Mr Michael Zucchet Secretary of Board of Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

Postmark Here

3. Service Type

SENDER: COMPLETE THIS SECTION

- Ensure items 1, 2, and 3 are completed.
- Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

B. Received By: (Printed Name)

1. Article Addressed to:

Mr Michael Zucchet Secretary of Board of Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128



9490 9118 9956 0687 9540 67

2. Article Number (Transfer from service label) 9414 7118 9956 0687 9540 56

A. Signature: (Addressee or Agent)

X

V Certified Mail®

C. Date of Delivery

D. Is delivery address different from item 1? If YES, enter delivery address below:

9414 7118 9956 0687 9540 56

Mr Michael Zucchet Secretary of Board of Commissioners San Diego Unified Port District 3165 Pacific Highway San Diego CA 92101-1128

CERTIFIED MAIL



B

3. Peel the Certified Mail label above and fold it over your envelope, just above the postage so that it covers the existing Certified Mail marking.

Certified Mail Labels (SDC-3930)

PS Form 3811 Facsimile, July 2015 (SDC 3930)

Domestic Return Receint

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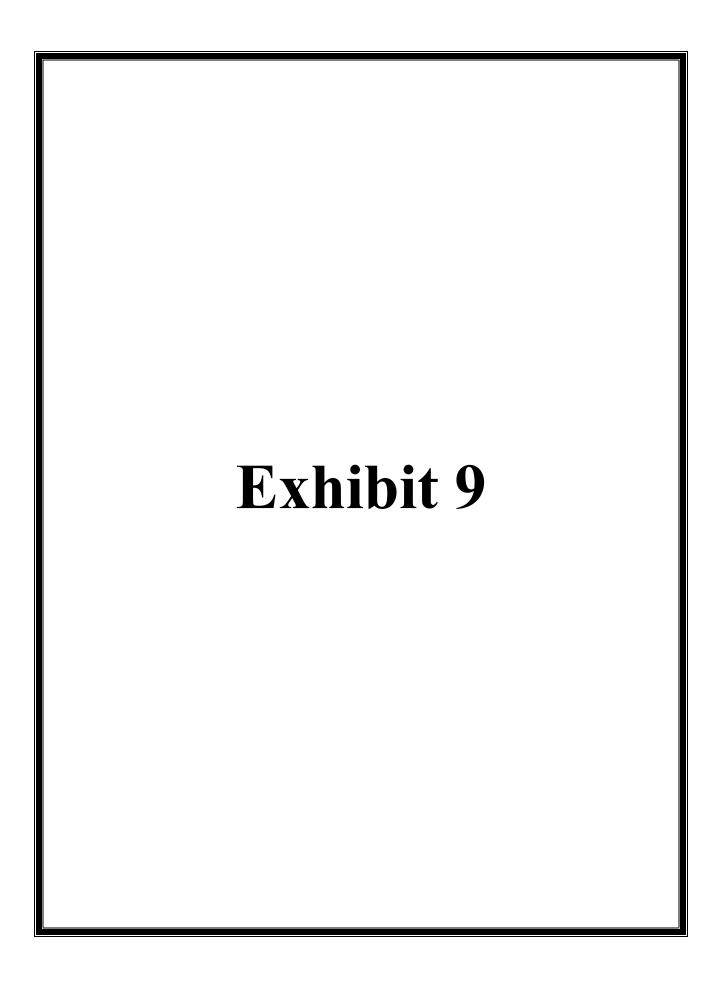
Stamps .con

Top of the page

stamps com

CERTIFIED MAIL

U.S. Postar Co Certified Mail Receipt





Office of the General Counsel

NOTICE OF REJECTION OR DENIAL OF CLAIM

May 10, 2019

(Sent via U.S. Mail)

Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street Suite 2210 Los Angeles, CA 90071

RE: Claim presented by Enterprise Rent-A-Car Co. of Los Angeles, LLC

District Document No. 69504

Dear Mr. Sislyan:

Please be advised that notice is hereby given, that the claim which you presented to the San Diego Unified Port District (District) (Document No. 69504) and received by the District on or about March 29, 2018, was reviewed and considered, and said claim was rejected or denied.

WARNING

Subject to certain exceptions, a court action on this claim may be filed by the claimant within six (6) months from the date this notice was personally delivered or deposited in the mail. (See Government Code Section 945.6.)

If an attorney has not already been consulted by the claimant, the advice of an attorney of the claimant's choice may be sought in connection with this matter. If an attorney is desired, the claimant should contact an attorney immediately.

Respectfully,

Rosemarie Morgans

Paralegal

cc: Douglas W. Sullivan, Crowell & Moring LLP via U.S. Mail

PROOF OF SERVICE BY MAIL

- I, Rosemarie Morgans, declare:
- 1. I am over the age of 18 years and not a party to the within action.
- 2. I am employed in the County of San Diego by the San Diego Unified Port District and my business address is: 3165 Pacific Highway, San Diego, California, 92101.
- 3. On the date executed below, I served a **NOTICE OF DENIAL OR REJECTION OF CLAIM** on Enterprise Rent A Car Co. of Los Angeles, LLC concerning Claim No. 69504, *via U.S.P.S. Mail* at the following address:

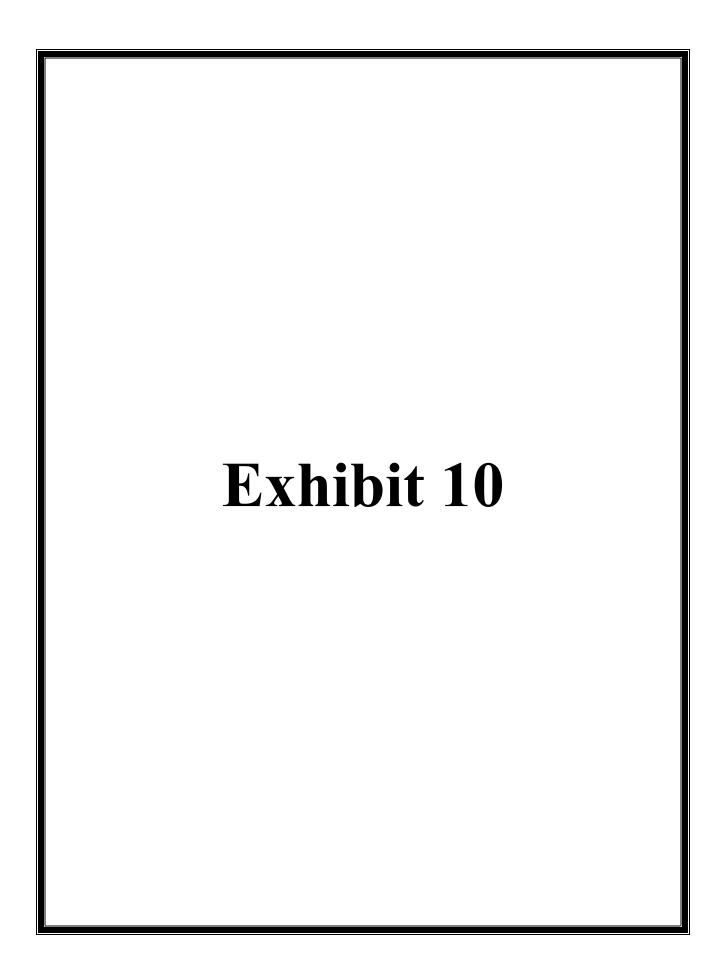
Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street Suite 2210 Los Angeles, CA 90071 Attn: Douglas W. Sullivan Crowell & Moring LLP 3 Embarcadero Center, 26th Floor San Francisco, CA 94111

4. I am readily familiar with our business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 10, 2019 at San Diego, California

Rosemarie Morgans





Office of the General Counsel

NOTICE OF REJECTION OR DENIAL OF CLAIM

May 10, 2019

(Sent via U.S. Mail)

Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street Suite 2210 Los Angeles, CA 90071

RE: Claim presented by The Hertz Corporation

District Document No. 69505

Dear Mr. Sislyan:

Please be advised that notice is hereby given, that the claim which you presented to the San Diego Unified Port District (District) (Document No. 69505) and received by the District on or about March 29, 2018, was reviewed and considered, and said claim was rejected or denied.

WARNING

Subject to certain exceptions, a court action on this claim may be filed by the claimant within six (6) months from the date this notice was personally delivered or deposited in the mail. (See Government Code Section 945.6.)

If an attorney has not already been consulted by the claimant, the advice of an attorney of the claimant's choice may be sought in connection with this matter. If an attorney is desired, the claimant should contact an attorney immediately.

Respectfully,

Rosemarie Morgans

Paralegal

cc: Douglas W. Sullivan, Crowell & Moring LLP via U.S. Mail

PROOF OF SERVICE BY MAIL

- I, Rosemarie Morgans, declare:
- I am over the age of 18 years and not a party to the within action.
- 2. I am employed in the County of San Diego by the San Diego Unified Port District and my business address is: 3165 Pacific Highway, San Diego, California, 92101.
- On the date executed below, I served a NOTICE OF DENIAL OR REJECTION OF CLAIM on The Hertz Corporation concerning Claim No. 69505, via U.S.P.S. Mail at the following address:

Attn: Mr. Ruben Sislyan DAKESSIAN LAW, Ltd. 445 S. Figueroa Street Suite 2210 Los Angeles, CA 90071 Attn: Douglas W. Sullivan Crowell & Moring LLP 3 Embarcadero Center, 26th Floor San Francisco, CA 94111

4. I am readily familiar with our business practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 10, 2019 at San Diego, California

Rosemarie Morgans