

1           IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 2                           IN AND FOR THE COUNTY OF SAN DIEGO  
 3   DEPARTMENT 69                           HON. KATHERINE A. BACAL

4	ENTERPRISE RENT-A-CAR CO. OF	)	
5	LOS ANGELES, LLC, a Delaware	)	CASE NO.
	limited liability company; THE	)	37-2018-
6	HERTZ CORPORATION, a Delaware	)	00028276-CU-MC-
	corporation,	)	CTL
7		)	
	Plaintiffs,	)	RELATED CASE
8		)	NO.
	VS.	)	37-2019-
9		)	00029137-CU-MC-
	SAN DIEGO UNIFIED PORT	)	CTL
10	DISTRICT, a public corporation	)	
	existing under the laws of the	)	
11	State of California; ALL	)	REPORTER'S
	PERSONS INTERESTED IN THE	)	TRANSCRIPT
12	MATTER OF THE IMPOSITION OF A	)	
	USER FEE FOR THE BENEFIT OF	)	
13	THE SAN DIEGO UNIFIED PORT	)	WEDNESDAY,
	DISTRICT, COMMENCING ON MAY	)	DECEMBER 4,
14	10, 2018, TO BE COLLECTED FROM	)	2019
	CUSTOMERS BY RENTAL CAR	)	
15	COMPANIES CONDUCTING BUSINESS	)	
	ON DISTRICT TIDELANDS ON	)	
16	BEHALF OF THE DISTRICT AND	)	
	PAID TO THE DISTRICT, AT THE	)	
17	RATE OF \$3.50 PER RENTAL CAR	)	
	TRANSACTION; and DOES	)	
18	1-100, inclusive,	)	
		)	
19	Defendants.	)	

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 21  
 22                           LOIS MASON THOMPSON, CSR, RPR, CRR  
   CSR NO. 3685  
   lois.mason51@gmail.com  
 23  
 24  
 25

1 APPEARANCES:

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3 FOR THE PLAINTIFFS ENTERPRISE RENT-A-CAR CO. OF  
4 LOS ANGELES, LLC, a Delaware limited  
liability company; THE HERTZ  
CORPORATION, a Delaware corporation:

5

6 CROWELL & MORING  
7 BY: DOUGLAS SULLIVAN  
3 EMBARCADERO CENTER  
26TH FLOOR  
8 SAN FRANCISCO, CALIFORNIA 94111  
415.365.7370

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12 FOR THE DEFENDANTS SAN DIEGO UNIFIED PORT  
DISTRICT, a public corporation existing under the  
laws of the State of California; ALL PERSONS  
13 INTERESTED IN THE MATTER OF THE IMPOSITION OF A  
USER FEE FOR THE BENEFIT OF THE SAN DIEGO UNIFIED  
14 PORT DISTRICT, COMMENCING ON MAY 10, 2018, TO BE  
COLLECTED FROM CUSTOMERS BY RENTAL CAR COMPANIES  
15 CONDUCTING BUSINESS ON DISTRICT TIDELANDS ON  
BEHALF OF THE DISTRICT AND PAID TO THE DISTRICT,  
16 AT THE RATE OF \$3.50 PER RENTAL CAR TRANSACTION:

17

18 COLANTUONO, HIGHSMITH, WHATLEY, P.C.  
BY: MICHAEL G. COLANTUONO  
JOHN L. JONES  
19 420 SIERRA COLLEGE DRIVE  
SUITE 140  
20 GRASS VALLEY, CALIFORNIA 94945  
530.432.7359

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1 San Diego, California, Wednesday, December 4, 2019,

2 AM Session

3 ---000---

4 THE COURT: Good morning. This is the matter  
5 of Enterprise versus the Port District -- or I should  
6 say the matters, plural, of Enterprise vs. the Port  
7 District.

8 I do have Request for Appointment of Court  
9 Reporter which I am assigning. Both matters are being  
10 reported.

11 We'll get appearances for the record.

12 MR. SULLIVAN: Doug Sullivan for  
13 the plaintiffs Hertz and Enterprise.

14 MR. COLANTUONO: Michael Colantuono appearing  
15 on behalf of the Port.

16 MR. JONES: John Jones appearing on behalf of  
17 the Port.

18 THE COURT: Okay. Thank you. Good morning to  
19 all of you. And, once again, I want to express my  
20 appreciation on a matter well briefed and argued. This  
21 will constitute the Court's oral tentative decision  
22 pursuant to the California Rules of Court.

23 I would note that a Request for Statement of  
24 Decision was filed by Enterprise and Hertz. Any further  
25 requests for a statement of decision is due within ten

1 days of today.

2 I will be directing Enterprise to prepare a  
3 statement of decision, again pursuant to the Rules of  
4 Court. Any requests or objections to the proposed  
5 tentative statement are due again pursuant to the Rules  
6 of Court.

7 The Court concludes that the charge at issue  
8 in this case is not a true user fee and violates the  
9 California Constitution. As a result, the Court will  
10 declare that their resolution and associated charge are  
11 illegal and unconstitutional. Given this, the Court  
12 need not determine whether the charge also violated the  
13 Dormant Commerce Clause.

14 I will quote a sentence only from a case that  
15 both parties believe is on point, Jacks vs. City of  
16 Santa Barbara, 2017 case from the California  
17 Supreme Court, 3 Cal.5th 248 at Page 268 (As read:)

18 "The aspect of a transaction that  
19 distinguishes a charge from a tax is the  
20 receipt of value in exchange for a payment."

21 The Court finds the Port District did not meet  
22 its required burden that the charge was not a tax.

23 That is the Court's oral decision, again a  
24 statement of decision to be prepared by Enterprise and a  
25 request for additional information to be included or

1 Request for Statement of Decision due within ten days  
2 pursuant to the Rules of Court.

3 I do have one question for you, though, and  
4 that would be the effect of this Court's order. In its  
5 closing argument, Enterprise and the Port District  
6 requested that the Court order a refund and order  
7 further that the refund be provided to the persons who  
8 paid the charge and that the transaction costs for that  
9 refund be borne by the Port District. It cited no  
10 authority, and I'm not clear I am aware of any on who in  
11 fact would bear that cost.

12 I didn't see anything addressed in the  
13 Port District, understanding the Port District wanted  
14 the Court to rule the other way, as to what the Court  
15 should then do with regard to any order for refund or  
16 what further orders the Court should enter.

17 I would ask the parties whether it makes sense  
18 to have further briefing on that question, and if so, I  
19 would accept further briefing, and that might push back  
20 the time schedule for a statement of decision. But I  
21 don't know your views in particular, the Port District,  
22 because I didn't see anything in the briefing that  
23 addressed that question.

24 So I will ask the Port District first, and  
25 then my problem with what the plaintiffs Enterprise and

1 Hertz requested is I saw no authority for it.

2 So the Port first.

3 MR. COLANTUONO: I think briefing would be  
4 appropriate, Your Honor.

5 The remedy in these cases is itself a complex  
6 and somewhat untested question. We have a few  
7 authorities. The best authority we have is merely dicta  
8 from the Court of Appeal, so I would suggest briefing.

9 Under THE circumstances I would request that  
10 the Port file the first brief, allow the plaintiffs to  
11 challenge our presentation by an opposition, and then  
12 allow us a brief reply. I think that will probably give  
13 you the most illumination on the subject --

14 THE COURT: I was going to suggest again  
15 simultaneous briefing, but it doesn't matter to me.

16 Maybe the second question is to ask whether  
17 you want to confer about that. It does and will affect  
18 the time schedule for both on when a further Request for  
19 Statement of Decision would be due from the Port and  
20 when a proposed tentative statement of decision would be  
21 due from Enterprise.

22 And I know you are looking at the holidays  
23 this month, and I certainly am not intending to make  
24 anyone work through the holidays. I don't want to do  
25 that.

1           So do you want to confer first about that  
2 question?

3           MR. SULLIVAN: Could I respond ever so briefly  
4 and then we will confer?

5           THE COURT: Well, if your response is going to  
6 require that you are going to confer anyway.

7           MR. SULLIVAN: Well, my point was, Your Honor,  
8 we did actually cite some authority which is the  
9 *SummerHill* case -- it's a related matter, where once  
10 the Court declared it illegal, it ordered the refund.  
11 In this case --

12           THE COURT: No, I know that authority.

13           The problem is the second question which is  
14 the transactional costs which I have the evidence --

15           MR. SULLIVAN: So we would provide the  
16 addresses and --

17           THE COURT: I know. But you've also told me  
18 it's going to cost about \$5 per address, and you want  
19 the Port to bear that cost.

20           MR. SULLIVAN: Not for us. If we give them  
21 the addresses, we wouldn't charge the \$5.

22           THE COURT: Oh, I see.

23           MR. SULLIVAN: We wouldn't charge the \$5 if we  
24 give them the addresses. There may be a few where we  
25 haven't yet, where we have collected but haven't

1 remitted.

2 THE COURT: I am going to take a recess, you  
3 are going to meet and confer. I set aside time to do  
4 that.

5 Now, I also have the other matter, and I'm not  
6 certain where we will stand with that, but I think you  
7 needed to hear my oral decision first. So I'm going to  
8 take a recess. You meet and confer and then propose to  
9 me what you want to do.

10 MR. SULLIVAN: Can I give you a thought on the  
11 second matter?

12 THE COURT: Yes.

13 MR. SULLIVAN: In the second matter, obviously  
14 you have Government Code claims you have to file. My  
15 suggestion -- and as I've said throughout, I thought  
16 either party that might lose, it would go to the  
17 Court of Appeal.

18 My suggestion would be that we would stay the  
19 other case, with the exception of we would file  
20 amendments if the Government Code claims come in on the  
21 other case so that after the Court of Appeal would  
22 rule --

23 THE COURT: I think you are going to need to  
24 talk about that too. I know whatever I was going to do  
25 on the other case depended on what the Court found in



1 this case.

2 MR. SULLIVAN: Okay.

3 THE COURT: So why don't we take a recess.

4 And after the recess, I would like to hear your thoughts

5 also on both questions. And I have no doubt this will

6 be going up to higher authority, and that's why I want

7 to make sure that we do everything right with the

8 briefing. Okay.

9 MR. SULLIVAN: Just one question. If we did  
10 simultaneous briefs, there could also be reply briefs.

11 THE COURT: Then I will just do it the other  
12 way.

13 I don't want -- I don't want briefing and  
14 briefing and briefing, so --

15 MR. SULLIVAN: Okay. Fair enough.

16 THE COURT: -- it doesn't matter to me,  
17 frankly, which way we do it. I think, given the ruling,  
18 you all know where I stand.

19 MR. SULLIVAN: We'll talk.

20 THE COURT: All right. We're in recess.

21 MR. SULLIVAN: How long, Your Honor?

22 THE COURT: Fifteen minutes.

23 Off the record.

24 (Discussion off the record.)

25 THE COURT: Do you want to stay off the record

1 for a moment and talk, or are you ready to put something  
2 on the record?

3 MR. COLANTUONO: Off the record we might want  
4 to talk about your calendar.

5 THE COURT: All right. Let's stay off the  
6 record.

7 (Discussion off the record.)

8 THE COURT: All right. Let's go on the  
9 record.

10 The Court and counsel have conferred  
11 relating -- regarding the remaining issue. The Court  
12 will hear, by way of briefing, arguments as to  
13 appropriate remedy.

14 The Port District will file an initial brief,  
15 no more than 15 pages filed and served January 13th.  
16 Enterprise and Hertz will file a responsive brief no  
17 more than 20 pages -- the Court strongly encourages you  
18 that you don't need to use all of your pages -- filed  
19 and served January 27th.

20 And then the Port may file a reply brief no  
21 more than five pages, filed and served February 3rd.

22 The Court will announce a further oral  
23 decision on February 11th at 8:45.

24 The parties' Request for Statement of Decision  
25 are due within ten days of today.

1 Further proposed tentative statement as  
2 directed by the Court will be proposed by -- will be  
3 prepared by Enterprise 30 days after the Court announces  
4 its decision February 11th.

5 Is that all accurate?

6 MR. COLANTUONO: That's agreed, Your Honor.

7 THE COURT: Now, let's turn to the other case.

8 MR. SULLIVAN: I think, Your Honor, we have  
9 agreed that the other case would be stayed subject to  
10 amendments, which they will agree to, which simply  
11 incorporate additional Government Code claims for the  
12 refunds as they -- as we are required to file them  
13 timewise.

14 So, for example, I think our next one is  
15 due -- our next amended complaint would be due sometime  
16 in March of 2020. The next one would probably be due  
17 six months or so after that.

18 THE COURT: So the case is stayed with the  
19 exception of amended briefing to be filed --

20 MR. COLANTUONO: Amended pleadings.

21 THE COURT: Excuse me.

22 -- amending pleadings to be filed on the time  
23 frame announced by the plaintiff/petitioner; correct?

24 MR. COLANTUONO: We have no objection.

25 THE COURT: And then I should probably set

1 some sort of status conference because I have stayed the  
2 case.

3 I am assuming that after the Court enters a  
4 decision and judgment in the case we were discussing  
5 earlier, that it will be taken up on appeal. I have no  
6 sense of the Court of Appeal's timing, but I think at a  
7 minimum we are talking about six months.

8 MR. COLANTUONO: Yeah. And this Court is  
9 quite current. They are turning their cases around in  
10 nine to 12 months at the moment, so I think you could  
11 expect a notice of appeal in March of 2020 at the latest  
12 because it will be prompt and a decision in March of  
13 2021, so if you set a CMC/status conference in late 2020  
14 or early 2021, I think that would be suitable.

15 THE COURT: Of course I don't have a calendar  
16 yet for that year. I barely have my 2020 calendar.

17 MR. SULLIVAN: Could I add one thing,  
18 Your Honor?

19 As indicated in the parties' stipulation from  
20 a few months ago when the cases were related, it's  
21 likely that the case that you have now ruled in, and it  
22 will go up on appeal, it's likely that that case will  
23 afford the full relief. And the parties even stipulated  
24 that is the case. We are just, out of an abundance of  
25 caution, doing the Government Code claims, et cetera.

1 So it may be that at the end of the day the cases can  
2 just be dismissed.

3 MR. COLANTUONO: That's my expectation. It  
4 will either be mooted by the Court of Appeal decision or  
5 it will lead to a settlement.

6 THE COURT: Why don't we do this, why don't we  
7 set a status conference this year after the notice of  
8 appeal is filed because at that point you might have  
9 some better sense on timing, so maybe summer, because  
10 I'm staying anyway, then we will also know where we are  
11 with further briefing --

12 MR. COLANTUONO: That's fine.

13 MR. JONES: That's fine.

14 THE COURT: -- of pleadings.

15 Any Friday in June. How about June 12th at  
16 9:00, status conference?

17 MR. COLANTUONO: I will be marrying my nephew  
18 and his wife that day.

19 THE COURT: Well, congratulations to them.  
20 Let's do a different day.

21 Again, it doesn't really matter to me. I'm  
22 just picking a day so that I make the clerks happy that  
23 I am keeping track of my cases.

24 July 10th, 9:00?

25 MR. COLANTUONO: That's fine with us,

1 Your Honor.

2 MR. SULLIVAN: Fine.

3 THE COURT: Notice waived?

4 MR. COLANTUONO: Yes.

5 THE COURT: The case is deemed stayed with the  
6 exception of amended pleading. Okay.

7 MR. SULLIVAN: Thank you, Your Honor.

8 MR. COLANTUONO: Thank you, Your Honor.

9 THE COURT: I am looking forward to your  
10 briefing. Thank you. And safe travels.

11 MR. SULLIVAN: Thanks.

12

13 (Proceedings adjourned at 9:52 a.m.)

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## 1 CERTIFICATE

2 State of California )

3 County of San Diego )  
4

5 I, Lois Mason Thompson, CSR No. 3685, a pro tem  
6 reporter in the Superior Court of the State of  
7 California, in and for the County of San Diego, hereby  
8 certify that I reported in machine shorthand the  
9 proceedings held on December 4, 2019, that my notes were  
10 transcribed into typewriting under my direction, that  
11 the foregoing transcript, pages 1 through 15 is a full,  
12 true, and correct transcript of the said proceedings.

13 Dated at San Diego, California, December 4, 2019  
1415  
16   
17 Lois Mason Thompson18 CSR No. 3685  
19

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<b>\$</b>	<b>5</b>	<b>Appeal</b> [4] - 6:8; 8:17, 21; 13:4 <b>Appeal's</b> [1] - 12:6 <b>appearances</b> [1] - 3:11 <b>APPEARANCES</b> [1] - 2:1 <b>appearing</b> [2] - 3:14, 16 <b>Appointment</b> [1] - 3:8 <b>appreciation</b> [1] - 3:20 <b>appropriate</b> [2] - 6:4; 10:13 <b>argued</b> [1] - 3:20 <b>argument</b> [1] - 5:5 <b>arguments</b> [1] - 10:12 <b>aside</b> [1] - 8:3 <b>aspect</b> [1] - 4:18 <b>assigning</b> [1] - 3:9 <b>associated</b> [1] - 4:10 <b>assuming</b> [1] - 12:3 <b>AT</b> [2] - 1:16; 2:16 <b>authorities</b> [1] - 6:7 <b>authority</b> [6] - 5:10; 6:1, 7; 7:8, 12; 9:6 <b>aware</b> [1] - 5:10	<b>calendar</b> [3] - 10:4; 12:15 <b>CALIFORNIA</b> [3] - 1:1; 2:7, 20 <b>California</b> [9] - 1:11; 2:12; 3:1, 22; 4:9, 16; 15:2, 7, 13 <b>CAR</b> [6] - 1:4, 14, 17; 2:2, 14, 16 <b>case</b> [18] - 4:8, 14, 16; 7:9, 11; 8:19, 21, 25; 9:1; 11:7, 9, 18; 12:2, 4, 21-22, 24; 14:5 <b>CASE</b> [2] - 1:5, 7 <b>cases</b> [5] - 6:5; 12:9, 20; 13:1, 23 <b>caution</b> [1] - 12:25 <b>CENTER</b> [1] - 2:6 <b>certain</b> [1] - 8:6 <b>certainly</b> [1] - 6:23 <b>CERTIFICATE</b> [1] - 15:1 <b>certify</b> [1] - 15:8 <b>cetera</b> [1] - 12:25 <b>challenge</b> [1] - 6:11 <b>charge</b> [8] - 4:7, 10, 12, 19, 22; 5:8; 7:21, 23 <b>circumstances</b> [1] - 6:9 <b>cite</b> [1] - 7:8 <b>cited</b> [1] - 5:9 <b>City</b> [1] - 4:15 <b>claims</b> [4] - 8:14, 20; 11:11; 12:25 <b>Clause</b> [1] - 4:13 <b>clear</b> [1] - 5:10 <b>clerks</b> [1] - 13:22 <b>closing</b> [1] - 5:5 <b>CMC/status</b> [1] - 12:13 <b>CO</b> [2] - 1:4; 2:2 <b>Code</b> [5] - 8:14, 20; 11:11; 12:25; 15:20 <b>COLANTUONO</b> [15] - 2:17; 3:14; 6:3; 10:3; 11:6, 20, 24; 12:8; 13:3, 12, 17, 25; 14:4, 8 <b>Colantuono</b> [1] - 3:14 <b>COLLECTED</b> [2] - 1:14; 2:14 <b>collected</b> [1] - 7:25 <b>COLLEGE</b> [1] - 2:19 <b>COMMENCING</b> [2] - 1:13; 2:14 <b>Commerce</b> [1] - 4:13 <b>COMPANIES</b> [2] - 1:15; 2:14	<b>company</b> [2] - 1:5; 2:3 <b>complaint</b> [1] - 11:15 <b>complex</b> [1] - 6:5 <b>concludes</b> [1] - 4:7 <b>CONDUCTING</b> [2] - 1:15; 2:15 <b>confer</b> [6] - 6:17; 7:1, 4, 6; 8:3, 8 <b>conference</b> [4] - 12:1, 13; 13:7, 16 <b>conferred</b> [1] - 10:10 <b>congratulations</b> [1] - 13:19 <b>constitute</b> [1] - 3:21 <b>Constitution</b> [1] - 4:9 <b>copies</b> [1] - 15:22 <b>copy</b> [2] - 15:21 <b>CORPORATION</b> [2] - 1:6; 2:4 <b>corporation</b> [4] - 1:6, 10; 2:4, 12 <b>correct</b> [2] - 11:23; 15:12 <b>cost</b> [3] - 5:11; 7:18 <b>costs</b> [2] - 5:8; 7:14 <b>counsel</b> [1] - 10:10 <b>County</b> [2] - 15:3, 7 <b>COUNTY</b> [1] - 1:2 <b>course</b> [1] - 12:15 <b>Court</b> [30] - 3:8, 22; 4:4, 6-7, 9, 11, 17, 21; 5:2, 6, 14, 16; 6:8; 7:10; 8:17, 21, 25; 10:10, 17, 22; 11:2; 12:3, 6, 8; 13:4; 15:6 <b>court</b> [2] - 15:20, 22 <b>COURT</b> [30] - 1:1; 3:4, 18; 6:14; 7:5, 12, 17, 22; 8:2, 12, 23; 9:3, 11, 16, 20, 22, 25; 10:5, 8; 11:7, 18, 21, 25; 12:15; 13:6, 14, 19; 14:3, 5, 9 <b>Court's</b> [3] - 3:21; 4:23; 5:4 <b>CROWELL</b> [1] - 2:5 <b>CRR</b> [1] - 1:21 <b>CSR</b> [4] - 1:21; 15:5, 18 <b>CTL</b> [2] - 1:6, 9 <b>current</b> [1] - 12:9 <b>CUSTOMERS</b> [2] - 1:14; 2:14					
<b>\$3.50</b> [2] - 1:17; 2:16 <b>\$5</b> [1] - 7:21	<b>5</b> [2] - 7:18, 23 <b>530.432.7359</b> [1] - 2:20	<b>appeal</b> [4] - 12:5, 11, 22; 13:8	<b>6</b>	<b>69</b> [1] - 1:3 <b>69954(D)</b> [1] - 15:20	<b>Appeal</b> [4] - 6:8; 8:17, 21; 13:4 <b>Appeal's</b> [1] - 12:6 <b>appearances</b> [1] - 3:11 <b>APPEARANCES</b> [1] - 2:1 <b>appearing</b> [2] - 3:14, 16 <b>Appointment</b> [1] - 3:8 <b>appreciation</b> [1] - 3:20 <b>appropriate</b> [2] - 6:4; 10:13 <b>argued</b> [1] - 3:20 <b>argument</b> [1] - 5:5 <b>arguments</b> [1] - 10:12 <b>aside</b> [1] - 8:3 <b>aspect</b> [1] - 4:18 <b>assigning</b> [1] - 3:9 <b>associated</b> [1] - 4:10 <b>assuming</b> [1] - 12:3 <b>AT</b> [2] - 1:16; 2:16 <b>authorities</b> [1] - 6:7 <b>authority</b> [6] - 5:10; 6:1, 7; 7:8, 12; 9:6 <b>aware</b> [1] - 5:10	<b>7</b>	<b>7</b>	<b>7</b>	<b>7</b>
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