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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN DIEGO, CENTRAL COURTHOUSE**

16 ENTERPRISE RENT-A-CAR CO. OF LOS
17 ANGELES, LLC, a Delaware limited
18 liability company; THE HERTZ
CORPORATION, a Delaware corporation,

19 Plaintiffs,

20 v.

21 SAN DIEGO UNIFIED PORT DISTRICT, a
22 public corporation existing under the laws
of the State of California; ALL PERSONS
23 INTERESTED IN THE MATTER OF THE
IMPOSITION OF A USER FEE FOR THE
24 BENEFIT OF THE SAN DIEGO UNIFIED
PORT DISTRICT, COMMENCING ON
25 MAY 10, 2018, TO BE COLLECTED
FROM CUSTOMERS BY RENTAL CAR
26 COMPANIES CONDUCTING BUSINESS
ON DISTRICT TIDELANDS ON BEHALF
27 OF THE DISTRICT AND PAID TO THE
DISTRICT, AT THE RATE OF \$3.50 PER
28 RENTAL CAR TRANSACTION; and
DOES 1-100, inclusive,

Defendants.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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CASE NO. 37-2018-00028276-CU-MC-CTL
(Related Case: 37-2019-00029137-CU-MC-CTL)
Unlimited Jurisdiction

Assigned for all purposes to:
Judge Katherine Bacal – Dept C-69

**DEFENDANT SAN DIEGO UNIFIED
PORT DISTRICT’S REPLY BRIEF ON
REMEDIES**

IMAGED FILE

Complaint Filed: June 8, 2018

Hearing Date: February 11, 2020

Time: 8:45 A.M.

Dept.: C-69

Trial Date: October 16, 2019

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1 **Introduction.** Plaintiffs sue in validation and mandate — statutory actions. (*Tide Water*
2 *Associated Oil Co. v. Superior Court* (1955) 43 Cal.2d 815, 822; Code Civ. Proc., § 23.) These are
3 “creatures of statute and the court’s jurisdiction in such proceedings is limited by statutory
4 authority[.]” (*Paramount Unified School Dist. v. Teachers Assn. of Paramount* (1994) 26
5 Cal.App.4th 1371, 1387, citation omitted.) Thus, absent statute, no relief can be granted. Plaintiffs
6 pray for a monetary remedy for customers who are not parties, citing no authority. Plaintiffs have
7 standing to seek prospective relief — and that is all this Court may grant.

8 Plaintiffs make but two points. **First**, they note the August 2019 stipulated order, claiming it
9 empowers this Court to provide a monetary remedy. Plaintiffs misread an order intended to address
10 which of their two actions (which the Port views as duplicative) would be addressed first. The order
11 expressly preserves the Port’s right to contest the availability of “any remedy” and Plaintiffs’ claim
12 to monetary relief. Moreover, a stipulation cannot confer power on this Court our Constitution does
13 not. **Second**, Plaintiffs fear unjust enrichment if no monetary remedy is granted. They need not. As
14 the Port’s opening brief explains, customers may file their own claims.

15 If the Court nevertheless concludes it can and should grant a monetary remedy, it should
16 invite the parties to discuss a claiming process, as Plaintiffs concede is appropriate. (Resp. Br. at
17 pp. 13, 17–19.).

18 **The Stipulated Order does not Require Monetary Relief.** Plaintiffs first sued in June
19 2018 (“*Enterprise I*”) and a companion case a year later. (*Enterprise Rent-A-Car Co. of Los Angeles,*
20 *LLC and The Hertz Corporations v. San Diego Unified Port District* (No. 37-2019-00029137-CU-
21 MC-CTL) [“*Enterprise II*”].) In August 2019, the parties stipulated to an order to manage the two
22 cases, which the Port views as unnecessarily duplicative. Although the *Enterprise I* prayer
23 encompasses *Enterprise II*’s, Plaintiffs would not toll the latter. Consolidation was inefficient given
24 the late stage of *Enterprise I*. So, the parties stipulated to defer *Enterprise II*. The Stipulated Order
25 was intended to allow the Court to address remedy here and to avoid litigating the cases at once.

26 The stipulation does state the Court may grant monetary relief. However, Plaintiffs quote but
27 one sentence, ignore the next, and turn an agreement for an efficient procedure into a waiver of this
28 remedy phase. (Resp. Br. at p. 10.) That next sentence states: “Entry of this order shall not affect the

1 Port’s ability to contest whether **any remedy** is appropriate or to contest whether Plaintiffs are the
2 appropriate recipient of any monetary relief.” (Aug. 10, 2019 Order, at ¶ 5, emphasis added.) This
3 preserves the Port’s right to object to the appropriateness, nature, and recipient of monetary relief, if
4 any, as it does. The stipulated order must be read as whole to achieve its purpose lest further disputes
5 require judicial intervention at every stage because agreement will have unforeseen consequences.

6 Moreover, the Parties cannot enlarge judicial power by agreement. (E.g., *Kurwa v.*
7 *Kislinger II* (2017) 4 Cal.5th 109 [parties could not stipulate to appellate jurisdiction or manufacture
8 finality to create it].) *In re Jose H.* (2000) 77 Cal.App.4th 1090, 1099 [“Nonetheless, the parties
9 cannot, by stipulation, create statutory authority where none exists. [Courts] are constrained by the
10 express language of the applicable statutes”].)

11 **Plaintiffs Do Not Distinguish Controlling Authority.** Tax refunds are strictly
12 governed by statute. (Cal. Const., art. XIII, § 32 [as to State]; *Batt v. City and County of San*
13 *Francisco* (2007) 155 Cal.App.4th 65, 77, disapproved on other grounds by *McWilliams v. City of*
14 *Long Beach* (2013) 56 Cal.4th 613 [local government] (“*Batt*”).) (Port’s Br., at pp. 8–12.) Plaintiffs
15 neither cite nor discuss article XIII, section 32 or *Batt*, silently conceding money relief is precluded:

16 The California Constitution expressly provides that actions for tax refunds must be brought
17 in the manner prescribed by the Legislature. Article XIII, section 32, of the California
18 Constitution provides in this regard: ‘After payment of a tax claimed to be illegal, an action
19 may be maintained to recover the tax paid, with interest, in such manner as may be provided
20 by the Legislature.’ ... This constitutional limitation rests on the premise that strict legislative
21 control over the manner in which tax refunds may be sought is necessary so that
22 governmental entities may engage in fiscal planning based on expected tax revenues.
23 (*Woosley v. State of California* (1992) 3 Cal.4th 758, 788–789.) Thus, absent statute, no relief is
24 possible. (*IBM Personal Pension Plan v. City and County of San Francisco* (2005) 131 Cal.App.4th
25 1291, 1399 [“To implement article XIII, section 32, the Legislature enacted a specific statutory
26 refund procedure for taxpayers whose property has been improperly assessed. [Citation.] Because
27 article XIII, section 32 vests the Legislature with plenary control over the manner in which tax
28 refunds may be obtained, a party ‘must show strict, rather than substantial, compliance with the
administrative procedures established by the Legislature”].)

1 **Plaintiffs Lack Standing to Seek Refunds to Non-Parties.** Plaintiffs admit (Resp. Br.
2 at p. 12) *TracFone Wireless, Inc. v. County of Los Angeles* (2008) 163 Cal.App.4th 1359, 1364
3 (“*Tracfone*”) holds a litigant lacks standing to seek a refund of what he has not paid. (*Id.* at 1364.)
4 Likewise, they acknowledge (Resp. Br. at p. 12) *Sipple v. City of Hayward* (2014) 225 Cal.App.4th
5 349 allowed that plaintiff to sue for refunds after receiving assignment of rights from those who paid
6 the disputed taxes. (*Id.* at p. 361.) These cases deny Plaintiffs standing to seek refunds for their
7 customers because they have not been assigned customers’ claims.

8 Plaintiffs argue they must pay the User Fee. (Resp. Br. at pp. 11–13 & fn. 4, citing Port Act,
9 § 57.5, subd. (a)(2) [“All fees collected for this purpose constitute debts owed to the district [Port] by
10 the collecting party [Plaintiffs].”) Not so. First, neither Resolution 2018-065 nor Ordinance 2030
11 require Plaintiffs to pay the fee. Each requires them to collect it **on behalf** of the Port. (Res., § 2;
12 Ord. 2030, § 3, subd. a.) Section 57.5 provides: “[a]ll fees **collected** for this purpose constitute debts
13 owed to the district by the collecting party. The debts are due and payable to the district quarterly or
14 at any other interval the district may establish to facilitate collection and ensure payment.” (Port Act,
15 § 57.5, subd. (a)(2), emphasis added.) Plaintiffs owe the Port what they collect in its name. There is
16 no allegation here Plaintiffs collected Port funds and illegally retained them, misleading customers.

17 Second, the fee proceeds are not Plaintiffs’. There is no evidence Plaintiffs advance the fees
18 and collect them in arrears; it is the reverse. Section 57.5, the Resolution, and the Ordinance, make
19 Plaintiffs collectors, not payors. As a mere conduit of the Port’s fee proceeds, they have no standing
20 to seek refunds. (*Jacks v. City of Santa Barbara* (2017) 3 Cal.5th 248, 279 [“The rule in California is
21 that where the government mandates payment of a charge by one party, and imposes a duty on some
22 other party to collect the payment and remit it to the government, the legal incidence of the charge
23 falls, not on the party collecting the payment — who acts merely as the government’s collection
24 agent or conduit — but on the party from whom the payment is, by law, collected”].) Plaintiffs
25 collect the User Fee proceeds and hold them in trust for the Port until remitted.

26 Plaintiffs attempt to distinguish *Tracfone* and *Sipple*, claiming “there was no unconstitutional
27 tax; rather the plaintiffs simply collected and paid taxes that were not due by mistake.” (Resp. Br. at
28

1 p. 12:12–14.) This is a distinction without a difference. In both cases, a tax was paid that should not
2 have been and a taxpayer (not a tax collector) was entitled to a refund.

3 **Plaintiffs Do Not Distinguish Other Controlling Cases.** Plaintiffs relegate *Jordan v.*
4 *Department of Motor Vehicles* (1999) 60 Cal.App.4th 171 (“*Jordan*”) to a footnote. *Jordan* held a
5 trial court lacked jurisdiction to grant monetary relief to absent parties. Plaintiffs claim, “the Court
6 merely ruled that individual plaintiffs, who paid excessive and illegal motor smog fees but who did
7 not pursue a class action, could not seek relief on behalf of other individuals who were not in the
8 lawsuit.” (Resp. Br. at p. 15, fn. 5.) So, too, here. Plaintiffs are private parties who collect (but —
9 unlike the *Jordan* plaintiffs — do not pay) what the Court found to be an improper fee; they did not
10 bring a class action. *Jordan* “merely” forbids the relief Plaintiffs seek. Their effort to distinguish
11 *Bronco Wine Co. v. Frank A. Logohuso Farms* (1989) 214 Cal.App.3d 699 (a private-sector case) is
12 relegated to that same unconvincing footnote.

13 Nor can Plaintiffs distinguish *Chiatello v. City and County of San Francisco* (2010) 189
14 Cal.App.4th 472 (“*Chiatello*”). They read it to bar a challenge to a tax by one who did not pay it —
15 again, the facts here. They read *The Inland Oversight Committee v. City of Ontario* (2015) 240
16 Cal.App.4th 1140 to hold only that such a plaintiff “had no standing to challenge the legality of an
17 assessment on hotels.” (Resp. Br. at p. 14.) Again; so, too, here. Plaintiffs offer no distinction. Their
18 treatment of the Port’s other standing cases (Resp. Br. at p. 14) is to similar effect — they concede
19 the rule while claiming to distinguish the cases. For example, Plaintiffs concede *Andal v. City of*
20 *Stockton* (2006) 137 Cal.App.4th 86 involved no claim for monetary relief.

21 **Plaintiffs Extend Cases the Supreme Court Has Repeatedly Refused to Extend.**
22 Plaintiffs rely on two dated sales tax cases allowing exceptional remedies our Supreme Court has
23 steadfastly refused to extend to other cases: *Javor v. State Board of Equalization* (1974) 12 Cal.3d
24 790 and *Decorative Carpets, Inc. v. State Board of Equalization* (1962) 58 Cal.2d 252. Other
25 plaintiffs have sought to expand their reach for decades — without success. Our Supreme Court
26 repeatedly refused — most recently in *McClain v. Sav-On Drugs* (2019) 6 Cal.5th 951, which
27 cabined *Javor*’s remedy to its facts. *Javor* allowed a customer to sue to compel a retailer (who bears
28 the legal incidence of sales taxes) to seek a refund of taxes paid in error. (*Id.* at p. 957.) It allowed

1 one who bore the economic incidence of a revenue measure to sue one who bore its legal incidence
2 to obtain monetary relief. *Javor* might allow suit by Plaintiffs’ customers, but not Plaintiffs.
3 Plaintiffs bear neither the legal nor economic incidence of the User Fee. *Loeffler v. Target Corp.*
4 (2014) 58 Cal.4th 1081, 1111, 1132–1134 holds that neither *Javor* nor *Decorative Carpets* empowers
5 courts to deviate from statutory remedies — and Plaintiffs can cite no statutory remedy here.

6 *Rider v. County of San Diego* (1992) 11 Cal.App.4th 1410, 1419 is similarly unhelpful to
7 Plaintiffs, stating: “constitutional limitations [rest] on the premise that strict legislative control over
8 the manner in which tax refunds may be sought is necessary so that governmental entities may
9 engage in fiscal planning based on expected tax revenues.”

10 **“Common Fund” Cases Govern Only Attorney Fee Claims.** Plaintiffs suggest they
11 should receive a “first-mover” advantage over competitors because they sued. (Resp. Br. at p. 17,
12 fn. 6.) They ignore that they sued in reverse validation, an in rem proceeding naming and binding
13 “all interested parties.” Plaintiffs’ competitors (and their customers) could therefore reasonably
14 assume they need not participate to have the benefit of the outcome here. None had notice the Court
15 would grant a money remedy to Plaintiffs’ customers alone. Plaintiffs admit equity governs here.
16 Equity is poorly served by the special treatment Plaintiffs seek.

17 In what amounts to a restatement of their unjust enrichment claim, Plaintiffs cite “common
18 fund” causes authorizing one who wins a fund of money for a class to claim fees from that fund.
19 (Resp. Br. at pp. 17–19.) Fees can be addressed if Plaintiffs seek them. Those cases have nothing to
20 teach as to monetary relief to absent parties.

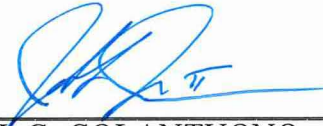
21 **Conclusion.** This Court may not grant monetary relief to a party who collected, but neither
22 paid, nor had an obligation to pay, the User Fee—or to non-parties. A sentence in a stipulated order
23 cannot grant this Court those powers, especially given the Order’s other provisions explicitly
24 preserving the Port’s right to contest “any remedy” and to deny Plaintiffs’ claim to money.

25 This Court has broken substantial ground under new provisions of our Constitution in the
26 liability phase. Monetary relief, if any, should be left to those with standing to seek it or to legislative
27 action.

28

1 DATED: February 3, 2020

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1 **PROOF OF SERVICE**
2 **Enterprise Rent-A-Car Co. of Los Angeles, LLC, et al. v. San Diego Unified Port District, et al.**
3 **Case No. 37-2018-00028276-CU-MC-CTL**

4 I, Lourdes Hernandez, declare:

5 I am employed in the County of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action. My business address is 790 East Colorado Boulevard, Suite
7 850, Pasadena, California 91101. My email address is: shassan@chwlaw.us. On February 3, 2020, I
8 served the document(s) described as **DEFENDANT SAN DIEGO UNIFIED PORT DISTRICT'S**
9 **REPLY BRIEF ON REMEDIES** on the interested parties in this action as follows:

10 **SEE ATTACHED SERVICE LIST**

11 **BY E-MAIL OR ELECTRONIC TRANSMISSION:** Based on a court order or an
12 agreement of the parties to accept service by e-mail or electronic transmission, by causing the
13 documents to be sent to the persons at the e-mail addresses listed on the service list on
14 February 3, 2020 from the court authorized e-filing service at OneLegal.com. No electronic
15 message or other indication that the transmission was unsuccessful was received within a
16 reasonable time after the transmission.

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

19 Executed on February 3, 2020, at Pasadena, California.

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Shoeba Hassan

1 **SERVICE LIST**
2 **Enterprise Rent-A-Car Co. of Los Angeles, LLC, et al. v. San Diego Unified Port District, et al.**
3 **Case No. 37-2018-00028276-CU-MC-CTL**

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