

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

*In re*

The Hertz Corporation, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11218 (MFW)

(Jointly Administered)

Re: D.I. 3589

**ORDER PURSUANT TO BANKRUPTCY RULES 9019 AND 7023 APPROVING THE SETTLEMENT AGREEMENT BETWEEN THE DEBTORS AND EMY JOHNSTON**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order (this “**Order**”) pursuant to sections 363 and 105(a) of the Bankruptcy Code and Bankruptcy Rule 9019(a) and 7023 approving the settlement between Hertz Local Edition Corp. (“**HLE**”), on behalf of certain Debtor entities, and named plaintiff Emy Johnston in the Johnston Litigation (as defined in the Motion), substantially in the form of the agreement attached hereto as **Exhibit 1A** (the “**Johnston Settlement**”), as described more fully in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper

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<sup>1</sup> The last four digits of The Hertz Corporation’s tax identification number are 8568. The location of the Debtors’ service address is 8501 Williams Road, Estero, FL 33928. Due to the large number of Debtors in these chapter 11 cases, which are jointly administered for procedural purposes, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://restructuring.primeclerk.com/hertz>.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion and the Settlement Agreement; and this Court having held a hearing, if necessary, to consider the relief requested in the Motion (the “**Hearing**”); and upon the record of the Hearing, if any; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein. Any objections or reservations of rights filed in respect of the Motion are overruled, with prejudice.
2. The Johnston Settlement is APPROVED in its entirety, including but not limited to the waivers and releases contained therein and consideration provided therefor as if set forth herein.
3. The parties are authorized to take any steps as may be required or necessary to implement the Johnston Settlement.
4. The Debtors are entitled to allow Proof of Claim No. 12553 as a general unsecured nonpriority claim solely upon HLE in the amount of \$532,000.00 and a section 507(a)(4) priority unsecured claim solely upon HLE in the amount of \$18,000.00.

5. The Class Representative will voluntarily dismiss all claims in the Johnston Litigation with prejudice and withdraw, or cause to be withdrawn, all other Proofs of Claim with prejudice within three (3) business days of the Effective Date.

6. The Johnston Settlement Class shall be certified as a class action as to the Settlement Class's claims in the Johnston Litigation and Proofs of Claim for settlement purposes only, as defined in the Johnston Settlement. The Settlement Class shall be defined as set forth in Section 7gg-7ii of the Johnston Prepetition Settlement, attached hereto as Exhibit A to Exhibit 1A.

7. The Settlement Payment will be made to the Claims Administrator, as defined in Section 7c of the Johnston Prepetition Settlement.

8. When the Claims Administrator holds cash upon the Settlement Payment recovery (either as a result of cash distributions upon the Settlement Claim, or upon the liquidation of non-cash recoveries upon the Settlement Claim), it shall dispose of such cash consistent with the Prepetition Settlement as directed by Class Counsel, as set forth fully in Section 16 of the Johnston Settlement.

9. Class Counsel shall cause notice and opportunity to opt-out to be issued to members of the Settlement Class by the Class Administrator within 30 days of the Effective Date. Such notice shall provide members of the Settlement Class 45 days from the date of mailing to opt-out, but shall conspicuously disclose that unless such a Settlement Class member timely filed individual proof(s) of claims in the Chapter 11 Cases by the general bar date of October 21, 2020, the effect of his or her opting out will be to bar any recovery from any Debtor arising from the Johnston Class Action or the related PAGA case. Such notice shall also state that any Class Member who timely filed an individual claim may only receive payment from the

Settlement Payment. Class Counsel shall provide a declaration to the Court reflecting the results of the notice and opt-out process. Form of such notice is attached hereto as Exhibit B to Exhibit 1A.

10. The Court is not tolling or otherwise extending the Bar Date for any creditors who did not file an individual proof of claim.

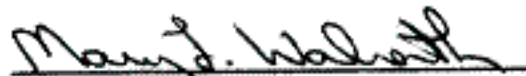
11. No creditor other than the Class Members defined in the Purported Class Action shall gain any rights by reason of Johnston Settlement Agreement. Nor shall the Johnston Settlement Agreement be admissible and/or used in any fashion in any action by any creditors.

12. The Debtors reserve all of their rights and defenses with respect to any creditor other than the Class Members.

13. This Court shall, and hereby does, retain jurisdiction with respect to all matters arising from or in relation to the interpretation and implementation of the Johnston Settlement Agreement, and all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

**Dated: April 26th, 2021**  
**Wilmington, Delaware**

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RLF1 25058556v.1



**MARY F. WALRATH**  
**UNITED STATES BANKRUPTCY JUDGE**

**Exhibit 1A**  
**[Johnston Settlement]**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

The Hertz Corporation, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 20-11218 (MFW)

(Jointly Administered)

**Settlement Agreement and Release**

This Settlement Agreement and Release (the “**Settlement Agreement**”) is made and entered into as of April 2, 2021 by and between the plaintiff Emy Johnston (the “**Plaintiff**”) on her own behalf and on behalf of others similarly situated (together with the Plaintiff, the Settlement Class (as defined below)), by and through their undersigned counsel, the Spivak Law Firm and the United Employees Law Group (collectively, “**Class Counsel**”), and Hertz Local Edition Corp. (“**HLE**” or the “**Debtor Defendant**”) on behalf of itself and the other debtors in the above-captioned action (collectively, the “**Debtors**”), and the official committee of unsecured creditors in the Chapter 11 Cases, as defined herein (the “**Committee**”). The Plaintiff, the Debtors, and the Committee are referred to collectively as the “**Parties**” or individually as a “**Party**.” The Parties, by and through their respective counsel, stipulate and agree as follows:

**Recitals**

WHEREAS, the Plaintiff filed a class complaint on August 10, 2017 against the Debtor Defendant in *Johnston, et al. v. The Hertz Corporation, et al.*, Case No. CU17-082392 in the California Superior Court for the County of Nevada, which was subsequently removed to federal court as Case No. 2:17-cv-01966 in the United States District Court for the Eastern District of California (the “**Johnston Class Action**”);

WHEREAS, in the Johnston Class Action, the Plaintiff alleged five causes of action for: unpaid minimum and overtime wages; failure to provide meal periods and rest breaks; failure to indemnify; wage statement penalties; waiting time penalties; and unfair competition pursuant to Business and Professions Code §§ 17200, *et seq.*; the Plaintiff also requested civil penalties under the Private Attorneys General Act of 2004 (Cal. Lab. Code § 2698, *et seq.*) (“**PAGA**”). The Debtor

<sup>1</sup> The Debtors include the following entities: The Hertz Corporation, Hertz Global Holdings, Inc., Thrifty Rent-A-Car System, LLC, Thrifty, LLC, Dollar Thrifty Automotive Group, Inc., Firefly Rent A Car LLC, CMGC Canada Acquisition ULC, Hertz Aircraft, LLC, Dollar Rent A Car, Inc., Dollar Thrifty Automotive Group Canada Inc., Donlen Corporation, Donlen FSHCO Company, Hertz Canada Limited, Donlen Mobility Solutions, Inc., DTG Canada Corp., DTG Operations, Inc., Hertz Car Sales LLC, DTG Supply, LLC, Hertz Global Services Corporation, Hertz Local Edition Corp., Hertz Local Edition Transporting, Inc., Donlen Fleet Leasing Ltd., Hertz System, Inc., Smartz Vehicle Rental Corporation, Thrifty Car Sales, Inc., Hertz Technologies, Inc., TRAC Asia Pacific, Inc., Hertz Transporting, Inc., Rental Car Group Company, LLC, Rental Car Intermediate Holdings, LLC.

Defendant has denied and continues to deny all of the allegations that have been, or could be, asserted by the Plaintiff;

WHEREAS, the Debtor Defendant and the Plaintiff engaged in discovery, including discovery related to putative class size and potential exposure, and discovery produced in connection with mediation efforts;

WHEREAS, on March 2, 2020, the Plaintiff and the Debtor Defendant filed the *Stipulation of Class Settlement and Release between Plaintiff and Defendant* (E.D. Cal. 2:17-cv-01966 D.I.33-2 at p. 26 *et seq.*), attached hereto as Exhibit A (the “**Prepetition Settlement**”);

WHEREAS, the Prepetition Settlement defined a class for settlement purposes, which class consisted of two subclasses of certain California employees of HLE (the “**Settlement Class**”);

WHEREAS, pursuant to the Prepetition Settlement, and as set forth more fully therein, the Debtor Defendant agreed to pay a Gross Settlement Amount<sup>2</sup> of \$550,000 in consideration for a general release of all claims by the Plaintiff and all Settlement Class Members which were, or could have been, alleged in the Johnston Class Action;

WHEREAS, on May 4, 2020, the Prepetition Settlement was preliminary approved by the District Court;

WHEREAS, on May 22, 2020 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”) thereby commencing the chapter 11 cases (the “**Chapter 11 Cases**”) which cases are being administered jointly pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”);

WHEREAS, the Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on June 11, 2020, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the Committee pursuant to section 1102 of the Bankruptcy Code;

WHEREAS, on September 9, 2020, the Court entered the *Order Establishing Bar Dates and Related Procedures for Filing Proofs of Claim, Including Claims Arising Under Section 503(b)(9) of the Bankruptcy Code, and Approving the Form and Manner of Notice Thereof* [D.I. 1240] (the “**Bar Date Order**”), and the Debtors filed the *Notice of Deadlines for Filing Proofs of Claim, Including Claims Arising Under Section 503(b)(9) of the Bankruptcy Code Against Debtors* [D.I. 1243] (the “**Bar Date Notice**”) establishing October 21, 2020 at 5:00 p.m. (prevailing Eastern Time) as the general bar date (the “**Bar Date**”);

WHEREAS, pursuant to the Bar Date Order, each person that holds or seeks to assert a claim against the Debtors, whether or not such person is or may be included in or represented by

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<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meaning given in the Prepetition Settlement.

a purported class, collective, or similar representative action, was required to properly file a proof of claim on or before the established Bar Date;

WHEREAS, pursuant to the Bar Date Order, Debtors served the Bar Date Notice to all known, potential claimants, including providing actual notice to Class Counsel, and also engaged in robust publication notice informing potential claimants of the Bar Date, which constituted constructive notice to any absent claimants in the Johnston Class Action;

WHEREAS, prior to or on the Bar Date, certain individuals within the Settlement Class may have filed individual proofs of claim asserting claims that are duplicative of or subsumed by the claims asserted in the Johnston Class Action and/or arise out of the same or similar facts (the “**Individual Claims**”), and the Plaintiff filed proofs of claim on behalf of the Settlement Class (Claim Nos. 12553, 14456, and 14459, the “**Purported Class Claims**”), as well as an individual proof of claim on her own behalf (Claim No. 14454, the “**Plaintiff’s Individual Claim**,” together with the Individual Claims and the Purported Class Claims, the “**Proofs of Claim**”) against HLE;

WHEREAS, on December 16, 2020, the Debtors, the Committee, and the Plaintiff, together with other representatives of the several class actions, agreed to a mediation process (the “**Mediation Process**”);

WHEREAS, the Mediation Process and related procedures were approved by the Bankruptcy Court on January 14, 2021 in the *Order (I) Approving the Mediation Stipulation Regarding Claims Arising from Prepetition Representative Actions: (A) Appointing a Mediator, (B) Referring Certain Matters to Mediation and (C) Approving the Mediation Procedures, and (II) Granting Related Relief* [D.I. 2450] (the “**Mediation Order**”);

WHEREAS, as part of the Mediation Process the Debtors and the Plaintiff agreed not to file a Rule 7023 Motion, and to negotiate in good faith a settlement agreement for approval under Rule 9019;

WHEREAS, the Debtors shall propose a joint chapter 11 plan of reorganization (including all exhibits thereto and as amended, modified, or supplemented, or replaced, the “**Plan**”), which shall provide treatment for all prepetition claims allowed in these Chapter 11 Cases and a disclosure statement for the Plan (together with all schedules and exhibits thereto, and as may be amended, modified, or supplemented, or replaced, the “**Disclosure Statement**”) pursuant to section 1125 of the Bankruptcy Code, which shall be used to solicit votes to accept and reject the Plan;

WHEREAS, the Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334; this is a core proceeding pursuant to 28 U.S.C. § 157(b); and venue for this matter is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409; and

NOW, THEREFORE, in consideration of the mutual covenants, the promises and other good and valuable consideration, the sufficiency of which hereby are acknowledged, the undersigned Parties agree as follows:

1. To the extent that any terms or conditions of this Settlement Agreement vary from the Prepetition Settlement, the terms and conditions of this Settlement Agreement shall govern and the Prepetition Settlement shall be deemed supplemented and/or amended by the Settlement



Agreement as applicable. Except as otherwise provided herein, and except for the Class Representative's general release and promise not to seek employment with any Released Party, both of which are incorporated herein, upon the Effective Date (as defined below), any mutual obligation or liability set forth in the Prepetition Settlement shall be void and no longer have any force or effect.

2. This Settlement Agreement will be binding on the Parties from the date of its execution, but is expressly subject to and contingent upon entry of a final non-appealable order of the Court approving the Settlement Agreement and the Parties' obligations hereunder (the "**Approval Order**").

3. Promptly upon the mutual execution and delivery of this Settlement Agreement, the Debtors shall file a motion with the Court seeking entry of the Approval Order pursuant to Bankruptcy Rule 9019 (the "**Rule 9019 Motion**"), which motion may include proposed settlements with other mediation parties.

4. The Debtors shall use commercially reasonable efforts to achieve entry of the Approval Order as soon as reasonably practicable, including by working in good faith to promptly resolve all formal and informal objections, if any, to the Rule 9019 Motion. If requested by the Debtors, the Plaintiff and her counsel, and the Committee shall take reasonable actions in support of the entry of the Approval Order and shall not take any Court action inconsistent with obtaining the Approval Order.

5. The Settlement Agreement will become effective when the Approval Order becomes final and no longer subject to appeal (the "**Effective Date**"). If the Court denies approval of this Settlement Agreement and the Effective Date does not occur, with the exception of provisions related to the manner of voting with respect to the Settlement Claim as set forth herein (which, for the avoidance of doubt, shall be binding and effective as of the date of signing of this Settlement Agreement) the Settlement Agreement, and the Prepetition Settlement, will be null and void and will be of no force and effect, and the rights and defenses of the Debtors, or any successor thereto, including any and all rights of the Debtors to object to the Proofs of Claim on any grounds permitted under applicable law, shall be reserved and retained. Upon such event, all parties reserve all rights and remedies with respect to the Johnston Class Action and the Proofs of Claim.

6. For purposes of this Settlement Agreement only, the Settlement Class shall be defined as set forth in the Prepetition Settlement.

7. The Settlement Class shall be certified as a class action as to the Settlement Class's claims in the Johnston Class Action and Proofs of Claim, provided, however, that such Settlement Class shall be certified for settlement purposes only pursuant to Rule 23(b)(3) of the Federal Rules of Civil Procedure as made applicable to these proceedings by Bankruptcy Rules 7023 and 9014. For the avoidance of doubt, in the event the Settlement Agreement is not approved or not consummated for any reason and the Effective Date does not occur, Debtors shall retain any and all rights to contest and object to the certification of any purported class of claims related to the Johnston Class Action.

8. For purposes of this Settlement Agreement only, the Plaintiff shall be appointed as class representative of the Settlement Class (the "**Class Representative**").

9. For purposes of this Settlement Agreement only, the Spivak Law Firm and United Employees Law Group shall be appointed Class Counsel.

10. Class Counsel shall cause notice and opportunity to opt-out to be issued to members of the Settlement Class by the Class Administrator within 30 days of the Effective Date. Such notice shall provide members of the Settlement Class 45 days from the date of mailing to opt-out, but shall conspicuously disclose that unless such a Settlement Class member timely filed individual proof(s) of claims in the Chapter 11 Cases by the general bar date of October 21, 2020, the effect of his or her opting out will be to bar any recovery from any Debtor arising from the Johnston Class Action or the related PAGA case. Such notice shall also state that any Class Member who timely filed an individual claim may only receive payment from the Settlement Payment (defined below). Class Counsel shall provide a declaration to the Court reflecting the results of the notice and opt-out process. Class Counsel acknowledges that the releases set forth below shall bind all members of the Settlement Class who do not timely opt out. Form of such notice is set forth as Exhibit B hereto.

11. In full and final settlement of the Released Claims (defined below), the Parties agree that Proof of Claim No. 12553 shall be allowed as a general unsecured claim upon HLE in the amount of \$532,000 and a 507(a)(4) priority unsecured claim upon HLE in the amount of \$18,000 (collectively the “**Settlement Claim**”) to the Class Representative, Debtors shall pay the employer’s share of all required state and federal payroll tax withholdings (the “**Employers’ Share of Payroll Taxes**”), and the Class Representative will voluntarily dismiss all claims in the Johnston Class Action with prejudice and withdraw, or cause to be withdrawn, all other Proofs of Claim with prejudice within three business days of the Effective Date. The Settlement Claim supersedes, replaces, and renders void and unenforceable any representation or obligation with respect to the Gross Settlement Amount set forth in the Prepetition Settlement.

12. Except for the rights arising out of, provided for or reserved in this Settlement Agreement, the Class Representative and the Settlement Class, for and on behalf of themselves and their respective predecessors, successors, agents, attorneys, heirs, representatives, assigns, affiliates and subsidiaries (collectively the “**Releasing Parties**”), do hereby fully and forever release and discharge the Debtor Defendants, the Debtors, and their affiliates, subsidiaries, predecessors, parent(s), successors, assigns, officers, directors, shareholders, agents, employees, partners, members, insurers, accountants, attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the “**Released Parties**”) of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys’ fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, that the Releasing Parties may have had, now have or hereafter may have against the Released Parties, which were asserted in the Johnston Class Action and the Proofs of Claim or which materially relate to or arise from the violations of law alleged in the Johnston Class Action (the “**Released Claims**”). On the Effective Date, all Released Claims are deemed settled, released, withdrawn and dismissed in their entirety, on the merits, with prejudice. On the Effective Date, all releases in favor of the Class Representatives, Settlement Class and Class Counsel provided for by the Prepetition Settlement shall be deemed incorporated herein and in force with respect to each of the releasors therein.

**Waiver of Civil Code § 1542.** Each Party to this Settlement Agreement acknowledges that by granting the releases in this Section, such Party is waiving claims such Party knows about, as well as claims that such Party does not know about. Each Party therefore is waiving the protection of California Civil Code Section 1542 and any analogous statute, rule or principle of law. Section 1542 states:

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

13. The Settlement Claim and the Employers' Share of Payroll Taxes shall be administered in accordance with the terms of any plan of reorganization confirmed in the Chapter 11 Cases or other disposition of the Chapter 11 Cases (the "**Settlement Payment**"). The Debtors make no representations that there will be sufficient funds in the estate to pay the allowed claims in full or in part.

14. The Settlement Payment will be made to the Claims Administrator (as defined in the Prepetition Settlement).

15. If final distributions at HLE under the Plan on account of the Settlement Claim are in a form other than cash, such distribution shall be held in the Claims Administrator in such form, and liquidated upon the direction of Class Counsel at such time and in such matter as Class Counsel shall direct in its discretion. Without limitation of the foregoing, Class Counsel shall be entitled to, but not obliged to, exercise (cashlessly or otherwise) or sell, any rights, warrants or options distributed upon the Claim.

16. When the Claims Administrator holds cash upon the Settlement Payment recovery (either as a result of cash distributions upon the Settlement Claim, or upon the liquidation of non-cash recoveries upon the Settlement Claim), it shall itself dispose of such cash consistent with the Prepetition Settlement as directed by Class Counsel, provided for the avoidance of doubt, that this shall include the authorization to dispense as additional expenses from the gross fund Plaintiff's and Class Counsel's Chapter 11 Cases' related costs and any additional or different expense of the Claims Administrator imposed by way of the modifications to the Prepetition Settlement made necessary by the Chapter 11 Cases and/or this Settlement Agreement.

17. The Debtors shall provide to Class Counsel and the Claims Administrator all data concerning the Settlement Class and otherwise necessary for the distribution to the Settlement Class as contemplated in the prior paragraph.

18. For the consideration of, and subject to the receipt of, each item and amount of recovery which shall become due to holders of HLE general unsecured claims and priority unsecured claims in these Chapter 11 Cases by way of a confirmed and effective Plan or otherwise, each of the Released Parties is released as provided in the Prepetition Settlement. Such releases shall be in addition to any releases provided to any person under any confirmed Plan.

19. In connection with solicitation related to the Debtors' Plan, the Settlement Class

shall have a single vote in the amount of the Settlement Claim, for voting purposes only. On the solicitation date, Prime Clerk LLC, the Debtors' solicitation agent in the Chapter 11 Cases, will serve on Class Counsel a solicitation package and a preprinted ballot in respect of Proof of Claim No. 12553, which shall count as one vote in the amount of \$532,000 if it is returned in compliance with the applicable solicitation procedures (the "**Solicitation Procedures**") and one vote in the amount of \$18,000 in an appropriate priority voting class if and to the extent 507(a)(4) claims are not excluded from voting as unimpaired.<sup>3</sup> To the extent that the Court does not approve this Settlement Agreement or the Settlement Agreement terminates for any reason and the Debtors' have not objected to the Purported Class Claims on or before the solicitation date set in the Solicitation Procedures, Class Counsel shall have a general unsecured claim worth one (1) vote in the amount of \$550,000.00. For the avoidance of doubt, this paragraph 19 of the Settlement Agreement shall be binding and effective as of the date of this Settlement Agreement and shall survive the termination of this Settlement Agreement.

20. The Class Representative and Class Counsel, on behalf of the Settlement Class, agree to support the Plan. The Class Representative and Class Counsel agree that they will not, directly or indirectly, object to, impeded, or take any other action to interfere with acceptance, implementation, or consummation of the Plan or file with any court (including the Court) any motion, pleading, or other document that is not, in whole or in part, materially consistent with the Settlement Agreement or the Plan. This paragraph shall be void and of no effect if the treatment of the claims allowed hereby is not reasonably similar to, or better than, the treatment contemplated under the First Amended Joint Chapter 11 Plan as presently on public file. If the Class Representative is a Committee Member, this Settlement Agreement does not bar or otherwise restrict any actions that Class Representative may take in that capacity, including actions taken as a Committee Member to object to or otherwise oppose the Plan.

21. The Parties agree that they are compromising and settling disputed claims. Each of the Parties agrees it shall not commence or continue any contested matter, adversary proceeding, lawsuit or arbitration that contests, disputes or is inconsistent with any provision of this Settlement Agreement.

22. Neither this Settlement Agreement nor any of its provisions, nor evidence of any negotiations or proceedings related to this Settlement Agreement, shall be offered or received in evidence in these Chapter 11 Cases, or any other action or proceeding, as an admission or concession of liability or wrongdoing of any nature on the part of any of the Released Parties, or anyone acting on their behalf, and the Debtor Defendant specifically denies any such liability or wrongdoing. The Settlement Agreement is intended to settle and dispose of claims which are contested and denied. Nothing herein shall be construed as an admission by any Party of any liability of any kind to any other Party.

23. Nothing herein shall prevent any Party from seeking to offer this Settlement Agreement in evidence after the entry of the Approval Order for the purpose of enforcing the terms of this Settlement Agreement.

24. This Settlement Agreement is confidential until it is filed with the Court, subject to

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<sup>3</sup> The Solicitation Procedures will be filed with the Debtors' motion to approve the Disclosure Statement.

Debtors sharing it with the Committee and the U.S. Trustee in advance of filing.

25. All notices or other communications hereunder shall be deemed to have been duly given and made if (i) in writing and if served by personal delivery upon the Party for whom it is intended, (ii) delivered by registered or certified mail, return receipt requested, (iii) by electronic mail, as long as its delivery is confirmed through a receipt issued by the machine used by the sender and notice is also provided by one of the other means set forth in this Section 25 as promptly as practicable thereafter, or (iv) by a national courier service, to the person at the address set forth below, or such other address as may be designated in writing hereafter, in the same manner, by such person:

**If to the Debtors:**

Randy White  
Vice President, Labor & Employment Law  
The Hertz Corporation  
8501 Williams Road  
Estero, FL 33928  
(239) 301-7019  
rwhite@hertz.com

**If to the Plaintiff:**

David G. Spivak  
The Spivak Law Firm  
16530 Ventura Blvd., Suite 203  
Encino, CA 91436  
(818) 582-3086  
david@spivaklaw.com

**If to the Committee:**

Philip Bentley  
Kramer Levin Naftalis & Frankel LLP  
1177 6th Ave.  
New York, NY 10036  
(212) 715-9505  
pbentley@kramerlevin.com

26. This Settlement Agreement shall be construed pursuant to the laws of the State of Delaware and the Bankruptcy Code.

27. The Court shall have exclusive jurisdiction to determine as a core proceeding any dispute or controversy with respect to the interpretation or enforcement of this Settlement Agreement.

28. The headings of paragraphs herein are included solely for convenience of reference and shall not control the meaning or interpretation of any of the provisions of this Settlement Agreement.

29. This Settlement Agreement reflects the entire agreement and understanding of the Parties and supersedes, replaces, and renders void and unenforceable all prior contemporaneous agreements, representations and statements associated with, or in any matter related to, the subject matter of this Settlement Agreement, including all negotiations that led to the Settlement Agreement. No modifications or amendments of this Settlement Agreement are effective unless in writing and signed by the Parties.

30. In the event of litigation for breach of any terms of this Settlement Agreement, the prevailing party in such litigation shall be entitled to recover its reasonable legal fees, costs and expenses of litigation.

31. The Parties each acknowledge that they are entering into this Settlement Agreement freely, knowingly, voluntarily and with a full understanding of its terms. The Parties each acknowledge that in executing this Settlement Agreement, each Party is not relying on any inducements, statements, promises, or representations made by any other Party, or their agents, employees, or representatives, other than the consideration set forth herein. The Parties acknowledge that they have consulted with counsel of their own choosing concerning this Settlement Agreement and that they were given reasonable time to review and consider the terms of this Settlement Agreement. Each Party affirmatively represents to have the capacity to sign this Settlement Agreement and that there has been no assignment of any of the matters that are subject of the releases set forth above.

32. This Settlement Agreement is the product of negotiation and preparation by and among each Party and its respective attorneys. The Parties acknowledge and agree that this Settlement Agreement shall not be deemed prepared or drafted by one Party or another and should be construed accordingly.

33. If any provision or provisions of this Settlement Agreement shall be deemed invalid, illegal, or unenforceable, the validity, legality, and/or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

34. The terms and provisions of this Settlement Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective heirs, successors and assigns.

35. This Settlement Agreement may be executed in counterparts and all so executed shall constitute one Settlement Agreement, which shall be binding upon all Parties hereto, notwithstanding that all of the Parties' signatures do not appear on the same page. It is further agreed that signatures may be transmitted by fax or e-mail and are binding.

IN WITNESS WHEREOF, this Settlement Agreement shall be deemed executed on the date of this Settlement Agreement.

**On Behalf of the Plaintiff**

By: /s/ David Spivak

Dated: April 2, 2021

Its: Counsel for Plaintiff Emy Johnston

**On Behalf of the Debtors**

By: /s/ David Galainena

Dated: April 2, 2021

Its: General Counsel

**On Behalf of the Committee**

By: /s/ Philip Bentley

Dated: April 2, 2021

Its: Counsel for the Official Committee  
of Unsecured Creditors

# EXHIBIT A



1 DAVID G. SPIVAK (SBN 179684)  
david@spivaklaw.com  
2 THE SPIVAK LAW FIRM  
16530 Ventura Blvd., Ste 312  
3 Encino, CA 91436  
Telephone (818) 582-3086  
4 Facsimile (818) 582-2561

5 Attorneys for Plaintiff Emy Johnston  
(Additional attorneys for Parties stated on the  
6 following page)

7  
8 **UNITED STATES DISTRICT COURT**  
9 **EASTERN DISTRICT OF CALIFORNIA**

10 EMY JOHNSTON, on behalf of herself,  
11 and all others similarly situated, and as  
12 an “aggrieved employee” on behalf of  
13 other “aggrieved employees” under the  
Labor Code Private Attorneys General  
14 Act of 2004,

15 *Plaintiff,*

16 vs.  
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19 HERTZ LOCAL EDITION CORP., a  
20 Delaware corporation; and DOES 1  
through 50, inclusive,

21 *Defendant.*  
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Case No. 2:17-cv-01966-JAM-EFB

**STIPULATION OF CLASS  
SETTLEMENT AND RELEASE  
BETWEEN PLAINTIFF AND  
DEFENDANT**

Judge: John A. Mendez

Action Filed: August 10, 2017

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**ADDITIONAL ATTORNEY FOR PLAINTIFF**

WALTER HAINES (SBN 71075)  
whaines@uelglaw.com  
UNITED EMPLOYEES LAW GROUP  
5500 Bolsa Ave, Suite 201  
Huntington Beach, CA 92649  
Telephone: (562) 256-1047  
Facsimile: (562) 256-1006

Attorneys for Plaintiff,  
EMY JOHNSTON, and all others similarly situated

**ATTORNEYS FOR DEFENDANT**

RICHARD BROMLEY (State Bar No. 156260)  
rbromley@constangy.com  
**CONSTANGY, BROOKS, SMITH & PROPHETE, LLP**  
2029 Century Park East, Suite 1100  
Los Angeles, California 90067  
Telephone: (310) 909-7775  
Facsimile: (424) 465-6630

ROBERT A. DOLINKO, State Bar No. 76256  
rdolinko@nixonpeabody.com  
**NIXON PEABODY LLP**  
One Embarcadero Center, 18th Floor  
San Francisco, California 94111-3600  
Telephone: (415) 984-8200  
Facsimile: (415) 984-8300

Attorneys for Defendant  
HERTZ LOCAL EDITION CORP.

1 This Joint Stipulation and Settlement Agreement (herein after “Stipulation,”  
2 “Settlement,” or “Settlement Agreement”) is entered by and between Plaintiff Emy  
3 Johnston (“Johnston” or “Plaintiff”) on the one hand, and Defendant Hertz Local  
4 Edition Corp. (“HLEC” or “Defendant”), a Delaware Corporation, on the other  
5 hand, subject to the terms and conditions hereof and the approval of the Court.  
6 Johnston and HLEC are referenced collectively herein as “the Parties.”

7 **I. BACKGROUND AND RECITALS**

8 **Case Background**

9 1. On August 10, 2017, Johnston filed a class action lawsuit in the  
10 Superior Court of Nevada County, Case No. CU17-082392 (the “Action”), alleging  
11 five causes of action for 1) Unpaid minimum and overtime wages (Lab.  
12 Code §§ 510, and 1194); 2) Failure to provide meal periods and rest breaks;  
13 3) Failure to indemnify (Lab. Code § 2802; 4) Wage Statement Penalties (Lab.  
14 Code § 226); 5) Waiting Time Penalties (Lab. Code §§ 201 - 203); and 6) Unfair  
15 Competition (Bus. & Prof. Code §§ 17200, et seq.). On August 23, 2017, Plaintiff  
16 filed a First Amended Complaint, adding a single cause of action for Civil  
17 Penalties (Lab. Code §§ 2698, *et seq.*) under the Private Attorney General Act  
18 (“PAGA”). On September 25, 2017, HLEC removed the Action to United States  
19 District Court for the Eastern District of California, Case No. 2:17-cv-01966-JAM-  
20 EFB.

21 2. The Parties have engaged in discovery, including discovery related to  
22 putative class size and potential exposure, and discovery produced in connection  
23 with the Parties’ mediation efforts. Class Counsel has thoroughly investigated the  
24 facts relating to the claims alleged and analyzed the applicable legal principles to  
25 the claims asserted against HLEC.

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1           **The Settlement**

2           3.     On August 27, 2019, the Parties participated in a mediation before  
3 Kelly Knight, Esq. This full-day mediation session resulted in the present  
4 Settlement Agreement between the Parties.

5           4.     Based upon Class Counsel’s discovery, investigation, and legal  
6 evaluation, and taking into account the sharply contested legal and factual issues  
7 involved and assessment of the uncertainties of complex litigation and the relative  
8 benefits conferred upon the Settlement Class pursuant to this Settlement  
9 Agreement, Class Counsel has concluded that a settlement with HLEC, on the  
10 terms set forth in this Settlement Agreement, is fair, reasonable, adequate and in  
11 the best interests of Johnston and the Settlement Class.

12           5.     HLEC denied, and continues to deny, the allegations in the Action in  
13 their entirety. HLEC has asserted defenses to the claims alleged in the Action and  
14 expressly denies each of the claims asserted against it and any and all liability  
15 arising out of the conduct alleged. HLEC contends, specifically, that it has  
16 complied at all times with the California Labor Code, and the California Business  
17 and Professions Code, and that it paid Johnston and Settlement Class Members all  
18 wages, reimbursed them for all expenses, and made any other payments owing to  
19 them under applicable federal and state law. In addition, HLEC denies that, if the  
20 case were to proceed, any class could be certified.

21           6.     HLEC has concluded that further defense of this Action would be  
22 protracted and expensive. Substantial amounts of HLEC’s time, energy and  
23 resources have been expended, and unless this settlement is made, will continue to  
24 be expended in defense of the claims asserted in this Action. HLEC has, therefore,  
25 agreed to settle in the manner and upon the terms set forth in this Settlement  
26 Agreement to put to rest the claims as set forth in the Action. The Parties  
27 specifically agree that the agreement of HLEC to settle this matter is not, and shall  
28 not be construed as, an admission of any wrongdoing whatsoever by HLEC against

1 Johnston and/or the other Settlement Class Members.

2 NOW THEREFORE, IT IS HEREBY AGREED, BY AND BETWEEN the  
3 undersigned, that this Action shall be settled, subject to the approval of the Court,  
4 pursuant to the following terms and conditions:

5 **II. DEFINITIONS**

6 7. As used in this Settlement Agreement, the following terms shall have  
7 the following meanings:

8 a. “Action” means the civil action titled *Johnston v. Hertz Local*  
9 *Edition Corp.*, once pending in the Superior Court of Nevada County, Case No.  
10 CU17-082392, and now pending in the United States District Court for the Eastern  
11 District of California, Case No. 2:17-cv-01966-JAM-EFB.

12 b. “Authorized Claimants” means those Settlement Class  
13 Members who do not timely opt out of the Settlement.

14 c. “Claims Administrator” means Phoenix Class Action  
15 Administration Solutions (“Phoenix”), the entity that Class Counsel recommended  
16 and the parties have selected to administer this Settlement and to act as the third-  
17 party administrator to process the Settlement under the terms of this Settlement  
18 Agreement.

19 d. “Claims Administration Costs” means the fees and costs  
20 incurred or charged by the Claims Administrator in connection with the execution  
21 of its duties under this Settlement Agreement including, but not limited to: (i) fees  
22 and costs associated with preparing, issuing, and/or monitoring reports, filings and  
23 notices (including the cost of printing and mailing all notices and other documents  
24 to the Settlement Class) required to be prepared in the course of administering the  
25 Settlement; (ii) computing the amount of the Settlement Awards, and any other  
26 payments to be made under this Settlement Agreement; (iii) handling inquiries  
27 about the calculation of individual Settlement Awards; (iv) establishing and  
28 operating a Settlement payment center address, and phone number to receive

1 inquires about the Settlement; and (v) preparing and issuing any tax forms required  
2 under the law and/or pursuant to this Settlement Agreement and preparing and  
3 submitting any filings required by any governmental taxing authority or other  
4 governmental agency.

5 e. “Class Counsel” means David G. Spivak of the The Spivak  
6 Law Firm and Walter Haines of the United Employees Law Group.

7 f. “Class List” means the list to be provided to the Class  
8 Administrator, which consists of the first and last names, last-known addresses,  
9 telephone numbers, dates of employment, number of workweeks, and full social  
10 security numbers of the Settlement Class Members.

11 g. “Class Notice” means the Notice of Proposed Class Action  
12 Settlement to be sent to the Settlement Class Members after the Court  
13 preliminarily approves the terms contained in this Settlement Agreement,  
14 informing them of the material terms of the agreement, why they are receiving the  
15 Class Notice, and what their options are with respect to the Settlement.  
16 The proposed Class Notice is attached as Exhibit A to this Settlement Agreement.

17 h. “Class Released Claims” means any and all claims to be  
18 released by the Class Members who do not opt out of the settlement consisting of  
19 all claims that were or could have been alleged based on the facts alleged in the  
20 Operative Complaint, including, but not limited to, any corresponding or related  
21 PAGA claims, for the Settlement Class Period, including the date of preliminary  
22 approval of this proposed Settlement under any state or local law, and shall  
23 specifically include, but is not limited to, claims for (1) Unpaid minimum and  
24 overtime wages (e.g., Lab. Code §§ 510, and 1194); (2) Failure to provide meal  
25 periods and rest breaks (e.g., Lab. Code §§ 226.7, 512 and 1198;  
26 (3) Unreimbursed expenses (e.g., Lab. Code § 2802); (4) Wage Statement Penalties  
27 (Lab. Code § 226); (5) Waiting Time Penalties (Lab. Code §§ 201 - 203);  
28 (6) Unfair Competition (Bus. & Prof. Code § 17200, *et seq.*); (7) Civil Penalties

1 (Lab. Code § 2698, *et seq.*) under the Private Attorney General Act (“PAGA”);  
2 (8) violation of Labor Code section 226.7 (for rest breaks); and (9) any similar  
3 claims and any related statutory and/or civil penalties, which were alleged or could  
4 have been alleged based on the facts of the Operative Complaint.

5 i. “Complaint” or “Operative Complaint” means the original  
6 complaint filed on August 10, 2017 in this Action, with case number CU17-  
7 082392 and removed to federal court as case number 2:17-cv-01966-JAM-EFB,  
8 and including the amendments contained in the First Amended Complaint.

9 j. “Counsel for Defendant” means Richard Bromley, Esq. of  
10 Constangy, Brooks, Smith & Prophete, LLP, 2029 Century Park East, Suite 1100,  
11 Los Angeles, California 90067, Telephone: 310-909-7775, Facsimile: 424-465-  
12 6630 and Robert A. Dolinko, Esq. of Nixon Peabody, LLP, One Embarcadero  
13 Center, 18th Floor, San Francisco, California 94111-3600, Telephone: (415) 984-  
14 8200, Facsimile: (415) 984-8300.

15 k. “Court” means the United States District Court of the Eastern  
16 District of California in which the Action is currently pending, the Honorable John  
17 A. Mendez presiding, and located at the Robert T. Matsui United States  
18 Courthouse, 501 I Street, Courtroom 6, Sacramento, California 95814. Court shall  
19 also mean any other Court with proper jurisdiction of this Action.

20 l. “Defendant” means Hertz Local Edition Corp.

21 m. “Effective Date” means ten (10) business days after either (a) if  
22 no objections are timely filed, the Final Approval Date; (b) if objections are filed  
23 but no appeal is filed, the expiration date of the time for filing notice of any appeal  
24 from Final Approval Date; or (c) if an appeal is filed, the latest of (i) the date of  
25 final affirmance of an appeal of that Final Approval Order, (ii) the expiration of the  
26 time for a petition for review or writ of certiorari with respect to the Final  
27 Approval Order and, if review or certiorari is granted, the date of final affirmance  
28 of the Final Approval Order following review pursuant to that grant; or (iii) the

1 date of final dismissal of any appeal from the Final Approval Order or the final  
2 dismissal of any proceeding on review or certiorari with respect to the Final  
3 Approval Order that has the effect of confirming the Final Approval Order.

4 n. “Final Approval Date” means the date of entry of the Order  
5 granting final approval of this Settlement Agreement.

6 o. “Final Approval Order” means the Order granting final  
7 approval of this Settlement.

8 p. “Final Judgment” or “Judgment” means the judgment entered  
9 into by the Court pursuant to the terms set forth in this Settlement Agreement  
10 finally and fully giving effect to the terms contained in this Agreement.

11 q. “Gross Settlement Amount” means the total amount of five  
12 hundred and fifty thousand dollars (\$550,000) to be paid by Defendant pursuant to  
13 the terms of this Settlement Agreement in full satisfaction of all claims arising  
14 from this Action, and which includes all individual settlement amounts to the  
15 Settlement Class Members, Representative Plaintiff’s Incentive Award, Class  
16 Counsel Fees, Class Counsel’s Costs, Claims Administrator’s Costs, and the  
17 portion for the PAGA Payment payable to the LWDA. Defendant will separately  
18 pay any employer payroll taxes required by law, including, but not limited to, the  
19 employer FICA, FUTA, and SDI contributions.

20 r. “Incentive Award” means the payment to Representative  
21 Plaintiff Johnston for her service to the Settlement Class and in consideration for  
22 her agreement not to seek employment with HLEC in any capacity at any time and  
23 her execution of the Personal Release contained herein, which is in addition to  
24 whatever payment she is otherwise entitled to as an Authorized Claimant.

25 s. “Net Settlement Amount” (“NSA”) means the portion of the  
26 Gross Settlement Amount after deducting Class Counsel Fees, Class Counsel  
27 Costs, Incentive Award to Representative Plaintiff, Claims Administrator Costs,  
28 and the portion for the PAGA Payment payable to the LWDA. Defendant will



1 separately pay any employer payroll taxes required by law, including, but not  
2 limited to, the employer FICA, FUTA, and SDI contributions. The NSA will be  
3 distributed to Settlement Class Members.

4 t. “Notice Packet” means a pre-paid self-addressed return  
5 envelope that will include the Class Notice and Opt-Out Form to all Settlement  
6 Class Members via first-class mail, postage prepaid, using the most current mailing  
7 address information available contained in the Class List.

8 u. “Opt-Out Form” means a request for exclusion from the  
9 proposed class action settlement form that will be mailed out in the Notice Packet  
10 to all Settlement Class Members.

11 v. “Opt-out Period” means the 45 calendar-day period after the  
12 mailing of the Notice Packets to the Settlement Class Members during which the  
13 Settlement Class Members can timely opt out of the Settlement Class.

14 w. “PAGA Payment” means the portion of the Gross Settlement  
15 Amount the Parties have agreed to allocate to settle the claims for civil penalties  
16 under the California Private Attorneys’ General Act (“PAGA”).

17 x. “Parties” means Johnston and HLEC.

18 y. “Personal Release” means the Representative Plaintiff Emy  
19 Johnston’s irrevocable and unconditional release, acquittal, and discharge of the  
20 Released Persons and all persons and/or corporate entities acting by, through,  
21 under or in concert with any of them, or any of them, from any and all Class  
22 Released Claims and any and all existing claims, demands, suits, actions, causes of  
23 action, obligations, agreements, contracts, promises, liabilities, debts,  
24 compensation, damages, losses, costs, expenses, and attorneys’ fees, of any and  
25 every kind, nature or character, known or unknown, suspected or unsuspected,  
26 actual or potential, absolute or contingent, pending or anticipated, which arise out  
27 of, are based upon, are by reason of, relate to, or in any way involve Johnston’s  
28 employment with HLEC, including the termination thereof, including, but not

1 limited to, those arising under any federal, state, or local law, regulation or  
2 ordinance, contract, quasi-contract, the common law, public policy, or any  
3 constitution, such as, without limitation, the California Constitution; the California  
4 Labor Code, including Labor Code Section 132a; Family Medical Leave Act;  
5 California Family Rights Act; Title VII of the Civil Rights Act of 1964 (42 U.S.C.  
6 § 2000e); the California Fair Employment and Housing Act (Cal. Govt. Code  
7 § 12900 *et seq.*); the Private Attorneys General Act of 2004 pursuant to *Arias v.*  
8 *Superior Court* (2009) 46 Cal. 4th 969; Americans with Disabilities Act; Older  
9 Workers Benefit Protection Act; Age Discrimination in Employment Act;  
10 Consolidated Omnibus Budget Reconciliation Act of 1985; Employee Retirement  
11 Income Security Act of 1974, Civil Code section 51 *et seq.*; Wage Orders of the  
12 California Industrial Welfare Commission; the California Code of Regulations; the  
13 California Business and Professions Code; Fair Labor Standards Act; and claims of  
14 intentional infliction of emotional distress; defamation and/or libel, or any other  
15 damage to reputation claims; breach of implied contract or for claims of a breach  
16 of the covenant of good faith and fair dealing, as well as any other express or  
17 implied covenant; or any other statute or common law principle of similar effect,  
18 known or unknown, which the person giving this release now has, owns, or holds,  
19 or claims to have, own or hold, or which said person at any time heretofore had,  
20 owned, or held, or claimed to have, own, or hold or which said person at any time  
21 hereinafter may have, own, or hold, or claim to have, own, or hold, against each or  
22 any of the Released Persons, arising from acts, events, or circumstances occurring  
23 on or before the effective date of this Agreement. Representative Plaintiff  
24 acknowledges and agrees that this Agreement includes her release of claims for  
25 disputed wages pursuant to Labor Code Section 206.5.

26 With respect to claims released in this Section, the Representative Plaintiff  
27 expressly waives the benefits of California Civil Code § 1542. Civil Code §1542  
28 provides:

1           **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS**  
2           **WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT**  
3           **TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**  
4           **EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM**  
5           **OR HER MUST HAVE MATERIALLY AFFECTED HIS OR**  
6           **HER SETTLEMENT WITH THE DEBTOR.**

6 Notwithstanding the provisions of section 1542, and for the purpose of  
7 implementing a complete release and discharge of the claims in the Personal  
8 Release, Representative Plaintiff Johnston expressly acknowledges that this  
9 Agreement is intended to include in its effect all claims which she does not know  
10 of or suspect to exist in her favor at the time of execution hereof and that this  
11 agreement contemplates the extinguishment of all such claims.

12           z.       “Preliminary Approval Motion” means the motion that will be  
13 filed by Plaintiff to obtain the Court’s preliminary approval of this Settlement and  
14 proposed Class Notice to be mailed out to the Settlement Class Members.

15           aa.     “Preliminary Approval Order” means the order preliminarily  
16 approving the settlement terms contained in this Agreement.

17           bb.     “Qualified Settlement Fund Account” means the account into  
18 which the Claims Administrator will transfer the Gross Settlement Amount  
19 pursuant to Internal Revenue Code Section 1.468B-1.

20           cc.     “Released Parties” means (i) HLEC; and (ii) HLEC’s past,  
21 present, or future subsidiaries, divisions, predecessors, successors and assigns,  
22 officers, agents, employees, advisors, insurers, attorneys, executors, administrators,  
23 servants, owners, shareholders, bondholders, directors, partners, attorneys, and any  
24 parent organizations (including but not limited to The Hertz Corporation and Hertz  
25 Global Holdings, Inc.), subsidiaries, successors in interest, and/or representatives.

26           dd.     “Representative Plaintiff” or “Johnston” means Emy Johnston.

27           ee.     “Settlement Agreement” or “Agreement” means this agreement  
28 and all exhibits attached to it.

1 ff. “Settlement Award” means the gross payment to any  
2 Settlement Class Member pursuant to the terms of this Settlement Agreement.

3 gg. “Settlement Class” is the class consisting of all Settlement  
4 Class Members described below who were employed by Defendant in California at  
5 any time during the Settlement Class Period. It includes Branch Managers, District  
6 Managers and/or Territory Managers (collectively “Branch Managers”) described  
7 in paragraph hh below.

8 hh. “Settlement Class Member” means (1) the approximately 15  
9 Branch Managers employed by HLEC in California, including Plaintiff, who  
10 (during certain weeks within the Settlement Class Period) were paid less than the  
11 minimum salary amount required to be exempt from overtime from August 2013 to  
12 the present (the “Salary Subclass”); and the approximately 129 Branch Managers,  
13 District Managers and/or Territory Managers employed by HLEC in California,  
14 including Plaintiff, who (according to company records during certain weeks  
15 within the Settlement Class Period) supervised or managed less than two (2) full-  
16 time employees, or the equivalent part-time employees at any time from August  
17 10, 2013 to the present (the “Under Supervised Subclass”) (hereafter the two  
18 groups are referred to collectively as the “Class Members”).

19 ii. “Settlement Class Period” means from August 10, 2013 through  
20 the date of the Court’s order preliminarily approving this Settlement.

21 jj. “Settlement Fairness Hearing” or “Final Approval Hearing”  
22 means the hearing to be requested by the Parties and conducted by the Court,  
23 following appropriate notice to the Settlement Class and an opportunity for  
24 Settlement Class Members to exclude themselves from the Settlement Class and  
25 the proposed settlement, at which time the Parties will request the Court to approve  
26 the fairness, reasonableness and adequacy of the terms and conditions of the  
27 proposed settlement and this Settlement Agreement and to enter a Final Approval  
28 Order and Final Judgment.

1 **III. SETTLEMENT FUND AND SETTLEMENT AWARD**  
2 **CALCULATION**

3 8. Gross Settlement Amount.

4 a. HLEC shall pay the Gross Settlement Amount of Five Hundred  
5 Fifty Thousand Dollars and Zero Cents (\$550,000.00) to settle this Action.

6 b. Deposit. Within thirty (30) business days after the Effective  
7 Date, HLEC shall deliver to the Claims Administrator the Gross Settlement  
8 Amount. Immediately upon receipt by the Claims Administrator, the Gross  
9 Settlement Amount shall be transferred into a Qualified Settlement Fund Account.  
10 No Party shall have any further obligation or liability for any payment under this  
11 Settlement Agreement to Johnston or to the Settlement Class Members.

12 c. Disbursement by Claims Administrator. All disbursements shall  
13 be made from the Qualified Settlement Fund Account. The Claims Administrator  
14 shall be the only entity authorized to make withdrawals or payments from the  
15 Qualified Settlement Fund Account. All payments to Authorized Claimants shall  
16 be made in a single distribution by the Claims Administrator (except for checks  
17 that are returned, which are addressed further below).

18 d. Interest. Any interest on the funds deposited by HLEC will  
19 inure pro rata once paid out to the party to whom the underlying funds are  
20 ultimately paid out.

21 e. Payroll Taxes. The Gross Settlement Amount will not cover  
22 HLEC's share of employer-side payroll taxes, including FICA, FUTA, SDI, UE,  
23 on the Settlement Awards paid to Settlement Class Members to the extent required  
24 by law. HLEC will pay such taxes in addition to the Gross Settlement Amount.

25 9. Incentive Award, Class Counsel Fees and Costs, Costs of  
26 Administration, and PAGA Payment. Subject to Court approval and for purposes  
27 of effectuating this Settlement Agreement, the following amounts shall be paid by  
28 the Claims Administrator from the Gross Settlement Amount:

1           a.     Incentive Award. Subject to Court approval and in exchange for  
2 Johnston's release of all claims in the Personal Release, Johnston's agreement not  
3 to seek re-employment with HLEC (as described below), Johnston's covenant not  
4 to sue (as described below), and in addition to her individual Settlement Award as  
5 a member of the Settlement Class, fifteen thousand dollars (\$15,000) will be set  
6 aside from the Gross Settlement Amount for Johnston's efforts in bringing and  
7 prosecuting this matter. The Qualified Settlement Fund Account shall issue an IRS  
8 Form 1099 for this payment. The Claims Administrator shall pay the Incentive  
9 Award approved by the Court from the Gross Settlement Amount within ten (10)  
10 business days of deposit of the Gross Settlement Amount. Any amounts not  
11 approved by the Court as an Incentive Award up to the amounts set forth in this  
12 paragraph shall be added back to the NSA to be distributed to the Settlement Class  
13 Members. Johnston shall not appeal the Court's decision on this subject.

14           i.     Johnston's Agreement Not To Seek Employment With  
15 HLEC. Johnston agrees not to seek employment or re-employment with HLEC in  
16 any capacity at any time.

17           ii.    Johnston's Covenant Not to Sue. Johnston covenants and  
18 agrees not to ever assert a claim released by the Personal Release, or to commence,  
19 join in, or voluntarily assist in a lawsuit or adversary proceeding against the  
20 Released Parties, or any of them, arising out of or regarding the claims released by  
21 Personal Release set forth above.

22           b.     Class Counsel Fees and Costs. Class Counsel shall make a  
23 motion for reasonable attorneys' fees and costs incurred by Class Counsel. The  
24 reasonable attorneys' fees requested by Class Counsel shall not exceed one third  
25 (33.33%) of the Gross Settlement Amount, or one hundred and eight three  
26 thousand three hundred and thirty three dollars (\$183,333). These amounts will  
27 compensate Class Counsel for work already performed in this case and all of the  
28 work remaining to be performed in this case, including but not limited to

1 documenting the Settlement Agreement, securing Court approval of the Settlement  
2 Agreement, making sure that the Settlement Agreement is fairly administered and  
3 implemented, obtaining final judgment of the action, and addressing any appeals or  
4 further proceedings that may occur. Class Counsel's Costs/Expenses  
5 reimbursement request shall not exceed twenty five thousand dollars (\$25,000).

6 i. HLEC and its attorneys agree not to oppose any  
7 application or motion by Class Counsel for attorneys' fees and costs up to those  
8 amounts set forth herein, so long as any such application or motion is consistent  
9 with the provisions of this Settlement Agreement, and Class Counsel agrees not to  
10 petition the Court for any additional payments for fees, costs, or interest.

11 ii. The Claims Administrator shall pay the attorneys' fees  
12 and costs approved by the Court, as set forth above from the Gross Settlement  
13 Amount within ten (10) business days of deposit of the Gross Settlement Amount  
14 pursuant to paragraph 9(b) above. Any amounts not approved by the Court in  
15 attorneys' fees and costs up to the amounts set forth in paragraph 9(b) above shall  
16 be added back to the NSA to be distributed to the Settlement Class Members

17 iii. The attorneys' fees and costs approved by the Court shall  
18 constitute full satisfaction of HLEC's obligations to pay amounts to any person,  
19 attorney, or law firm for attorneys' fees, expenses, or costs in this Action incurred  
20 on behalf of Johnston and/or the Settlement Class, and shall relieve HLEC from  
21 any other claims or liability to any other attorney or law firm for any attorneys'  
22 fees, expenses, and/or costs to which any of them may claim to be entitled on  
23 behalf of Johnston and/or the Settlement Class. Johnston further agrees that any  
24 allocation of fees between or among Class Counsel and any other attorney  
25 representing a Plaintiff and/or the Settlement Class shall be the sole responsibility  
26 of Class Counsel, and Johnston agrees to hold harmless HLEC from any claim or  
27 liability by any other party claiming or seeking to claim any attorneys' fees or  
28 costs.

1                   iv.     An IRS Form 1099 shall be provided to Class Counsel  
2 for the payments made to Class Counsel. Class Counsel shall be solely and legally  
3 responsible to pay any and all applicable taxes on the payment made to Class  
4 Counsel. HLEC makes no representations or warranties regarding the tax  
5 consequences or obligations resulting from any payments made to Class Counsel.  
6 Class Counsel agrees to hold harmless HLEC, the Claims Administrator, and the  
7 Qualified Settlement Fund Account from any claim or liability for taxes, penalties,  
8 or interest for which Class Counsel is responsible as a result of the payment or any  
9 allocation of the payment made to Class Counsel.

10                   c.     Claims Administration Costs. Neither the Settlement Class  
11 Members nor Class Counsel shall have any responsibility or liability with respect  
12 to any administration costs incurred in connection with the administration of, and  
13 the distribution from, the NSA. All fees, costs, and expenses by the Claims  
14 Administrator pertaining to this Settlement Agreement shall be paid from the  
15 Gross Settlement Amount as set forth in this Settlement Agreement in an amount  
16 not to exceed, and are estimated to be, ten thousand dollars (\$10,000). Any  
17 amounts not approved by the Court in Claims Administration Costs pertaining to  
18 this Settlement Agreement up to the amount set forth in this paragraph shall be  
19 added back to the NSA to be distributed to the Settlement Class Members. The  
20 Parties agree to cooperate in the settlement administration process and to make all  
21 reasonable efforts to control and minimize the costs and expenses incurred in the  
22 administration of the Settlement Agreement. The Claims Administrator shall pay  
23 itself the Claims Administration Costs approved by the Court within ten (10)  
24 business days of the deposit of the Gross Settlement Amount.

25                   d.     PAGA Payment. The total PAGA Payment shall be ten  
26 thousand dollars (\$10,000). Seventy-five percent (75%) of that total, in the amount  
27 of seven thousand five hundred dollars (\$7,500), shall be paid to the State of  
28 California Labor & Workforce Development Agency (“LWDA”). The remaining



1 twenty-five percent (25%), in the amount of two thousand five hundred dollars  
2 (\$2,500), shall be added back to the NSA to be distributed to the Settlement Class  
3 Members. The PAGA Payment to the LWDA shall be made within ten (10)  
4 business days after the deposit of the Gross Settlement Agreement. As a result of  
5 the Settlement Agreement, Settlement Class Members shall be deemed to no  
6 longer be aggrieved employees for purposes of the PAGA.

7 10. Settlement Awards to Eligible Class Members. Solely for purposes of  
8 effectuating this Settlement Agreement and in exchange for the release of the  
9 Class Released Claims by the Settlement Class Members, Settlement Class  
10 Members who do not timely opt out of the Settlement Agreement shall be paid a  
11 Settlement Award from the NSA in the amount(s) calculated as follows: Each  
12 Settlement Class Member will be paid a pro rata share of the NSA based on the  
13 number of weeks he or she worked for HLEC during the Settlement Class Period,  
14 divided by the total number of work weeks worked by all Settlement Class  
15 Members during the Settlement Class Period. Each of the amounts in this section  
16 is subject to change depending on the final tally of Settlement Class Members who  
17 do not timely opt out of the Settlement Agreement.

18 a. The Claims Administrator shall be responsible for determining  
19 eligibility for, and the amount of, the Settlement Awards to be paid. Settlement  
20 Awards shall be paid to Settlement Class Members no later than ten (10) business  
21 days after the deposit of the Gross Settlement Amount.

22 b. The Settlement Award shall be treated by all Parties as one half  
23 (50%) non-wage penalties and interest, to be reported to the Settlement Class  
24 Member on an IRS Form 1099, and shall not be subject to withholdings, and one  
25 half (50%) wages, subject to withholdings, to be reported to the Settlement Class  
26 Member on an IRS Form W-2. Settlement Class Members shall be solely and  
27 legally responsible to pay any and all applicable taxes on the payment made to  
28 them. HLEC makes no representations or warranties regarding the tax

1 consequences or obligations resulting from any payments made to Settlement Class  
2 Members.

3 c. All eligibility and Settlement Award determinations shall be  
4 based on personnel and payroll data that HLEC will make available as needed to  
5 the Claims Administrator. Settlement Class Members shall have an opportunity to  
6 dispute the personnel and payroll information reflected on the Class Notice as  
7 reflected in Exhibit A. The Claims Administrator shall have the sole authority to  
8 resolve any such disputes, and may consult with Class Counsel and HLEC's  
9 counsel in doing so. Any Settlement Awards that are undeliverable to Settlement  
10 Class Members pursuant to paragraph 18(f) shall be distributed to the *cy pres* fund  
11 pursuant to subsection (d) of this paragraph.

12 d. All checks for Settlement Awards shall remain valid and  
13 negotiable for one hundred eighty (180) days from the date of their issuance. The  
14 Claims Administrator will include with the checks a letter stating that the check  
15 must be cashed or deposited within 180 days. The funds represented by Settlement  
16 Award checks returned as undeliverable and those Settlement Award checks  
17 remaining un-cashed for more than 180 days after issuance shall be retained by the  
18 Claims Administrator. Any checks that are not cashed or otherwise remain  
19 unclaimed upon the expiration of that 180-day time period shall be distributed to  
20 the State of California State Controller's Office Unclaimed Property Fund in the  
21 name and for the benefit of the individual Class Member. If the Settlement  
22 Administrator is unable to obtain a valid mailing address through this process, the  
23 monies represented by the check shall be distributed to the State of California State  
24 Controller's Office Unclaimed Property Fund in the name and for the benefit of the  
25 individual Class Member.

26 e. The aggregate amount of the Settlement Awards to Settlement  
27 Class Members shall not under any circumstances exceed the NSA.

28 ///

1           11. Taxes.

2           a. Withholding and Reporting Requirements. The Claims  
3 Administrator shall be responsible for ensuring that all taxes associated with this  
4 Settlement Agreement are timely paid to the appropriate tax authorities. The  
5 Claims Administrator's responsibilities include the following: (i) filing all federal,  
6 state, and local tax deductions, (ii) to timely and proper filing of all required  
7 federal, state and local forms (e.g., IRS Form 1099's, W-2's, etc.) with the  
8 appropriate taxing authorities, and (iii) completion of any other steps necessary for  
9 compliance with any tax obligations of the Settlement under federal, state, and/or  
10 local law, as applicable. To verify the Claims Administrator's compliance with the  
11 foregoing withholding and reporting requirements, as soon as administratively  
12 practicable, the Claims Administrator shall furnish Class Counsel and Counsel for  
13 Defendant with copies of all forms detailing the payment of taxes (including all  
14 1099 forms and returns) sufficient to prove that such payments were properly  
15 remitted. The Claims Administrator shall provide a final accounting declaration  
16 adequate to demonstrate full compliance with all duties set forth in this Settlement  
17 Agreement, including, but not limited to, tax withholding, payment, and reporting  
18 obligations.

19           b. Determination and Payment of Taxes. The Claims  
20 Administrator shall determine the amount of any withholding or taxes to be  
21 withheld from each Authorized Claimant's settlement payment and issue IRS  
22 Form W-2's to the Settlement Class Members. All such withholdings shall be  
23 remitted by the Claims Administrator to the proper governmental taxing  
24 authorities. Each Settlement Class Member shall be responsible for any tax  
25 consequences of any funds paid out to each Settlement Class Member pursuant to  
26 this Settlement Agreement.

27           c. Circular 230 Disclaimer. Each party to this Settlement  
28 Agreement (for purposes of this section, the "Acknowledging Party"; and each

1 party to this Settlement Agreement other than the Acknowledging Party, an “Other  
2 Party”) acknowledges and agrees that (1) no provision of this Settlement  
3 Agreement, and no written communication or disclosure between or among the  
4 Parties or their attorneys and other advisors, is or was intended to be, nor shall any  
5 such communication or disclosure constitute or be construed or be relied upon as,  
6 tax advice within the meaning of United States Treasury Department Circular 230  
7 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has relied  
8 exclusively upon his, her, or its own, independent legal and tax advisers for advice  
9 (including tax advice) in connection with this Settlement Agreement, (b) has not  
10 entered into this Settlement Agreement based upon the recommendation of any  
11 other party or any attorney or advisor to any other party, and (c) is not entitled to  
12 rely upon any communication or disclosure by any attorney or adviser to any other  
13 party to avoid any tax penalty that may be imposed on the Acknowledging Party;  
14 and (3) no attorney or adviser to any other party has imposed any limitation that  
15 protects the confidentiality of any such attorney’s or adviser’s tax strategies  
16 (regardless of whether such limitation is legally binding) upon disclosure by the  
17 Acknowledging Party of the tax treatment or tax structure of any transaction,  
18 including any transaction contemplated by this Settlement Agreement.

19 12. Completion of and Report on Settlement Administration.

20 Administration of the Settlement Agreement shall be completed on or before the  
21 eleventh business day after the deposit of the Gross Settlement Amount. Upon  
22 completion of administration of the Settlement Agreement, the Claims  
23 Administrator shall provide written certification of such completion and provide  
24 proof of payment at the request of the Court and/or counsel for the Parties. The  
25 Claims Administrator also shall furnish counsel for the Parties with a report  
26 showing the amounts and dates of each payment.

27 13. Date of Distribution. In no event shall there be any distribution from  
28 the Gross Settlement Amount until after the Effective Date.

1 **IV. RELEASES**

2 Pursuant to this Settlement, the Representative Plaintiff and Settlement  
 3 Class Members who do not timely and validly opt-out of this Settlement, and all  
 4 persons purporting to act on their behalf or purporting to assert a claim under or  
 5 through them, including, but not limited to their spouses, dependents, attorneys,  
 6 heirs and assigns, beneficiaries, devisees, legatees, executors, administrators,  
 7 trustees, conservators, guardians, personal representatives, and successors-in-  
 8 interest, whether individual, class, collective, representative, legal, equitable, direct  
 9 or indirect, or any other type or in any other capacity fully, finally, and forever  
 10 settle, compromise, and discharge the Released Parties of the Class Released  
 11 Claims and, for the Representative Plaintiff, of the claims in the Personal Release.  
 12 Upon the final approval by the Court of this Agreement and by operation of the  
 13 Agreement's terms, and except as to such rights or claims as may be created by  
 14 this Agreement, all Settlement Class Members who do not timely and validly opt-  
 15 out of this Settlement fully release and discharge the Released Parties from all  
 16 Class Released Claims during the Settlement Class Period.

17 The claims of putative class members described in Plaintiff's First Amended  
 18 Complaint or Complaint who are not Settlement Class Members or are not part of  
 19 the Settlement Class shall be dismissed without prejudice.

20 **V. SETTLEMENT APPROVAL & IMPLEMENTATION PROCEDURE**

21 14. Conditional Class Certification for Settlement Purposes Only. For  
 22 settlement purposes only, the Parties agree that the Settlement Class may be  
 23 certified. For purposes of settling this lawsuit only, the Parties stipulate and agree  
 24 that the requisites for establishing class certification with respect to the Settlement  
 25 Class Members as defined above have been and are met. The Parties agree that  
 26 evidence of this limited stipulation for settlement purposes only will not be deemed  
 27 admissible for any purpose in this action. It is the position of HLEC that if this case  
 28 were to be litigated, class certification would be inappropriate, *inter alia*, because

1 individualized issues would predominate and render any class trial unmanageable,  
2 and that it would prevail on the merits. If the Settlement fails to be approved or  
3 otherwise fails to be consummated for any reason whatsoever, including, but not  
4 limited to, the Final Judgment not becoming final, then Defendant retains all rights  
5 previously available to it, and any provisional certification of any class, or the  
6 adoption of any procedure herein, shall be undone, shall be deemed null and void,  
7 and the Parties shall be restored to their pre-Settlement status as if no Settlement  
8 had been reached and no decisions were made pursuant to it.

9       15. Mutual Full Cooperation. The Parties agree to fully cooperate with  
10 each other to accomplish the terms of this Settlement Agreement, including but not  
11 limited to, execution of such documents and to take such other action as may  
12 reasonably be necessary to implement the terms of this Settlement Agreement. The  
13 Parties to this Settlement Agreement shall use their best efforts, including all  
14 efforts contemplated by this Settlement Agreement, and any other efforts that may  
15 become necessary by order of the Court, or otherwise, to effectuate this Settlement  
16 Agreement and the terms set forth herein. As soon as practicable after execution of  
17 this Settlement Agreement, Class Counsel shall, with the assistance and  
18 cooperation of HLEC and its counsel, take all necessary steps to secure the Court's  
19 preliminary and final approval of this Settlement Agreement.

20       16. Procedures. As part of this Settlement Agreement, the Parties agree to  
21 the following procedures for requesting the Court's preliminary approval of the  
22 Settlement Agreement, certifying the Settlement Class, notifying the Settlement  
23 Class, requesting final Court approval of the Settlement Agreement, and  
24 processing the Settlement Awards.

25       17. Preliminary Approval of the Settlement. Johnston will file with the  
26 Court a motion for preliminary approval of this Settlement and provisional  
27 certification of the Settlement Class within 45 calendar days of signing of this  
28 Agreement. Such submissions will include such motions, pleadings and evidence

1 as may be required for the Court to determine that this Agreement is fair, adequate,  
2 and reasonable, as required by Fed. R. Civ. P. 23. Such submission will also  
3 include a Class Notice of Settlement for the Court to approve, which will then be  
4 mailed to the Settlement Class Members. At least one week prior to filing the  
5 motion, Plaintiff's counsel shall provide a draft of the motion to HLEC for review  
6 and comment.

7 18. Class Notice. Subject to the approval of the Court, notice of the  
8 Settlement Agreement shall be provided to the Settlement Class in the form of the  
9 proposed Class Notice attached hereto as Exhibit A. The Parties believe and agree  
10 that the following proposed procedures for notice provide the best practicable  
11 notice to the Settlement Class:

12 a. As directed by the Court, the Claims Administrator shall be  
13 responsible for preparing, printing, and mailing to all Settlement Class Members  
14 the Class Notice and Opt-Out Form attached to this Settlement Agreement.

15 b. No later than 30 business days after the date of the entry of the  
16 Preliminary Approval Order, and to the extent not already provided, HLEC shall  
17 provide to the Claims Administrator the Class List.

18 c. Neither HLEC nor the Claims Administrator shall provide the  
19 identification and/or financial information of Settlement Class Members to the  
20 Class Representative, Class Counsel, any other Settlement Class Member, or to  
21 any other person or entity. However, before the Claims Administrator sends the  
22 Class Notice to Settlement Class Members as outlined below, it will advise the  
23 Parties of the total number of Settlement Class Members and the total number of  
24 workweeks on the Class List.

25 d. If HLEC and the Claims Administrator determine, based upon  
26 further review of available data, that a person previously identified as being a  
27 Settlement Class Member should not be so included, or if they identify a person  
28 who should have been included as a Settlement Class Member but was not so

1 included, HLEC and the Claims Administrator shall promptly delete or add such  
2 person as appropriate and immediately notify Class Counsel prior to such deletions  
3 or additions (and the reasons therefore). All issues of this nature, and any challenge  
4 by a Settlement Class Member regarding his or her Settlement Award, ultimately  
5 will be resolved by the Claims Administrator prior to distribution of settlement  
6 proceeds.

7 e. No later than 40 business days after the date of entry of the  
8 Preliminary Approval Order, the Claims Administrator shall send a Notice Packet  
9 to all Settlement Class Members via first-class mail, postage prepaid, using the  
10 most current mailing address information available contained in the Class List.

11 f. Any Notice Packets returned to the Claims Administrator as  
12 non-delivered before the expiration of the 45 calendar day period for Settlement  
13 Class Members to mail Exclusion Forms shall be sent to the forwarding addresses  
14 affixed thereto. If no forwarding address is provided for a Notice Packet that is  
15 returned as non-delivered, then such Notice Packet will be re-sent by the Claims  
16 Administrator after the address is updated using the following skip-trace  
17 procedures: (1) run this Class List through the United States Postal Service's  
18 National Change of Address database; and (2) perform address searches using  
19 public and proprietary electronic resources which collect their data from various  
20 sources such as utility records, property tax records, motor vehicle registration  
21 records, and credit bureaus. Undelivered Notice Packets will be re-sent within five  
22 (5) business days after the Claims Administrator receives notice that the Notice  
23 Packet was undeliverable.

24 g. The objection deadline shall not be extended *pro-rata* for  
25 members of the Settlement Class whose original notices are re-mailed pursuant to  
26 paragraph 18(f).

27 19. Other than the obligations set forth in this Settlement Agreement,  
28 Johnston, Class Counsel, HLEC, and the Claims Administrator shall have no



1 additional obligation to identify or locate any Settlement Class Member or have  
2 any liability in connection with the provision of information to the Claims  
3 Administrator or otherwise.

4       20. Requests for Exclusion (“Opt Outs”). The Class Notice shall provide  
5 that Settlement Class Members who wish to exclude themselves from the  
6 Settlement Agreement an Opt-Out Form, postmarked on or before the expiration of  
7 the Opt-Out Period. Such written request for exclusion must contain all of the  
8 information requested on the Opt-Out Form. The Opt-Out Form must be personally  
9 signed by the Settlement Class Member who seeks to opt out. No opt-out request  
10 may be made on behalf of more than one Settlement Class Member. The Opt-Out  
11 Form must be sent by mail to the Claims Administrator and must be timely  
12 postmarked as set forth above, except that the Claims Administrator may, upon  
13 consultation with counsel for all Parties and good cause shown, extend the due date  
14 for mailing the Opt-Out Form. The postmark date of the mailing envelope shall be  
15 the exclusive means used to determine whether an Opt-Out Form has been timely  
16 submitted and the Claims Administrator shall have the sole power to determine  
17 timeliness or validity of an opt-out, but may confer with counsel for the Parties in  
18 reaching that determination. Any Settlement Class Member who requests exclusion  
19 (opts out) of the Settlement Agreement will not be entitled to any Settlement  
20 Award and will not be bound by the Settlement Agreement or have any right to  
21 object, appeal, or comment thereon.

22       21. Objections to Settlement. The Class Notice shall provide that those  
23 members of the Settlement Class who wish to object to the Settlement Agreement  
24 should mail a written statement of objection on or before the expiration of the Opt-  
25 Out Period to the Claims Administrator. The postmark date of the mailing shall be  
26 the exclusive means for determining that a Notice of Objection is timely. The  
27 Notice of Objection should include the case name and the basis for the objection.  
28 The Notice of Objection should be served on counsel for the Parties at least two (2)

1 weeks prior to the Settlement Fairness Hearing. Regardless of whether a Class  
2 Member has complied with this recommended procedures, he/she will be permitted  
3 to speak to the Court at the Settlement Fairness Hearing.

4 22. No Encouragement of Objections, Opt-Outs, or Appeals. At no time  
5 shall any of the Parties or their counsel seek to solicit or otherwise encourage  
6 members of the Settlement Class to opt-out, or appeal from the Final Approval  
7 Order and Final Judgment.

8 23. Right to Rescission In Event of Excess Opt-Outs. Notwithstanding  
9 any other provision of this Settlement Agreement, HLEC shall retain the right, in  
10 the exercise of its sole discretion, to nullify the Settlement Agreement within ten  
11 (10) business days of receipt of the Opt-Out Report as detailed in paragraph 24(b),  
12 if Settlement Class Members representing more than five percent (5%) of the pay-  
13 periods worked by the Settlement Class Members during the Settlement Class  
14 Period opt out of the Settlement Agreement pursuant to paragraph 20 above. All  
15 signatories and their counsel agree to refrain from encouraging opt-outs. The  
16 Parties specifically agree not to solicit opt-outs, directly or indirectly through  
17 anyone, through any means. In the event of such a rescission, no Party may use the  
18 fact that any Party agreed to settle this case as evidence of HLEC's liability in this  
19 lawsuit or the lack thereof, or that class certification is proper for any purpose other  
20 than settlement. HLEC, however, shall remain liable for the cost of administration  
21 to the extent such costs have been incurred prior to HLEC exercising this  
22 termination right.

23 24. Reports by the Claims Administrator.

24 a. Weekly Reports. Starting on the date that the Claims  
25 Administrator receives the Class List, the Claims Administrator shall provide  
26 weekly reports to counsel for the Parties detailing the progress of the claims  
27 process outlined herein.

28

1           b.     Opt-Out Report by the Claims Administrator. No later than ten  
2 (10) business days after the Opt-Out Period expires, the Claims Administrator shall  
3 provide counsel for the Parties with a declaration setting forth: (a) due diligence  
4 and proof of mailing of the Notice Packets; (b) the total amounts to be paid to the  
5 Settlement Class; and (c) the total number of Settlement Class Members who filed  
6 timely requests for exclusion or objections to the Settlement Agreement (“Opt-Out  
7 Report”), along with the complete copies of all requests for exclusion and  
8 objections received, including the postmark dates for each request for exclusion or  
9 objection. The Parties can challenge the validity of any opt-out and the Claims  
10 Administrator will be the sole arbiter of validity.

11           25.   Motion for Final Approval. Johnston will file with the Court a motion  
12 for final approval of this Settlement on or before 28 calendar days before the date  
13 of the Settlement Fairness Hearing, which will be set by the Court. At least one  
14 week prior to filing the motion, Plaintiff’s counsel shall provide a draft of the  
15 motion to HLEC for review and comment.

16           26.   Settlement Fairness Hearing. After expiration of the deadline for  
17 requesting exclusion from or objecting to the Settlement Agreement, the Court  
18 shall conduct a Settlement Fairness Hearing to determine final approval of the  
19 Settlement Agreement along with the amounts properly payable for (i) attorneys’  
20 fees and costs; (ii) the payment to Johnston for her time and effort in bringing and  
21 prosecuting this matter, and (iii) the costs of administration of the Settlement  
22 Agreement. Upon final approval of the Settlement Agreement by the Court at or  
23 after the Settlement Fairness Hearing, the Parties shall present a final order to the  
24 Court for its approval and entry. After entry of the Final Approval Order, the Court  
25 shall have continuing jurisdiction for purposes of addressing (i) settlement  
26 administration matters; (ii) such post-Final Approval Order matters as may be  
27 appropriate under Court rules or as set forth in this Settlement Agreement; and (iii)  
28

1 ruling on the stipulated request for Final Judgment of entire Action when all  
2 aspects of the Settlement Agreement have been consummated.

3 **VI. FAILURE OF SETTLEMENT; APPELLATE REVIEW**

4 27. Invalid without Court Approval. This Settlement Agreement is subject  
5 to approval by the Court. In the event it is not approved, it shall be deemed null  
6 and void, of no force and effect, and of no probative value, and the Parties hereto  
7 represent, warrant, and covenant that it will not be used or referred to for any  
8 purpose whatsoever.

9 28. Effect of Revocation or Failure of Settlement. In the event that the  
10 settlement does not become final for any reason, this Settlement Agreement shall  
11 be null and void and any order entered by the Court in furtherance of this  
12 Settlement shall be treated as void *ab initio*. In such a case, the Parties shall return  
13 to the status quo as if the Parties had not entered into this Settlement Agreement.  
14 The Claims Administrator will be paid by HLEC for its costs through the date it is  
15 notified that the Settlement will not proceed.

16 29. Impact of Appellate Review. In the event an appeal is filed from any  
17 of the Court's Orders, or any other appellate review is sought prior to the Effective  
18 Date, administration of the Settlement Agreement shall be stayed pending final  
19 resolution of the appeal or other appellate review, except that the Claims  
20 Administrator will be paid by HLEC for its costs through the date it is notified that  
21 the Settlement Agreement has been stayed by appellate review.

22 **VII. PARTIES' AUTHORITY**

23 30. The signatories hereto hereby represent that they are fully authorized  
24 to enter into this Settlement Agreement and bind the Parties hereto to the terms and  
25 conditions hereof.

26 31. No Signature Required by Settlement Class Members on Settlement  
27 Agreement. Because the Settlement Class Members are so numerous, it is  
28 impossible or impractical to have each one execute this Settlement Agreement. The

1 Class Notice, Exhibit A hereto, will advise all Settlement Class Members of the  
2 binding nature of the release and such shall have the same force and effect as if this  
3 Settlement Agreement were executed by each Settlement Class Member.

4 32. Agreement of Johnston. Johnston agrees not to object to or appeal any  
5 of the terms of this Settlement Agreement. Should by Johnston violate the terms of  
6 this paragraph, any such objection or appeal shall be deemed void and of no force  
7 or effect.

### 8 **VIII. LIMITATIONS ON USE OF THIS SETTLEMENT**

9 33. No Admission of Liability or Wrongdoing. HLEC denies any and all  
10 claims alleged in the Complaint and denies all wrongdoing and liability  
11 whatsoever. HLEC maintains, among other things, that it has complied at all times  
12 with the California Labor Code, and all applicable California and federal law. This  
13 Settlement Agreement is not a concession or admission, and shall not be used  
14 against HLEC as an admission or indication with respect to any claim of any fault,  
15 concession or omission by HLEC. Whether or not the Settlement Agreement is  
16 finally approved, neither the Settlement Agreement, nor any document, statement,  
17 proceeding or conduct related to this Settlement Agreement, nor any reports or  
18 accounts thereof, shall in any event be: (i) construed, offered or admitted in  
19 evidence as, received as, or deemed to be, evidence for any purpose, including, but  
20 not limited to, evidence of a presumption, concession, indication or admission by  
21 HLEC of any liability, fault, wrongdoing, omission, concession or damage; or (ii)  
22 disclosed or referred to for any purpose, or offered or received in evidence, in any  
23 further proceeding in this lawsuit, or any other civil, criminal, or administrative  
24 action or proceeding against HLEC except for purposes of settling this lawsuit  
25 pursuant to this Settlement Agreement and for obtaining preliminary and final  
26 approval thereof. The limitations set forth in this paragraph do not apply to any use  
27 of this Settlement Agreement by the Parties to enforce this Settlement following  
28 final approval by the Court.

1           34. No Impact on Employee Benefit Plan, Policy or Bonus Program.

2 HLEC contends that the amounts paid under this Settlement Agreement will not  
3 affect any previously credited hours of service under any employee benefit plan,  
4 policy, or bonus program sponsored by HLEC. To the extent permitted by the  
5 terms of the Plan as such exists at the time of the payment, the amounts paid under  
6 this Settlement Agreement will not form the basis for additional contributions to,  
7 benefits under, or any other monetary entitlement under HLEC (self-insured or  
8 not) employee benefit plans, policies, or bonus programs. Any payments made  
9 under the terms of this Settlement Agreement shall not be applied retroactively,  
10 currently, or on a going forward basis as salary, earnings, wages, bonuses,  
11 commissions, or any other form of compensation for the purposes of any HLEC  
12 employee benefit plan, policy, or bonus program. HLEC retains the right to modify  
13 the language of its employee benefit plans, policies, and bonus programs to effect  
14 this intent and to make clear that any amounts paid pursuant to this Settlement  
15 Agreement are not for “hours worked,” “hours paid,” “hours of service,” or any  
16 similar measuring term as defined by applicable plans, policies, and bonus  
17 programs for the purpose of eligibility, vesting, benefit accrual, or any other  
18 purpose, and that additional contributions or benefits are not required by this  
19 Settlement Agreement. Neither HLEC nor Johnston are opining on the terms of  
20 any such plan, each of which speaks for itself.

21           35. Non-Disparagement: Johnston—including her attorneys, agents,  
22 servants, employees, and representatives—shall refrain from making any  
23 disparaging, derogatory, or otherwise negative comments or statements about the  
24 Settlement Agreement or Released Parties to any person or entity, including, but  
25 not limited to, any person affiliated in any way with any actual or potential  
26 employee, contractor, customer, vendor or competitor of HLEC, any member of  
27 the business community with whom HLEC has had or, to Johnston’s knowledge,  
28

1 has contemplated a business or professional relationship, or any member of the  
2 press.

3 36. No Publicity. Neither the Parties nor their counsel, without the prior  
4 written approval of counsel for the other Party (which approval may be withheld in  
5 a Party's sole discretion), shall issue, authorize, or contribute to the preparation or  
6 dissemination of any press release or any other public statement or advertisement  
7 (including but not limited to posting information on any counsel's website)  
8 concerning this Agreement or any of its terms, or sponsor or participate in any  
9 press conference, interview, media appearance, or other public discussion  
10 concerning this Agreement or any of its terms. If the Parties or their counsel are  
11 contacted by the press, media, or any industry association, they will respond only  
12 that the case has been amicably resolved to the parties' mutual satisfaction. Any  
13 violation of this provision by Johnston or Class Counsel shall entitle HLEC to  
14 nullify the Settlement Agreement at any time before final court approval. The  
15 Parties agree that, in the event of a breach of this provision, the non-breaching  
16 party shall be entitled to reasonable attorneys' fees and costs incurred as a result of  
17 that breach. The foregoing does not limit HLEC's right to enforce this provision  
18 through an action for injunctive relief.

19 37. Various Proceedings Stayed. The Parties agree to stay all proceedings  
20 in the class action, except such proceedings as may be necessary to implement and  
21 complete the Settlement Agreement, pending the Settlement Fairness Hearing to be  
22 conducted by the Court.

23 38. Use of HLEC's Data and Documents. Johnston and Class Counsel  
24 agree that none of the documents provided to them by HLEC during the case or in  
25 connection with the mediation or settlement shall be used for any purpose other  
26 than the settlement of this action. Furthermore, should Johnston or her counsel  
27 have any originals or copies of documents of HLEC, Johnston and her counsel  
28

1 agree to destroy or return such originals and copies of documents via Class  
2 Counsel upon the Effective Date of the Settlement Agreement.

3 **IX. MISCELLANEOUS**

4 39. No Assignment of Rights. Johnston warrants and represents that she  
5 has not assigned, transferred, or hypothecated, or purported to assign, transfer, or  
6 hypothecate to any person or entity any of the claims in the Personal Release or  
7 any rights, claims, or causes of action arising out of those claims. This warranty  
8 and representation of non-assignment shall survive the execution of this Settlement  
9 Agreement and entry of judgment in the Action. No Settlement Award shall be  
10 paid to any person or entity with respect to whom Johnston has assigned,  
11 transferred, or hypothecated, or purported to assign, transfer, or hypothecate any of  
12 the claims in the Personal Release or any rights, claims, or causes of action arising  
13 out of those claims. In addition, Johnston shall defend, hold harmless, and  
14 indemnify the Released Parties, or any of them, from and against any claims,  
15 damages, litigation, causes of action, and expenses, including reasonable attorneys'  
16 fees, resulting from any breach by Johnston of this warranty and representation, or  
17 any breach by Johnston of her release of the claims in the Personal Release.

18 40. Construction. The Parties hereto agree that the terms and conditions of  
19 this Settlement Agreement are the result of lengthy, intensive arms-length  
20 negotiations between the Parties, and that this Settlement Agreement shall not be  
21 construed in favor of or against any party by reason of the extent to which any  
22 party or his, her, or its counsel participated in the drafting of this Settlement  
23 Agreement.

24 41. Captions and Interpretations. Paragraph titles or captions contained  
25 herein are inserted as a matter of convenience and for reference, and in no way  
26 define, limit, extend, or describe the scope of this Settlement Agreement or any  
27 provision hereof. Each term of this Settlement Agreement is contractual and not  
28 merely a recital.



1           42. Modification. This Settlement Agreement may not be changed,  
2 altered, or modified, except in writing and signed by the Parties hereto, and  
3 approved by the Court. This Settlement Agreement may not be discharged except  
4 by performance in accordance with its terms or by a writing signed by the Parties  
5 hereto.

6           43. Integration Clause. This Settlement Agreement, along with any  
7 exhibits attached hereto, constitutes the entire agreement between the Parties  
8 relating to the settlement and transaction contemplated hereby, and the final,  
9 complete and exclusive express of the terms and conditions of their agreement.  
10 Any and all prior or contemporaneous agreements, understandings, representations,  
11 and statements, whether oral or written and whether by a party or such party's legal  
12 counsel, are hereby superseded and merged herein. No rights hereunder may be  
13 waived except in writing.

14           44. Binding on Assigns. This Settlement Agreement shall be binding upon  
15 and inure to the benefit of the Parties hereto and their respective heirs, trustees,  
16 executors, administrators, successors, and assigns.

17           45. Enforcement. The Parties agree that following entry of the final  
18 judgment, this Settlement Agreement shall be enforceable by the Court and the  
19 Court shall retain exclusive and continuing jurisdiction of this action over all  
20 Parties and Settlement Class Members to interpret and enforce the terms,  
21 conditions, and obligations of the Settlement Agreement. This Settlement  
22 Agreement may be pleaded or asserted by or on behalf of HLEC as a defense and  
23 complete bar to any action or claim that may be brought against or involve HLEC  
24 by anyone acting or purporting to act on behalf of Johnston and/or the Settlement  
25 Class Members with respect to any matters within the scope of this Settlement  
26 Agreement excepting only the obligations of the Parties under this Settlement  
27 Agreement.

28 ///

1 46. Counterparts. This Settlement Agreement may be executed in  
2 counterparts, and when each party has signed and delivered at least one such  
3 counterpart, each counterpart shall be deemed an original, and, when taken  
4 together with other signed counterparts, shall constitute one Settlement Agreement,  
5 which shall be binding upon and effective as to all Parties. This Settlement  
6 Agreement will become effective on the date when the last person signs and dates  
7 it.

8 47. Governing Law. All terms of this Settlement Agreement and the  
9 Exhibits hereto shall be governed by and interpreted according to the laws of the  
10 State of California and the United States of America, where applicable.

11  
12 Dated: December 19, 2019

  
\_\_\_\_\_  
Plaintiff Emy Johnston

13  
14 *January 16 2020*  
15 Dated: ~~December~~ \_\_\_\_\_, 2019


  
\_\_\_\_\_  
Defendant Hertz Local Edition Corp.

Name: Dave Galainena  
Title: EVP & General Counsel

16  
17  
18  
19 Approved as to form:

20 *January*  
Dated: ~~December~~ 16, 2019

CONSTANGY, BROOKS, SMITH &  
PROPHETE, LLP

21  
22  
23 By:   
Richard Bromley  
24 Attorneys for Defendant  
25 Hertz Local Edition Corp.

26  
27 **[SIGNATURES CONTINUE ON NEXT PAGE]**

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January 16, 2020

Dated: ~~December~~, 2019  
RAD

NIXON PEABODY LLP

By: Robert A. Dolinko  
Robert A. Dolinko  
Attorneys for Defendant  
Hertz Local Edition Corp.

Dated: December 12, 2019

THE SPYVAK LAW FIRM

By: David Spivak  
David Spivak  
Attorneys for Plaintiff  
Emy Johnston

Dated: December \_\_, 2019

THE UNITED EMPLOYEES LAW GROUP

By: \_\_\_\_\_  
Walter Haines  
Attorneys for Plaintiff  
Emy Johnston

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Dated: December \_\_, 2019

NIXON PEABODY LLP

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

Robert A. Dolinko  
Attorneys for Defendant  
Hertz Local Edition Corp.

Dated: December \_\_, 2019

THE SPIVAK LAW FIRM

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

David Spivak  
Attorneys for Plaintiff  
Emy Johnston

Dated: December 19, 2019

THE UNITED EMPLOYEES LAW  
GROUP

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

Walter Haines  
Attorneys for Plaintiff  
Emy Johnston

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# EXHIBIT A

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**Notice of Proposed Class Action**  
**United States District Court for the Eastern District of California**

*Johnston v. Hertz Local Edition Corp.*, Case No. 2:17-cv-01966-JAM-EFB

You May Be Entitled To Receive Money From A Class Action Settlement If You Are or Were A Branch Manager Of Hertz Local Edition Corp. In California Anytime From August 10, 2013 to \_\_\_\_\_ According to Hertz Local Edition Corp., it employed you during the period above for \_\_\_\_ workweeks. The total workweeks during this period for all Class Members is \_\_\_\_\_. You will receive an estimated payment of \$ \_\_\_\_ as your share of the Settlement.

A federal district court permitted this notice. This is not an advertisement.  
You are not being sued. Your legal rights are affected, whether you act or not.

Hertz Local Edition Corp. will not retaliate against you regarding this settlement, whether you do nothing, ask to be excluded, or file an objection.

Please read this notice carefully.

WHAT IS IN THIS NOTICE

1.	<i>Why Should You Read This Notice?</i> .....	1
2.	<i>What Is The Case About?</i> .....	1
3.	<i>What Is This Notice About?</i> .....	2
4.	<i>Who Are The Parties in This Class Action?</i> .....	2
5.	<i>Why Did Hertz Local Edition Corp. Join In This Notice?</i> .....	2
6.	<i>Who Are The Attorneys Representing The Parties?</i> .....	2
7.	<i>How Do I Receive Money From This Settlement?</i> .....	2
8.	<i>Excluding Yourself From And/Or Objecting To The Settlement</i> .....	3
9.	<i>Effect Of The Settlement</i> .....	3
10.	<i>How Much Can I Expect To Receive?</i> .....	3
11.	<i>How Will The Attorneys for the Class and Johnston be Paid?</i> .....	4
12.	<i>Release</i> .....	4

**1. Why Should You Read This Notice?**

This notice tells of your rights to share in the settlement and your ability to “opt out” of, or object to, the settlement. There was a hearing on \_\_\_\_\_ in the United States District Court for the Eastern District of California, and Judge John A. Mendez directed that you receive this notice.

You have received this notice because records indicate that you are a Settlement Class Member in this lawsuit. The settlement will resolve all claims described below.

On \_\_\_\_\_, 2020, at \_\_\_\_\_m., the Court will hold a Final Approval Hearing concerning the proposed settlement in Courtroom 6 on the 14<sup>th</sup> floor of the Robert T. Matsui United States Courthouse, United States District Court for the Eastern District of California, 501 “I” Street, Sacramento, CA 95814.

**2. What Is The Case About?**

A putative class action lawsuit entitled *Emy Johnston v. Hertz Local Edition Corp.* was filed on August 10, 2017 in Nevada County Superior Court, Case No. CU17-082392 (the “Action”), alleging that Hertz Local Edition Corp. (“HLEC”) violated California law by failing to properly pay its Branch Managers for all overtime hours worked, failing to provide properly itemized wage statements, failing to timely pay employees upon termination, failing to provide rest breaks and meal periods, and failing to reimburse business expenses.

1 HLEC denies the allegations raised in the Action, and asserts that it did not violate the law and has no liability for any  
 2 of the Settlement Class Members' claims under any statute, wage order, regulation, common law, or equitable theory.  
 3 Plaintiff and HLEC disagree about whether a class can be certified. With the assistance of a professional mediator,  
 4 Plaintiff and HLEC agreed to a settlement to be paid on the terms set forth below.

3 **3. What Is This Notice About?**

4 You may be entitled to receive money from a settlement that has been reached in the lawsuit. The Court must finally  
 5 approve the terms of the settlement described below as fair and reasonable to the class. The settlement will affect all  
 6 members of the class, including you. This notice will explain the terms of the settlement and the amount of money  
 7 you may get.

6 **4. Who Are The Parties In This Class Action?**

7 Emy Johnston is the Plaintiff in this class action lawsuit, acting on behalf of herself and on behalf of certain current  
 8 and former HLEC Branch Managers in California. HLEC is the Defendant.

8 The "Settlement Class" is comprised of two groups: (1) the approximately 15 Branch Managers employed by HLEC  
 9 in California, including Plaintiff, who (during certain weeks within the Settlement Class Period) were paid less than  
 10 the minimum salary amount required to be exempt from overtime from August 2013 to \_\_\_\_\_ <<date the  
 11 date of the Court's order preliminarily approving this Settlement>> (the "Settlement Class Period"); and (2) the  
 12 approximately 129 Branch Managers, District Managers and/or Territory Managers employed by HLEC in California,  
 13 including Plaintiff, who (according to company records during certain weeks within the Settlement Class Period)  
 14 supervised or managed less than two (2) full-time employees, or the equivalent part-time employees at any time during  
 15 the Settlement Class Period..

12 You have been identified as a member of the Settlement Class.

13 **5. Why Did Hertz Local Edition Corp. Join In This Notice?**

14 The Court has not decided who should win this case. HLEC does not admit to any of the claims alleged in the Action.  
 15 HLEC denies the allegations in the Action, and denies that it owes money for any of the claims alleged in the Action.  
 16 HLEC is settling the Action as a compromise, in order to save attorneys' fees and costs and to avoid the uncertainties  
 17 of litigation. HLEC reserves the right to object to any claims made in the Action if for any reason the settlement fails.  
 18 The Court file has the settlement documents with more information on the Action.

16 **6. Who Are The Attorneys Representing The Parties?**

17 Attorneys for Plaintiff & the Class are:

18 **The Spivak Law Firm**  
 19 David G. Spivak  
 20 Caroline Tahmassian  
 21 16530 Ventura Blvd., Suite 203  
 Encino, CA 91436  
 Toll Free: (877) 203-9010  
 Facsimile: (818) 582-2561  
[david@MyWorkMyWages.com](mailto:david@MyWorkMyWages.com)

22 **United Employees Law Group**  
 23 Walter Haines  
 24 5500 Bolsa Ave., Suite 201  
 Huntington Beach, CA 92649  
 Telephone: (888) 474-7242  
 Facsimile: (562) 256-1006

Attorneys for Hertz Local Edition Corp. are:

**Constangy, Brooks, Smith & Prophete, LLP**  
 Richard E. Bromley  
 2029 Century Park East, Suite 1100  
 Los Angeles, CA 90067  
 Telephone: (310) 909-7775  
 Facsimile: (424) 465-6630  
[rbromley@constangy.com](mailto:rbromley@constangy.com)

**Nixon Peabody LLP**  
 Robert A. Dolinko  
 One Embarcadero Center, 32nd Floor  
 San Francisco, California 94111-3600  
 Telephone: (415) 984-8200  
 Facsimile: (415) 984-8300  
[rdolinko@nixonpeabody.com](mailto:rdolinko@nixonpeabody.com)

25 **7. How Do I Receive Money From This Settlement?**

26 Class Counsel listed above represents you in connection with the settlement. You will automatically receive money  
 27 from the settlement if you do not submit a request to be excluded from the settlement. Your individual settlement  
 28

1 payment will be based on the information above. The deadline to request to be excluded from the settlement, or to  
object to the settlement is \_\_\_\_\_.

2 **If you are a current HLEC employee, your decision as to whether or not to be excluded from the settlement  
will not affect your employment with HLEC.**

3 **8. Excluding Yourself From And/Or Objecting To The Settlement.**

4 If you do not wish to be included in the settlement, you must mail to the Claims Administrator a request to be excluded  
from the settlement postmarked no later than \_\_\_\_\_.

5 If you request to be excluded, you will receive **no money** from the settlement.

6 If you do nothing and do not request exclusion, following entry of judgment and exhaustion of appeals or other post-  
judgment proceedings, the judgment entered by the Court will bind you and you will release the claims described  
below. You will only receive money from the settlement if you do not request exclusion.

7 If you wish to object to the settlement, you should mail an objection that includes the case name and states why you  
object to the settlement. Your objection should state your full name, address, and telephone number. The objection  
should be mailed to the Claims Administrator at Johnston Class Action Settlement Claims Administrator,  
8 \_\_\_\_\_ by \_\_\_\_\_, 2020. Regardless of whether you comply with this procedure, you may  
appear at the final approval hearing to speak with the Court about the Settlement.

9 Do not call the Court.

10 If you properly object, you may also appear and discuss your objections with the Court and the Parties at the Final  
Approval Hearing set for \_\_\_\_\_, 2020 at \_\_\_\_m. in Courtroom 6 on the 14<sup>th</sup> floor of the Robert T.  
11 Matsui United States Courthouse, United States District Court for the Eastern District of California, 501 "I" Street,  
12 Sacramento, CA 95814.

13 If the Court approves the settlement against your objection and you have not returned a request for exclusion from the  
Settlement, you will receive a payment from the settlement.

14 **9. Effect Of The Settlement.**

15 If the proposed settlement is approved by the Court, a Judgment will be entered by the Court that will release HLEC  
and HLEC's past, present, or future subsidiaries, divisions, predecessors, successors and assigns, officers, agents,  
16 employees, advisors, insurers, attorneys, executors, administrators, servants, owners, shareholders, bondholders,  
directors, partners, attorneys, and any parent organizations (including but not limited to The Hertz Corporation and  
17 Hertz Global Holdings, Inc.), successors in interest, and/or representatives ("Released Parties") from all claims that  
were or could have been alleged based on the facts alleged in the First Amended Complaint, including any  
18 corresponding or related PAGA claims, for the Settlement Class Period. The "Class Released Claims" means any and  
all claims to be released by the Class Members who do not opt out of the settlement consisting of all claims that were  
19 or could have been alleged based on the facts alleged in the Operative Complaint, including, but not limited to, any  
corresponding or related PAGA claims, for the Settlement Class Period, including the date of preliminary approval of  
20 this proposed Settlement under any state or local law, and shall specifically include, but is not limited to, claims for  
(1) Unpaid minimum and overtime wages (e.g., Lab. Code §§ 510, and 1194); (2) Failure to provide meal periods and  
21 rest breaks (e.g., Lab. Code §§ 226.7, 512 and 1198); (3) Unreimbursed expenses (e.g., Lab. Code § 2802); (4) Wage  
Statement Penalties (Lab. Code § 226); (5) Waiting Time Penalties (Lab. Code §§ 201 - 203); (6) Unfair Competition  
22 (Bus. & Prof. Code §§ 17200, *et seq.*); (7) Civil Penalties (Lab. Code §§ 2698, *et seq.*) under the Private Attorney  
General Act ("PAGA"); (8) violation of Labor Code section 226.7 (for rest breaks); and (9) any similar claims and  
23 any related statutory and/or civil penalties, which were alleged or could have been alleged based on the facts of the  
Operative Complaint.

24 If the settlement is approved and you do not request to be excluded, you will receive compensation and will be forever  
barred from asserting the Settled Claims against the Released Parties.

25 **10. How Much Can I Expect To Receive?**

26 Your payment under the settlement will be calculated based on the number of weeks you worked for HLEC. This  
Notice sets forth the number of work weeks that you worked for Defendant during the Settlement Class Period. The  
27 Notice also provides an estimate of your share of the Settlement. This amount may decrease or increase without further  
28



1 notice to you depending on orders by the Court. It is important that you carefully check and confirm the number of  
workweeks during the period of August 10, 2013 through \_\_\_\_\_ and correct any inaccuracies in this Notice.

2 **11. How Will The Attorneys For The Class And Johnston Be Paid?**

3 The Gross Settlement amount is \$550,000. The attorneys for Johnston will be paid from the Gross Settlement Amount.  
4 The attorneys have asked for an award of \$183,333, one third (33.33%) of the Gross Settlement Amount, in fees and  
\$25,000 in costs, and will receive that award if their request is approved by the Court. If approved by the Court,  
5 Plaintiff Emy Johnston will be paid from the Gross Settlement Amount an Incentive Award of \$15,000 for her service,  
in addition to her individual Settlement Award pursuant to section 10 above.

6 **12. Release**

7 Upon final approval by the Court of the settlement, each Settlement Class Member who has not opted out of this  
settlement shall release the Released Parties from the Settled Claims during the Settlement Class Period.

8 If you need more information or have any questions, you may call Class Counsel at the telephone numbers listed  
above, you may call the Claims Administrator at the telephone number listed below, toll free, or visit  
www.HLECSettlement.com. Please refer to the Johnston Class Action Settlement.

9 Johnston Class Action Settlement  
10 Claims Administrator

11 \_\_\_\_\_  
12 \_\_\_\_\_  
13 \_\_\_\_\_

14 Please do not call the Court for information about this settlement.  
15 Please do not contact HLEC’s attorneys for information about this settlement.  
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# EXHIBIT B

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**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF CALIFORNIA**

EMY JOHNSTON, on behalf of herself,  
and all others similarly situated, and as  
an “aggrieved employee” on behalf of  
other “aggrieved employees” under the  
Labor Code Private Attorneys General  
Act of 2004,

*Plaintiff,*

vs.

HERTZ LOCAL EDITION CORP., a  
Delaware corporation; and DOES 1  
through 50, inclusive,

*Defendant.*

Case No.: 2:17-cv-01966-JAM-EFB

**[PROPOSED] ORDER  
PRELIMINARILY APPROVING  
CLASS ACTION SETTLEMENT**

Action August 10, 2017

filed:

Hearing: \_\_\_/\_\_\_/2020 at \_\_\_:\_\_\_

\_.m.

Dept.:

6, Hon. John A.  
Mendez

1 Plaintiff Emy Johnston’s (hereafter referred to as “Plaintiff”) Unopposed  
2 Motion for Preliminary Approval of a Class Action Settlement (the “Motion”) was  
3 heard before the Court, the Honorable John A. Mendez, Judge presiding. The Court  
4 having considered the Motion, the Stipulation of Class Settlement and Release  
5 Between Plaintiff and Defendant (“Settlement” or “Settlement Agreement”), and  
6 supporting papers, HEREBY ORDERS THE FOLLOWING:

7 1. The Court grants preliminary approval of the Settlement and the  
8 Settlement Class based upon the terms set forth in the Settlement filed in support of  
9 the Motion. All capitalized terms used herein shall have the same meaning as  
10 defined in the Settlement. The Court has determined there is sufficient evidence to  
11 suggest that (a) the terms of the Settlement might be fair, adequate, and reasonable  
12 to the Settlement Class and (b) the Settlement falls within the range of  
13 reasonableness and appears to be presumptively valid, subject only to any  
14 objections that may be raised at the final hearing and final approval by this Court.  
15 The Court will make a determination at the hearing on the motion for final approval  
16 of class action settlement (the “Final Approval Hearing”) of whether the Settlement  
17 is fair, adequate and reasonable to the Settlement Class.

18 2. For purposes of this Preliminary Approval Order, the “Settlement  
19 Class” means (1) the approximately 15 Branch Managers employed by HLEC in  
20 California, including Plaintiff, who (during certain weeks within the Settlement  
21 Class Period) were paid less than the minimum salary amount required to be exempt  
22 from overtime from August 2013 to the present (the “Salary Subclass”); and (2) the  
23 approximately 129 Branch Managers, District Managers and/or Territory Managers  
24 employed by HLEC in California, including Plaintiff, who (according to company  
25 records during certain weeks within the Settlement Class Period) supervised or  
26 managed less than two (2) full-time employees, or the equivalent part-time  
27 employees at any time from August 10, 2013 to the present (the “Under Supervised  
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1 Subclass”) (hereafter the two groups are referred to collectively as the “Settlement  
2 Class Members”). The “Effective Date” means ten (10) business days after either  
3 (a) if no objections are timely filed, the entry date of Final Approval Order of this  
4 Settlement Agreement by the Court; (b) if objections are filed but no appeal is filed,  
5 the expiration date of the time for filing notice of any appeal from the Order  
6 Granting Final Class Action Settlement Approval by the Court; or (c) if an appeal  
7 is filed, the latest of (i) the date of final affirmance of an appeal of that Order, (ii)  
8 the expiration of the time for a petition for review or writ of certiorari with respect  
9 to the Order and, if review or certiorari is granted, the date of final affirmance of  
10 the Order following review pursuant to that grant; or (iii) the date of final dismissal  
11 of any appeal from the Order or the final dismissal of any proceeding on review or  
12 certiorari with respect to the Order that has the effect of confirming the Order.

13 3. This action is provisionally certified pursuant to Rule 23 of the Federal  
14 Rules of Civil Procedure as a class action for purposes of settlement only with  
15 respect to the proposed Settlement Class.

16 4. The Court hereby preliminarily finds that the Settlement was the  
17 product of serious, informed, non-collusive negotiations conducted at arm’s length  
18 by the Parties. In making this preliminary finding, the Court considered the nature  
19 of the claims set forth in the pleadings, the amounts and kinds of benefits which  
20 shall be paid pursuant to the Settlement, the allocation of Settlement proceeds to the  
21 Settlement Class, and the fact that the Settlement represents a compromise of the  
22 Parties’ respective positions. The Court further preliminarily finds that the terms of  
23 the Settlement have no obvious deficiencies and do not improperly grant  
24 preferential treatment to any individual Class Member. Accordingly, the Court  
25 preliminarily finds that the Settlement was entered into in good faith.

26 5. The essential monetary terms of the Settlement are as follows:  
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- 1 a. Defendant HLEC’s payment of a Gross Settlement Amount
- 2 (“GSA”) of \$550,000;
- 3 b. Plaintiff’s Incentive Award of up to \$15,000;
- 4 c. Class Counsel’s fees of not more than one-third of the GSA, or
- 5 \$183,333;
- 6 d. Class Counsel’s costs and expenses not to exceed \$25,000;
- 7 e. The Claims Administrator’s costs not to exceed \$10,000;
- 8 f. Civil penalties under the California Private Attorneys General
- 9 Act (“PAGA”) of \$10,000, of which 25% or \$2,500 will be payable to the
- 10 Settlement Class and 75% or \$7,500 will be payable to the California Labor and
- 11 Workforce Development Agency (“LWDA”);
- 12 g. The Net Settlement Amount (“NSA”) is the net amount
- 13 available for distribution to Settlement Class Members after payments have been
- 14 made from the GSA for (i) Plaintiff’s Incentive Award; (2) Class Counsel’s
- 15 attorney’s fees; (3) Class Counsel’s costs and expenses; (4) Claims Administration
- 16 Costs; (5) the portion of the PAGA payment payable to the LWDA; and (6)
- 17 employer- and employee-side taxes.

18 6. The Court finds that the dates set forth in the Settlement for mailing  
19 and distribution of the Class Notice meet the requirements of due process and  
20 provide the best notice practicable under the circumstances, and constitute due and  
21 sufficient notice to all persons entitled thereto, and directs the mailing of the Class  
22 Notice by first class mail to the Settlement Class as set forth in the Settlement.  
23 Accordingly, the Court orders the following implementation schedule for further  
24 proceedings:

- 25 a. Within thirty (30) business days following the date of this order
- 26 (the “Preliminary Approval Date”), Defendant shall provide Phoenix Class Action
- 27 Administration Solutions, the appointed Claims Administrator, with the first and
- 28

1 last names, last-known addresses, telephone numbers, dates of employment, and  
2 full social security numbers of the Settlement Class Members (“Class List”) for  
3 purposes of mailing Class Notices to Settlement Class Members. The Claims  
4 Administrator will keep the list confidential, use it only for the purposes described  
5 herein and take adequate safeguards to protect confidential or private information.

6           b. Within forty (40) business days following the Preliminary  
7 Approval Date, the Claims Administrator shall send a copy of the Class Notice and  
8 a pre-paid self-addressed return envelope (collectively referred to as the “Notice  
9 Packets”) to all Settlement Class Members via first-class mail, postage prepaid,  
10 using the most current mailing address information available contained in the Class  
11 List. Any Notice Packets returned to the Claims Administrator as non-delivered  
12 before the expiration of the 45-calendar day Opt-Out Period for Settlement Class  
13 Members to mail Exclusion Forms shall be sent to the forwarding addresses affixed  
14 thereto. If no forwarding address is provided for a Notice Packet that is returned as  
15 non-delivered, then such Notice Packet will be re-sent by the Claims Administrator  
16 after the address is updated using the following skip-trace procedures: (1) run this  
17 Class List through the United States Postal Service’s National Change of Address  
18 database; and (2) perform address searches using public and proprietary electronic  
19 resources which collect their data from various sources such as utility records,  
20 property tax records, motor vehicle registration records, and credit bureaus.  
21 Undelivered Notice Packets will be re-sent within five (5) business days after the  
22 Claims Administrator receives notice that the Notice Packet was undeliverable. The  
23 objection deadline shall not be extended *pro-rata* for members of the Settlement  
24 Class whose original notices are re-mailed.

25           c. Within forty-five (45) calendar days after the Claims  
26 Administrator mails the Notice Packet to Settlement Class Members, Settlement  
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1 Class Members who wish to exclude themselves from the Settlement Agreement  
2 must postmark a request for exclusion from the Settlement (“Opt-Out”).

3 d. Within forty-five (45) calendar days after the Claims  
4 Administrator mails the Notice Packet to Settlement Class Members, Settlement  
5 Class Members who wish to object to the Settlement Agreement should mail a  
6 written statement of objection to the Claims Administrator.

7 e. The Court will consider any written or oral objections or  
8 comments from Settlement Class Members at the time of the Final Approval  
9 Hearing, whether or not they comply with the objection procedure described above.

10 7. The Court approves, as to form and content, the Class Notice (in  
11 substantially the form attached as Exhibit A to the Settlement).

12 8. The Court approves, for settlement purposes only, David Spivak of  
13 The Spivak Law Firm and Walter Haines of the United Employees Law Group as  
14 Class Counsel.

15 9. The Court approves, for settlement purposes only, Emy Johnston as  
16 the Class Representative.

17 10. The Court approves Phoenix Class Action Administration Solutions as  
18 the Claims Administrator.

19 11. The Court preliminarily approves Class Counsel’s request for  
20 attorneys’ fees and costs subject to final review by the Court.

21 12. The Court preliminarily approves the estimated Claims Administration  
22 Costs payable to the Claims Administrator subject to final review by the Court.

23 13. The Court preliminarily approves Plaintiff’s Incentive Award subject  
24 to final review by the Court.

25 14. A Final Approval Hearing shall be held on \_\_\_\_\_, 2020 at  
26 \_\_\_\_ .m. in Courtroom 6 on the 14<sup>th</sup> floor of the Robert T. Matsui United States  
27 Courthouse, United States District Court for the Eastern District of California, 501  
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1 “T” Street, Sacramento, CA 95814, to consider the fairness, adequacy and  
2 reasonableness of the proposed Settlement preliminarily approved by this  
3 Preliminary Approval Order, and to consider the application of Class Counsel for  
4 attorneys’ fees and costs and the Incentive Award to the Class Representative. The  
5 notice of motion and all briefs and materials in support of the motion for final  
6 approval of class action settlement and motion for attorneys’ fees and litigation  
7 costs shall be served and filed with this Court on or before \_\_\_\_ court days before  
8 the Final Approval Hearing.

9 15. If for any reason the Court does not execute and file a final approval  
10 order and judgment, or if the Effective Date, as defined in the Settlement, does not  
11 occur for any reason, the proposed Settlement that is the subject of this order, and  
12 all evidence and proceedings had in connection therewith, shall be without  
13 prejudice to the status quo ante rights of the Parties to the litigation, as more  
14 specifically set forth in the Settlement.

15 16. The Court expressly reserves the right to adjourn or continue the Final  
16 Approval Hearing from time to time without further notice to members of the Class.  
17 The Plaintiff shall give prompt notice of any continuance to Settlement Class  
18 Members who object to the Settlement.

19 **IT IS SO ORDERED.**

20  
21 \_\_\_\_\_  
22 **DATE**

\_\_\_\_\_ **HON. JOHN A. MENDEZ,**  
**UNITED STATES DISTRICT JUDGE**

# **EXHIBIT B**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

THE HERTZ CORPORATION, *et al.* <sup>1</sup>

Chapter 11

Case No. 20-11218 (MFW)

(Jointly Administered)

**CLASS NOTICE**

**IF YOU ARE OR WERE A BRANCH MANAGER OF HERTZ LOCAL EDITION CORP. IN CALIFORNIA FROM AUGUST 10, 2013 UP TO AND INCLUDING THE EFFECTIVE DATE OF [●], 2021, THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY AND IN ITS ENTIRETY.**

*A court authorized this notice. This is not a solicitation.*

The purpose of this Class Notice is to advise you of how your rights may be affected by the *Settlement Agreement and Release* dated as of April 2, 2021 (the “**Settlement Agreement**”) reached between the Parties to a purported class action lawsuit filed by a certain former employee of Hertz Local Edition Corp. (referred to hereafter as “**HLE**” or “**Debtor**”) and related proofs of claim filed in the above-captioned chapter 11 proceedings.<sup>2</sup>

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<sup>1</sup> The Debtors include the following entities: The Hertz Corporation, Hertz Global Holdings, Inc., Thrifty Rent-A-Car System, LLC, Thrifty, LLC, Dollar Thrifty Automotive Group, Inc., Firefly Rent A Car LLC, CMGC Canada Acquisition ULC, Hertz Aircraft, LLC, Dollar Rent A Car, Inc., Dollar Thrifty Automotive Group Canada Inc., Donlen Corporation, Donlen FSHCO Company, Hertz Canada Limited, Donlen Mobility Solutions, Inc., DTG Canada Corp., DTG Operations, Inc., Hertz Car Sales LLC, DTG Supply, LLC, Hertz Global Services Corporation, Hertz Local Edition Corp., Hertz Local Edition Transporting, Inc., Donlen Fleet Leasing Ltd., Hertz System, Inc., Smartz Vehicle Rental Corporation, Thrifty Car Sales, Inc., Hertz Technologies, Inc., TRAC Asia Pacific, Inc., Hertz Transporting, Inc., Rental Car Group Company, LLC, Rental Car Intermediate Holdings, LLC.

<sup>2</sup> A complete list of such information may be obtained on the website of the Debtors’ claims and noticing agent, Prime

## 1. Why Should I Read This Notice?

This Class Notice is given pursuant to an Order of the U.S. Bankruptcy Court dated [●], 2021 [Docket No. [●]] granting approval of the proposed Settlement Agreement resolving the lawsuit titled *Johnston v. Hertz Local Edition Corp.*, No. 2:17-cv-01966-JAM-EFB in the United States District Court for the Eastern District of California (hereinafter the “**Johnston Class Action**”).

In January 2020, HLE and lawyers representing the class in the Johnston Class Action reached a settlement agreement, which the district court preliminarily approved on May 4, 2020 (the “**Prepetition Settlement**”).

On May 22, 2020 (the “**Petition Date**”), The Hertz Corporation and certain of its subsidiaries commenced voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of Delaware (the “**Court**”).

On or prior to October 21, 2020, the representative plaintiff in the Johnston Class Action (the “**Plaintiff**”) filed a class proof of claim in the Chapter 11 cases (the “**Proof of Claim**”).

In April 2021, HLE and lawyers representing the class in the Johnston Class Action reached an agreement, memorialized in the Settlement Agreement, to approve the Prepetition Settlement, and dispose of the Proofs of Claims and related claims. The Plaintiff and HLE executed a final settlement agreement on April 2, 2021.

The Settlement Agreement provides that the Class Representative will represent all Branch Managers employed by HLE in California between August 10, 2013 and [●], 2021 (the “**Settlement Class Period**”). You are determined to be an employee who fits this description and if you do not opt out of the settlement will be deemed a member of the Class.

For purposes of the settlement, the Class shall include two groups: (1) the approximately 15 Branch Managers employed by HLE in California, including Plaintiff, who (during certain weeks within the Settlement Class Period) were paid less than the minimum salary amount required to be exempt from overtime from August 2013 to [●]; and (2) the approximately 129 Branch Managers, District Managers and/or Territory Managers employed by HLE in California, including Plaintiff, who (according to company records during certain weeks within the Settlement Class Period) supervised or managed less than two (2) full-time employees, or the equivalent part-time employees at any time during the Settlement Class Period (collectively, the “**Settlement Class**” or “**Class Members**”).

If the Court approves the Settlement Agreement, it will result in, among other things: (i) a

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Clerk, at <https://restructuring.primeclerk.com/hertz>.

distribution of money to Class Members who do not opt out, (ii) dismissal of the Johnston Class Action, (iii) a release of certain actual or potential claims against HLE and related parties, (iv) an award of attorneys' fees and costs and other professional expenses, (v) payment of certain administrative and statutory fees and penalties, (vi) payment of certain taxes required to be paid by HLE as an employer, and (vii) payment of certain enhancements to the Class Representative for her service to the Class.

## 2. Denial of Liability by HLE

HLE denies the merits of the claims/allegations asserted in the Johnston Class Action and further denies that, absent the Settlement Agreement, the Class Representative could certify one or more class under Rule 7023 of the Federal Rules of Bankruptcy Procedure or proceed with the Proof of Claim. HLE contends, among other things, that it has complied at all times with California law. HLE further contends that the Proof of Claim should not be permitted to proceed on a class-wide basis, and that only persons who filed timely individual proofs of claim in the Bankruptcy Court should be permitted to assert any claim in the Bankruptcy Proceeding. HLE denies that any class-wide problem existed in connection with the alleged claims in the Johnston Class Action, or that the Class Representative is entitled to class-wide relief.

## 3. Who Is Included in the Settlement and Why Did I Get This Class Notice?

You received this Notice because HLE's records indicate that you were a Branch Manager who worked for HLE in California at any time between August 10, 2013 and [●].

This Notice is to inform you of a proposed settlement and how you can participate in or opt out of the settlement.

## 4. What Is The Settlement?

The parties have reached a proposed settlement of the Johnston Class Action referenced above and you are receiving this notice because the Bankruptcy Court has approved the Parties' agreement. **The Settlement Agreement will affect all members of the Class who do not opt out and will entitle them to a portion of the class action settlement payment.**

In full and final settlement of the Released Claims (defined below), the Parties agree that Proof of Claim No. 12553 shall be allowed as a general unsecured nonpriority claim upon HLE in the aggregate amount of **\$532,000** and a 507(a)(4) priority unsecured claim upon HLE in the amount of **\$18,000** (collectively, the "**Settlement Claim**") to the Class Representative, HLE will pay the employers' share of all required state and federal payroll tax withholdings, and the Class Representative will voluntarily dismiss all claims in the Johnston Class Action with prejudice and withdraw, or cause to be withdrawn, all other Proofs of Claim with prejudice within three business days of the Effective Date. The Settlement Claim supersedes, replaces, and renders void and unenforceable any representation or obligation with respect to the Gross Settlement Amount set forth in the Prepetition Settlement.

The Settlement Payment will be made to the Claims Administrator, who shall be

responsible for determining eligibility for, and the amount of, the Settlement Awards to be paid to Settlement Class Members, as fully set forth in the Prepetition Settlement.

#### **5. How Much Will Each Class Member Receive?**

All Class Members who have not timely opted out will receive settlement payments in the mail after the Effective Date (as defined below). The total amount to be distributed to Class Members will be the net amount remaining to be distributed after deducting Class Counsel Fees, Class Counsel Costs, Incentive Award to Representative Plaintiff, Claims Administrator Costs, and the portion for the PAGA Payment payable to the LWDA. (the resulting figure is the “**Net Settlement Amount**” or “**NSA**”).

The amount of money each Class Member receives (the “**Individual Class Member Settlement Payment(s)**”) will be calculated from the NSA as follows: Each Settlement Class Member will be paid a pro rata share of the NSA based on the number of weeks he or she worked for HLEC during the Settlement Class Period, divided by the total number of work weeks worked by all Settlement Class Members during the Settlement Class Period.

The above is a summary of the Settlement provisions. The specific and complete terms of the proposed Settlement are stated in the Settlement Agreement, a copy of which can be obtained at [●].

**Based on this formula, your estimated settlement share is approximately \$[●].00 at this time. This amount is subject to reduction, depending on the final resolution of HLE’s chapter 11 plan, the number of Class Members who opt out, challenges to estimated amounts from Class Members, and other factors.**

#### **6. How Will Class Professionals and the Class Representative Be Paid?**

From the inception of this litigation to the present, Class Counsel have undertaken representation of the Class on a contingent basis and have not received any payment for their services in prosecuting this case, nor have they been reimbursed for any out of pocket expenses. To date, Class Counsel has worked many hours and has spent thousands of dollars working on behalf of the Class. If the Court approves the Settlement Agreement and if Hertz’s chapter 11 plan is confirmed, then Class Counsel, subject to Bankruptcy Court approval, will receive fees of 33.33% of the Settlement Fund and no more than \$25,000 for their costs and expenses, all payable solely out of the Settlement Fund, as set forth fully in the Prepetition Settlement.

In addition, the professional fees of Dundon Advisers LLC as financial and strategic adviser to the Class Representative and Class Counsel, are to be paid out of the Settlement Fund and are not to exceed 8.25 percent (8.25%) of the Settlement Fund.

If the Court approves the Settlement Agreement and if HLE’s chapter 11 plan is confirmed, the Class Representative will receive a service award in the amount of \$7,500 in addition to her settlement payment, payable out of the Settlement Fund. The award is to compensate her for her efforts and the risks she undertook in representing the Class.

**7. How Will I Receive Payment?**

The Parties have agreed that the Claims Administrator Phoenix Class Action Administration Solutions will mail Individual Class Member Settlement Payment checks directly to Class Members. If you do not opt out of the Settlement Agreement, you *will not* have to submit proofs of claim, or take any other action, to receive your payment. **If your address changes from the time you receive this Notice, you are required to update your address with the Claims Administrator to receive your check and any other notices.**

**8. When Will I Receive My Settlement Payment?**

Due to the timing of the claims resolution process contemplated required by the bankruptcy process, distributions from the Settlement Fund will likely occur in early to mid-2022. Following approval of all distributions, the Claims Administrator will issue and send checks to Class Members. Such payment will be made in accordance with state and federal tax laws.

**9. What Am I Giving Up If I Participate In This Settlement?**

If you do not opt out, you will fully and forever release and discharge HLE, its affiliates, subsidiaries, predecessors, parent(s), successors, assigns, officers, directors, shareholders, agents, employees, partners, members, insurers, accountants, attorneys, representatives and other agents, and all of their respective predecessors, successors and assigns (collectively, the “**Released Parties**”) of and from any and all claims, demands, debts, liabilities, obligations, liens, actions and causes of action, costs, expenses, attorneys’ fees and damages of whatever kind or nature, at law, in equity and otherwise, whether known or unknown, anticipated, suspected or disclosed, that the Releasing Parties may have had, now have or hereafter may have against the Released Parties, which were asserted in the Johnston Class Action and the Proofs of Claim or which materially relate to or arise from the violations of law alleged in the Johnston Class Action (the “**Released Claims**”). The Released Claims include a waiver of the protection of California Civil Code Section 1542 and any analogous statute, rule or principle of law. On the Effective Date, all Released Claims are deemed settled, released, withdrawn and dismissed in their entirety, on the merits, with prejudice.

Note that if you did not file a proof of claim with the Court on or before October 21, 2020 (the “**Bar Date**”) asserting on an individual basis a right to compensation of the sort sought in the Johnston Class Action, you may already be barred from asserting any such claim against HLE or any of the other debtors in the bankruptcy. The Court may further bar you from pursuing claims against third parties under the third-party release provisions of HLE’s eventual Chapter 11 Plan.

**10. What if I Elect To Opt Out of the Settlement Agreement?**

If you choose not to be bound by this Settlement Agreement and do not wish to share in any of the benefits described herein (including receiving your Individual Class Member Settlement Payment), you may opt out of the Class by filing a Request to Opt Out against Debtors no later

than [●], 2021. Should you choose to opt out of the settlement, you may mail the completed form to the Claims Administrator at:

Phoenix Class Action Administration Solutions

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**The Opt Out *must be received by the Claims Administrator no later than [●], 2021* (the “Opt Out Deadline”). All requests for exclusion from the Class received after the Opt Out Deadline will not be effective and such person will be deemed a member of the Class, even if you filed an individual proof of claim with respect to any Released Claims prior to service of the Class Notice.**

Any Class Member who did not timely file individual claims and who elects to opt out of the settlement (each an “**Opt-Out**”) must pursue his or her claims with the Bankruptcy Court in accordance with the claims allowance process. The Bankruptcy Court shall have exclusive jurisdiction to determine as a core proceeding any dispute or controversy with respect to the interpretation or enforcement of this Settlement and Opt-Outs will be stayed or enjoined from pursuing claims that are subject to this Settlement Agreement in state court or any other court. HLE reserves all of its rights and defenses with respect to any creditor (including Opt-Outs), including but not limited to the right to object that a creditor’s claims lack merit, have not been filed by the Bar Date, are filed in excess, and/or are not supported by proper documentation. In connection with the motion to approve this Settlement, the Debtors will seek to have the Court determine that the Bar Date is not tolled or otherwise extended for any creditors (including Opt-Outs) who did not file an individual proof of claim. **Please recall that the claim allowance Bar Date was October 21, 2020.** Class Members who opt out of the Settlement Agreement may recover, if at all, pari passu with other non-settling general unsecured creditors under the Plan. The actual terms of the Plan are available on the Administrative Agent’s website for this Bankruptcy Proceeding: [●]. **If the Opt-Out is allowed and a Proof of Claim was not filed by the Bar Date of October 21, 2020, the Class Member who opted out of the Settlement Agreement will likely receive no recovery on behalf of such claims regardless of their merits.**

**11. What if I Already Timely Filed a Individual Proof of Claim with the Bankruptcy Court?**

If you have timely filed an individual proof of claim prior to service of this Class Notice alleging any claim duplicative of or subsumed by the release described in paragraph [●], above, you will receive your Individual Class Member Settlement Payment as set forth above, or some other amount as agreed to by you and the settlement administrator or Class Counsel, such payment to be made exclusively from the Settlement Fund, in full satisfaction of all claims asserted in your individual claims that are duplicative of or subsumed by the claims asserted in the Johnston Class Action and/or arise out of the same or similar facts. Accordingly, you will *consent to having your individual proof(s) of claim reduced, withdrawn, and/or expunged.*

**12. When did the Court Decide To Approve The Settlement and Ordered This Notice?**



The Bankruptcy Court considered the Settlement and on [●], 2021 at [●] p.m. (prevailing Eastern Time). The Honorable Judge Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware located at 824 North Market Street, 6th Floor, Courtroom No. 4, Wilmington, DE 19801, approved the order and notice after a determination that the Settlement Agreement should be finally approved as fair, reasonable and accurate; including with respect to the aspects of the Settlement Agreement discussed herein and the Class Professionals' request for fees, costs and expenses and Class Representative's enhancement payment.

If there are further actions taken in the case that affect your rights, you will receive notice as determined by the Bankruptcy Court.

Unless otherwise ordered by the Court, any Class Member who does not make his or her objection or Opt Out known in the manner provided in this Class Notice shall be deemed to have waived all objection and opposition to the Settlement Agreement, including to the fairness, reasonableness and adequacy of the proposed Settlement Agreement, the distribution of settlement payments to Class Members, and Class Professionals' fees, costs and expenses. Class Members will have no other chance to object or oppose any of these items before Bankruptcy Court prior to approval of the Settlement Agreement.

**13. Who is the Judge In this Case?**

Judge Mary F. Walrath of the U.S. Bankruptcy Court for the District of Delaware located at 824 North Market Street, 6th Floor, Courtroom No. 4, Wilmington, DE 19801.

**14. Where Can I Find Additional Information?**

If you have questions, you may write or telephone Class Counsel at:

**Via Mail:**

David G. Spivak  
The Spivak Law Firm  
16530 Ventura Blvd. Ste 312  
Encino, CA 91436

**Via Phone:**

(818) 582-3086

This Class Notice is only a summary and does not describe all details of the Settlement Agreement. For full details of the matters discussed in this Class Notice, you may wish to review the Settlement Agreement. Please contact Class Counsel, as provided for above, for a copy of the Settlement Agreement and/or copies of the complaints filed in the Actions. The complete record of all the non-confidential pleadings and papers filed in this case have also been electronically filed with the U.S. Bankruptcy Court for the District of Delaware. Certain information will also be posted on a website maintained by Phoenix Class Action Administration Solutions, which is located at: [www.\\_\\_\\_\\_\\_.com](http://www._____.com).