

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

In re:  THE HERTZ CORPORATION, <i>et al.</i> <sup>1</sup>	Chapter 11  Case No. 20-11218 (MFW)  (Jointly Administered)
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**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 MAY 4, 2020, THIS NOTICE MAY AFFECT YOUR RIGHTS. PLEASE READ IT CAREFULLY AND IN ITS ENTIRETY.**

*A court authorized this notice. This is not an advertisement or 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 putative 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>

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

This Class Notice is given pursuant to an Order of the U.S. Bankruptcy Court dated April 26, 2021 (Docket No. 4205) 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 putative class in the Johnston Class Action ("Class Counsel") reached a settlement agreement, which the United States District Court for the Eastern District of California preliminarily approved on May 4, 2020 (the "**Prepetition Settlement**").

On May 22, 2020 (the "**Petition Date**"), The Hertz Corporation and certain 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**").

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

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

In April 2021, HLE and lawyers representing the putative 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 parties executed a final settlement agreement on April 2, 2021.

"Settlement Class" is the class consisting of all Settlement Class Members described below who were employed by HLE in California at any time during the Settlement Class Period. "Settlement Class Period" means from August 10, 2013 through May 4, 2020. The Settlement Agreement provides that the Class Representative will represent the Settlement Class Members employed by HLE in California during the Settlement Class Period. You are determined to be a Settlement Class Member.

"Settlement Class Member" means (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 during the Settlement Class Period (the "Salary Subclass"); and (2) the approximately 129 Branch Managers, District Managers and/or Territory Managers employed by HLE in California 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 (the "Under Supervised Subclass")(collectively, the "**Settlement Class**" or "**Class Members**" or "**Settlement Class Members**").

The Court's April 26, 2021 approval of the Settlement Agreement, resulted in, among other things: (i) approval for distribution of money to Settlement Class Members who do not opt out of the Settlement, (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 an incentive award to Plaintiff for her service as Class Representative.

## **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 a 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 labor laws. 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 Class Notice because HLE's records indicate that you are a Settlement Class Member who worked for HLE in California during the period of August 10, 2013 and May 4, 2020.

This Class 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 Settlement Agreement. **The Settlement Agreement will affect all Settlement Class Members who do not opt out and will entitle them to a portion of the settlement amount (as described below).**

In full and final settlement of the Released Claims (defined below), the Parties agree that (1) 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**") (for a total Settlement Fund of \$550,000), (2) HLE will pay the employers' share of all required state and federal payroll tax withholdings (in addition to the Settlement Fund), and (3) 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 Fund will be made to Phoenix Class Action Administrators ("Claims Administrator"), who will 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 a Settlement Award 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's Fees and Costs, Incentive Award to Plaintiff, Claims Administrator Costs to the Claims Administrator, and the portion of the PAGA Payment payable to the State of California Labor & Workforce Development Agency ("LWDA") (the resulting figure is the "**Net Settlement Amount**" or "**NSA**").

The amount of each Settlement Class Member's individual Settlement Award 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 HLE during the Settlement Class Period, divided by the total number of work weeks worked by all Settlement Class Members during the Settlement Class Period. It is important that you carefully check and confirm the number of your work weeks during the Settlement Class Period stated below and contact the Claims Administrator if there are any inaccuracies before the Opt Out Deadline, as defined below.

The above is a summary of the settlement provisions. The specific and complete terms of the Court approved settlement are stated in the Settlement Agreement, a copy of which can be obtained at <https://restructuring.primeclerk.com/hertz/Home-DocketInfo> and entering "4205" in the search field.

**Based on this formula, your estimated total number of work weeks is \_\_\_\_\_ and your individual Settlement Award is approximately \$[ ] at this time. This amount is subject to change depending on the final tally of Settlement Class Members who do not timely opt out of the Settlement Agreement, challenge 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 putative 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 have worked many hours and have spent thousands of dollars working on behalf of the Settlement Class. Class Counsel 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.

The Class Representative will receive a service award in the amount of \$15,000.00 in addition to her individual Settlement Award, payable out of the Settlement Fund. The award is to compensate her for her efforts and the risks she undertook in representing the Settlement Class.

## 7. How Will I Receive Payment?

The Parties have agreed that the Claims Administrator will mail the individual Settlement Payment Awards directly to Settlement Class Members. If you do not opt out of the Settlement Agreement, you **will not** have to submit a claim form, proofs of claim, or take any other action, to receive your payment. **If your address changes from the time you receive this Class 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 Award?

Due to the timing of the claims resolution process required by the bankruptcy process, distributions from the Settlement Fund will likely occur in 2021. Following approval of all distributions, the Claims Administrator will issue and send checks to Settlement Class Members. Such payments 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.<sup>3</sup> However, your failure to file a claim in the Bankruptcy Court will not impact your settlement share if you are a Settlement Class Member.

## 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 December 6, 2021. Should you choose to opt out of the settlement, you may mail the completed Request to Opt Out to the Claims Administrator at:

Phoenix Settlement Administrators  
P.O. Box 7208  
Orange, CA 92863

**The Opt Out *must be received by the Claims Administrator no later than December 6, 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.***

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<sup>3</sup> HLE's confirmed chapter 11 plan does provide third parties with extensive releases. This plan, including its release provisions, may be accessed at <https://restructuring.primeclerk.com/hertz/Home-DocketInfo> and entering "5178" in the search field.

Any Settlement Class Member who elects to opt out of the Settlement Agreement (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 the 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 Agreement, 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 note that the claim allowance Bar Date was October 21, 2020.** Class Members who opt out of the Settlement Agreement may recover, if at all, with other unsecured creditors under HLE's Chapter 11 plan who are not party to this Settlement Agreement. **Please note that if you choose to timely opt out of the Settlement Agreement, you will likely receive no recovery for your claims, regardless of their merit, if you failed to file a Proof of Claim in the Bankruptcy Court by the Bar Date of October 21, 2020.**

**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 9, above, you will receive your individual Settlement Award as set forth above, or some other amount as agreed to by you and the Claims 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 Agreement and on April 26, 2021, 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 settlement and this Class Notice after a determination that the Settlement Agreement should be finally approved as fair, reasonable and accurate, including Class Counsel and Dundon Advisers LLC's requests for fees, costs and expenses and Class Representative's Incentive Award.

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 timely opt out or dispute the number of his or her work weeks in the manner provided in this Class Notice shall be deemed to have waived all objections and opposition to the Settlement Agreement, including to the fairness, reasonableness and adequacy of the proposed Settlement Agreement, the distribution of settlement payments to Settlement Class Members, Class Representative, Class Counsel, or Dundon Advisers LLC. Settlement Class Members will have no other chance to object or oppose any of these items before Bankruptcy Court.

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

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.

#### **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 203  
Encino, CA 91436

**Via Phone:** (213) 725-9094

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 Administrators, which is located at: <http://www.phoenixclassaction.com/>.