

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

DWIGHT SIMONSON, and
SUSAN DOHERTY, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

THE HERTZ CORPORATION,
AMERICAN TRAFFIC SOLUTIONS, INC.,
and PLATEPASS LLC,

Defendants.

Civil Action No. 1:10-cv-00359-NLH-KMW

**DECLARATION OF STEVEN R. JAFFE
IN SUPPORT OF MOTION FOR
AGREED-UPON ATTORNEYS' FEES
AND SERVICE AWARDS¹**

STEVEN R. JAFFE pursuant to 28 USCS § 1746, hereby declare as follows:

1. I have been admitted to this Court *pro hac vice* and am counsel of record for Plaintiffs and the proposed Settlement Class² in these coordinated proceedings against the above-named Defendants. I am a shareholder of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., and respectfully submit this declaration in support of Plaintiffs' Motion for Agreed-Upon Attorneys' Fees and Service Awards. Except as otherwise noted, I have personal knowledge of the facts set forth in this declaration, and could testify competently to them if called upon to do so.

2. On or about May, 2013, after almost five years since the first case was filed, hard-fought litigation, initial mediation, several in-person settlement meetings, and multiple

¹ This declaration is abbreviated as "Jaffe Supp. Dec." in the Motion for Agreed-Upon Attorneys' Fees and Service Awards to which the declaration corresponds.

² All capitalized terms have the same meaning as defined in the Agreement attached as Exhibit A to Declaration of Steven R. Jaffe in support of Plaintiffs' Motion for Preliminary Approval of Proposed Class Action Settlement, Application for Service Awards and Class Counsels' Application for Attorneys Fees and Expenses. Any capitalized terms not defined there are defined herein.

arm's-length negotiations, Plaintiffs and Defendants executed a Settlement Agreement ("Agreement") establishing a Common Fund of \$11,004,000³ in cash benefits to be used to pay claims of the Settlement Class. The Common Fund of \$11,004,000, which is the cornerstone of the Settlement, is only to be exclusively used for paying the claims of Settlement Class Members.

3. Class Members who submit qualifying claims will receive a refund based upon on two categories: (a) For their first-time rental transactions, Class Members will be eligible for a return of 67% of charged and paid PlatePass-Related Administrative Fees and Toll Differentials (i.e., - up-charges); and (b) for all subsequent rental transactions, Class Members will be eligible for a return of 38% of the fees and Toll Differentials paid. The difference in these categories refund amounts is attributable to the likelihood that a certain degree of knowledge of the program may be imputed to renters who used the PlatePass program two or more times.

4. The settlement has also required Defendants at their sole expense to provide notice of the Settlement through several modes: (a) a Summary Notice in post-card format mailed to Class Members for whom Defendants have addresses;⁴ (b) on the settlement website⁵; (c) two insertions in the USA Today newspaper⁶; and a press release issued via newswire.

5. Further the Settlement Agreement requires Defendants to establish and maintain at their sole expense a transparent settlement administration process, including a Settlement

³ DE 98-4 at 2.1.

⁴ DE 98-4 (Settlement Agreement ¶¶ 1.30, 2.2(i), 3.1-3.2)

⁵ *id.* ¶ 3.3

⁶ *id.* ¶ 5.2 d

Administrator⁷; a settlement website with on-line Claim Form submission⁸; a toll-free information line for Class Members to call to receive information on the settlement⁹ a process to refer and process objections and opt-outs¹⁰; a detailed process for administering refunds for settlement Class Members¹¹; and a method for resolving disputes about refunds¹².

6. While Plaintiffs certainly maintain that the claims asserted in the Action are meritorious, that their motion for class certification would have succeeded, and that Plaintiffs would prevail if this matter proceeded to trial, of course none of this is certain. The Action involved sharply opposed positions on several fundamental legal and factual issues and the manageability of a nationwide class action. The ultimate success of the litigation required Plaintiffs to prevail, in whole or in part, on *all* of these issues. Conversely, Defendants' success on any one of these issues could have spelled defeat for Plaintiffs and the Settlement Class. Therefore, continued litigation, presents significant risks to attaining a successful judgment, as well as the time and expenses associated with proceeding to trial, the time and expenses associated with appellate review, and the countless uncertainties of litigation, particularly in the context of a class consisting of several thousand members. In short, the case was one following

⁷ *id.* ¶¶ 1.28, 5.2

⁸ *id.* ¶¶ 2.2(ii), 2.3(i), 3.3. Class Members may also request Claim Forms be sent to them via mail [Agreement, ¶ 2.2(i)]

⁹ *id.* ¶ 2.2(i)]

¹⁰ *id.* ¶¶ 3.5, 3.6. 4.1. 4.2

¹¹ *id.* ¶¶ 2.2-2.5

¹² *id.* ¶ 2.5

highly active litigation and discovery merited the parties seriously and good faith trying to work out a compromise and settlement, which is what occurred.

7. In light of the risks presented by continued litigation, the Defendants ample ability and willingness to litigate through trial and appeals, and taking into account the substantial benefits achieved for the Settlement Class Members under the terms of the Settlement Agreement, the Settlement before the Court not only provides fair and adequate compensation to the Settlement Class Members, it represents a significant achievement benefitting the Settlement Class, which supports an award of attorney's fees and incentive awards.

A. BACKGROUND OF THE LITIGATION

8. Plaintiffs and Class Members rented cars from Hertz that were pre-enabled with the "PlatePass®" electronic toll payment system ("PlatePass System")¹ [Dkt. No. 43 Consol. Amed. Compl. ¶¶ 7-8, 23-66, 67-74].

9. Plaintiffs alleged that Defendants, through their implementation of the PlatePass System, systematically charged Class Members unwarranted PlatePass-Related Charges (i.e.- administrative fees and overcharges based upon the amount of toll actually charged by and paid to a tolling authority), and consequently, Defendants breached the Hertz rental agreements with Class Members who rented cars from Hertz in the United States; violated the New Jersey Consumer Fraud Act; wrongly converted Class Members' monies; were unjustly enriched; and/or committed civil conspiracy.

B. COURSE OF THE PROCEEDINGS

10. On December 10, 2009, plaintiff Susan Doherty, filed a class action naming Defendants in the Burlington County, New Jersey Superior Court that Defendants later removed to United States District Court for the District of New Jersey ("**Court**"), styled as *Susan Doherty*

v. The Hertz Corporation, American Traffic Solutions, and PlatePass LLC, Case No. 1:10-CV-00359 (“Doherty Action”).

11. On March 26, 2010, plaintiff Simonson filed a class action naming Defendants in this Court styled *Dwight Simonson v. The Hertz Corporation, American Traffic Solutions, and PlatePass LLC*, Case No. 1:10-CV-01585 (“Simonson Action”).

12. Defendants filed two motions to dismiss in the Doherty Action: one in February 2010 [Dkt. 7] and one in April 2010 [Dkt. 17]; and Doherty filed briefs in opposition to both motions [Dkt. 14, 18]. In November 2010, the Court denied Defendants’ dismissal motion in the Doherty Action [Dkt. 24].

13. In the Simonson Action, Defendants filed a motion to dismiss on June 22, 2010 [Dkt. 11]. Simonson filed a brief in opposition to Defendants’ motion to dismiss on July 3, 2010 [Dkt. 12]. The Court later denied the dismissal motion in the Simonson Action [Dkt. 23].

14. Following these denials, the Court entered an order [Dkt. 40] consolidating the Simonson and Doherty Actions for all purposes into docket number Civil No. 1: 10-cv-00359-NHL-KMW.

15. On July 27, 2011, Plaintiffs filed a consolidated amended complaint (“Complaint”) [Dkt. 43] that combined all claims against Defendants regarding Defendants’ implementation and operation of the “PlatePass System.” Defendants then filed their answers to the Complaint [Dkt. 46, 47]. On October 22, 2012, Defendants ATS and PlatePass LLC filed a motion for summary judgment that remains pending [Dkt. 74-78].

16. In addition to this consolidated *Doherty* and *Simonson* action, there was also a Florida consumer only class action commenced in 2010 by another Hertz Rental customer, Mr. James Soper, in Florida state court which is captioned *James Soper v. American Traffic*

Solutions, Inc., Case No. 10-37689. The *Soper* case also included claims based upon the Avis and Budget car rental companies' similar PlatePass toll collection program administered by ATS/Platepass. In light of the similar issues Counsel for Mr. Soper worked cooperatively with Class Counsel herein during both discovery and settlement initiatives. Thus with respect to the ATS/Platepass defendants, Class Counsel and Soper's counsel divided the labor by Soper's counsel taking the lead on examining some of ATS's witnesses with Class Counsel taking lead on the rest. Class Counsel conducted all of the Hertz employee witnesses. The present settlement, if approved, will resolve the *Soper* claims based upon Hertz transactions. Mr. Soper's counsels have entered appearances to support the pending settlement as fair, adequate and reasonable.

17. Prior to and throughout the proceedings, this litigation involved extensive discovery, including numerous depositions, several rounds of requests for production of documents; interrogatories; and requests for admissions.

18. Throughout the litigation, the Parties held numerous meet-and-confer sessions over the Parties' discovery requests and the scope of their productions of documents in response.

C. SETTLEMENT NEGOTIATIONS

19. On December 2011, the Parties participated in a full-day mediation session with the Hon. Joel Rosen, U.S. Maj. J. (Retired) ("Judge Rosen") that ended in an impasse. Thereafter, the Parties litigated the case, but held formal and informal settlement negotiations that evolved over a period of months under the auspices of Judge Rosen.

20. At all times throughout the mediation proceedings, the negotiations were adversarial and contentious. The Parties had substantially divergent views of the case and the alleged injury to Class Members.

21. With guidance from Judge Rosen, Plaintiffs' and Defendants' counsel explored the possibility of settlement through a series of in-person meetings: they met in Chicago, Illinois, on September, 2012; Fort Lauderdale, Florida, on November 2012; and again in Fort Lauderdale in January 2013. I was present for all of these meetings.

22. Parties, including Mr. Soper's counsel, then convened in Philadelphia, Pennsylvania, on March 21 and 22, 2013, at which time under the guidance of Judge Rosen, the Settling Parties forged and reached agreement on the class relief and then other terms of settlement that comprise the Agreement they now propose for preliminary approval.

23. On April 1, 2013, the Parties notified the Court that this case had settled in principle and the parties would be submitting a formal Settlement Agreement for preliminary approval. On May 31, 2013 the parties submitted the proposed settlement to the court in connection with their motion for preliminary approval of the settlement and conditional class certification. .

24. During and throughout the Settlement Agreement's negotiation Class Counsel and Defendants' Counsel had clear views of the strengths and weaknesses of their cases and were in a strong position to make an informed decision regarding the reasonableness of a potential settlement. Plaintiffs always insisted on monetary relief distributed through a common fund, but remained realistic in their view of the case and Defendants' potential defenses. The total estimated damages in the case were up to \$19.6 million and there were are an estimated 1.8 million unique PlatePass users. Estimates of the total individual damages for each individual Class Member averaged at approximately were \$9-10 per Class Member. It was recognized however that Defendants had certain defenses to liability and class certification, including that PlatePass-related fees were adequately disclosed in signage depending on the time and rental

location, and that knowledge of the charges could be imputed to some degree to renters who used and paid for the service more than once. Defendants also indicated they possessed address and payment records sufficient to identify a majority, but not all Class Members. The resulting Agreement thus required Defendants to establish a claims process and a Common Fund of \$11,004,000 as a compromise and for settlement and satisfaction of all claims [Dkt. 98-4, at ¶ 2.1], with refunds being calculated based upon the two categories of 67% for Class Members first time transaction charges and 38% of all subsequent PlatePass transaction charges. [Dkt. 98-4, at ¶¶ 2.1.1, 2.4.1].

D. PRELIMINARY APPROVAL

25. On May 30, 2013, the Plaintiff's filed their Motion for Preliminary Approval of Proposed Class Action Settlement, which included the fully executed Settlement [Dkt. 98-4], a proposed Claim Form and proposed forms of notice [Dkt. 98-4]. On that same day, Plaintiffs filed a Memorandum in Support of Joint Motion for Settlement. [Dkt. 98-2].

26. On July 1, 2013, the Court entered the Order Granting Preliminary Approval [Dkt. 100] which, *inter alia*, preliminary approved the Settlement upon finding that the Settlement Class met the requirements of Fed. R. Civ. P. 23 [Dkt. 100 at 2-3] and that the "Settlement and Settlement Agreement is fair, reasonable, and adequate" to warrant proceeding with notice and a final approval hearing [*id.* at 3]. The Court has also among other things (a) conditionally certified the Class; (b) approved the notice program, finding that it satisfied Due Process, and ordered that it be executed [*id.* at 5]; (c) approved the Claim Form [*id.* at 14]; established deadlines for opt outs [*id.* at 7]; (d) set a Final Approval Hearing [*id.* at 16]; and (e) appointed Plaintiffs as representatives of the Settlement Class and Plaintiffs' counsel as Class Counsel [*id.* at 4].

27. Defendants have engaged Dahl Administration (“Dahl”) as Settlement Administrator who is now administering the settlement under the Court’s Preliminary Approval Order. Dahl has set up a settlement website with on-line Claim Form submission [*id.* ¶¶ 2.2(ii), 2.2(iii), 2.3(i), 3.3], at www.hertzplatepasssettlement.com and established a toll-free information line for Class Members to call to receive information on the settlement [*id.* ¶ 2.2(i), Dkt. 98-4], which contact information has appeared in the Summary Notice, the settlement website, the Publication Notice, long-form Notice and elsewhere. The settlement Agreement also includes a streamlined process for administering refunds for settlement Class Members [*id.* ¶¶ 2.2-2.5] and a method for resolving disputes about refunds [*id.* ¶ 2.5].

28. In accordance with the Agreement and the Court’s Preliminary Approval Order [Dkt. 100 at ¶ 6], the Settlement Administrator and the Parties commenced the process of notifying Class Members of the settlement and its terms. On June 7, 2013, Defendants mailed the Class Action Fairness Act notice of settlement (including among other things, the entire settlement Agreement) to appropriate government officials, including US Attorney General and state Attorneys’ General across the United States. Dahl following entry of the Preliminary Order mailed the Summary Notice to Class Members nationwide on July 24, 2013, and established the settlement website, www.hertzplatepasssettlement.com, containing the long-form Notice, Summary Notice, settlement Agreement, Preliminary Approval Order, and Claim Form. The Parties issued a press release announcing the settlement on July 31, 2013 [*see* Dkt. 98-5 at 56]. The settlement website further contains a comprehensive explanation of the settlement terms in a series of FAQs. Dahl has also mailed out 1.6 Million post-card summary notices. Defendants have arranged for two rounds of nationwide Publication Notice in USA Today that Dahl has handled or will handled them; one that has already appeared in USA Today on August 15, 2013,

and the other is set for publication on September 14, 2013. Based upon the estimates I received from Defendants' counsel, each publication placement costs approximately \$21,000. After Court-ordered notice began, Dahl has overseen the agreed process whereby Class Members submit claims through a Claim Form to Settlement Administrator at www.hertzplatepasssettlement.com electronically or per request via mail or telephone.

29. Since the Court's issuance of the Preliminary Approval Order on July 1, 2013 [Dkt. 100], Class Counsel, and I have had regular meetings and exchanges with Dahl to ensure the settlement administration, notice, and claims process was being conducted fairly and in accordance with the Agreement. Dahl has also prepared analysis of the databases it received from ATS and Hertz for Class Counsel which Class Counsel has used to confirm the data on which the Settlement was based. I and co-class counsel have made several inquiries to Dahl and they were responded to promptly. Dahl also provided regular updates on the administrative process. According to estimates I have reviewed, and as confirmed by Jeff Dahl, President of Dahl Administration, in his attached Declaration (Exhibit "A"), the cost of administration and notice will cost Defendants approximately slightly over \$1,000,000. I and co-class counsel have also responded to questions from class members and have assisted them. This administration process will not end if and when the settlement is finally approved at the Fairness Hearing. Class Counsel will continue thereafter to respond to Class Members and assist them without further compensation.

E. ATTORNEY'S FEES AND LITIGATION COST REIMBURSEMENT FOR CLASS COUNSEL

30. As the \$11,004,000 Common Fund is to be used exclusively to pay refunds to class members without any deduction for fees or expenses, the terms of Settlement Agreement further established separate, independent payments by Defendants for attorney fees, litigation

costs and class action representative incentive or service awards to Ms. Doherty and Mr. Simonson. I address in this section of my declaration Class Counsels' request for an award of attorney fees and reimbursement of litigation expenses. In the following section I will address Class Representatives' request for awards of incentive fees for their services to the class in bringing this matter.

31. Pursuant to the Settlement Agreement, Class Counsel are entitled to request that the Court award Class Counsel attorneys' fees not to exceed a total amount of \$3,026,100 [Dkt. 98-4 at ¶ 5.4.1] and a separate award of actual costs incurred in the Action up to \$100,000. Defendants agreed to pay this sum without objection [*id.*]. Attorney's fees were not discussed or negotiated until after all material relief to the Settlement Class had been negotiated and agreed. The terms of the Settlement Agreement were not conditioned upon any minimum or maximum attorney's fee [*id.*].

32. Consistent with best class-action practices, various forms of the notices to Class Members and government entities specifically identified the dollar amount of service awards and attorney's fee Class Counsel would be seeking.¹³ Also, the Settlement Agreement (which has been published on the settlement website, www.hertzplatepasssettlement.com) identifies the specific dollar amount of service awards and attorneys fees.¹⁴ I have reviewed the materials that the Defendants have submitted to government entities under the Class Action Fairness Act, and those materials specifically referred to the amount of service awards and attorneys fees Class

¹³ <http://hertzplatepasssettlement.com/docs/download/notice.pdf> (long-form Notice) at ¶ 5; <http://hertzplatepasssettlement.com/info/faq#q13>.

¹⁴ <http://hertzplatepasssettlement.com/docs/download/settlement-agreement.pdf>.

Counsel would be seeking. The materials provided to government entities, the long-form Notice, the Publication Notice, the FAQs, the Agreement, the settlement website, the Preliminary Approval Order, were all disseminated to Class Members and the public at large and either refer to or discuss in detail Class Counsel's agreed-upon fees and the service awards. To date, there have been no objections to either award.

33. For the following reasons, as well as based upon the authorities set out in the accompanying Memorandum of Law in Support of this fee petition, I respectfully submit on behalf of all Class Counsel, as well as the other attorneys who cooperatively worked together with Class Counsel and contributed towards achieving the proposed settlement, that applying the *Gunter* factors¹⁵ the full negotiated counsel fee Defendants have agreed to pay has been earned and should be awarded by the Court, together with reimbursement of litigation expenses in the amount that the Defendants have also agreed to pay.

Class Counsel Achieved a Significant Result

34. "Perhaps no better indicator of the quality of representation here exists than the result obtained." *Behrens v. Wometco Enter., Inc.*, 118 F.R.D. 534, 547 (S.D. Fla. 1988), *aff'd.*, 899 F.2d 21 (11th Cir. 1990). *Accord*, *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) (first evaluative factor being the size of the fund created and the number of persons benefitted); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 Jrl. Emp. L. Stud. 27, p. 28 (March 2004) (finding "that the level of client recovery is by far the most important determinant of the attorney fee amount").

¹⁵ *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000).

35. The Settlement Class Counsel, assisted by *Soper's* counsel achieved here, is outstanding. Instead of facing additional years of costly and uncertain litigation, 1.8 million Settlement Class Members are now enabled to receive an immediate benefit (the refunds of 67% and 38% of their PlatePass administration fees and toll differentials) from a large fund of \$11,004,000 million by going on line and completing or filling in and mailing a simple, short claim form. The Settlement Administration's design provides these Class Members with their transaction data from Hertz and ATS's PlatePass program databases for their convenience in making a claim application, and where and when transaction information may be incomplete or missing, a simple, user friendly means exists to submit the transaction information to the Claims Administrator. Thus many consumers have the opportunity to share in the compromise recovery that returns a very substantial portion of the money's in dispute. The proportion of damages recovered here alone, when compared to other consumer abuse and security fraud settlements, inescapably leads to the conclusion that an excellent result has been achieved.

36. In addition, the refunds being paid are net of all expenses. The Settlement requires Defendants at their sole expense to provide the notice of the Settlement *via* direct mail and publication. Defendants are also paying all administrative costs of implementing the Settlement, including establishing a website, publishing the Publication Notice twice in the USA Today and on the settlement website, processing claims forms submitted electronically and by mail, determine eligibility, any other task necessary and proper to effectuate the payment of Claimants and administering the Settlement Agreement.¹⁶ These notice and administration costs and

¹⁶ DE 98-4 (Settlement Agreement, at ¶ 5.2). Mr. Dahl's estimate of the administration, notice and publication costs are set out in his declaration attached as Exhibit "A."

expenses are estimated by the Claims Administrator, Jeffery Dahl, CEO of Dahl Administration, to be approximately \$1,035,000 and are being paid solely by Defendants.¹⁷ Expenses for Class Counsel were approximately \$100,000, which also, under the terms of the Agreement being reimbursed separately and apart from the Common Fund. Additionally, attorney's fees provided for under the Agreement total \$ 3,026,100 and Incentive Awards total \$10,000. Thus the total benefit of this Settlement for the Class can be estimated at \$15,175,100 (*i.e.*- the sum of \$11,004,000 in cash settlement benefits, plus \$10,000 incentive awards, plus \$1,035,000 in notice and settlement administration costs, plus \$ 3,026,100 in attorneys' fees¹⁸, plus \$100,000 in expenses). Again, neither the costs of settlement administration, nor the Incentive Awards, nor the requested Attorney's fees will reduce the \$11,004,000 Common Fund. All in all, this is a superior, indeed, an excellent result for the Class.

¹⁷ DE 98-4 (Settlement Agreement, at ¶ 5.2) See also Dahl Declaration.

¹⁸ Courts in the Third Circuit and elsewhere hold that a defendant's negotiated agreement to pay an agreed upon attorney's fee amount separately and over and above other monetary and equitable benefits, subject to court approval, is a benefit to the settlement class. Further, where the amount of fees is agreed upon and set forth in the agreement, that amount is fully includable as part of the class recovery when calculating a fee award under the percentage of recovery and lodestar check method. *See, In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 821 (3rd Cir.), *cert. denied*, 516 U.S. 824 (1995) ; *Pro v. Hertz Equip. Rental Corp.*, 2013 U.S. Dist. LEXIS 86995 (D NJ June 30, 2013) (including amount of separately agreed upon attorneys fee as part of class recovery when calculating and determining fee award in connection with class action settlement); *Lonardo v. Travelers Indemnity Co.*, 706 F. Supp. 2d 766, 803 (N.D. Ohio 2010) (holding for purposes of calculating the percentage of the fee, agreed upon attorneys' fee award of \$ 4.6 million is part of the Total Class Benefit); *In re Vitamins Antitrust Litig.*, 2001 U.S. Dist. LEXIS 25067 *56 (D. D.C. 2000) (holding attorneys' fees that are borne by defendants and not plaintiffs are a valuable part of the settlement and fairly characterized as part of the common fund.”)

The Requested Fee Comports with Customary Fees in Similar Cases, Common Fund

37. The fee requested here also matches the fee typically awarded in similar cases. In the Third Circuit, a settlement in the range of 25-35% of a calculable common benefit is well within the range of a customary attorney's fee and falls squarely within the range of awards made in cases brought in this District.¹⁹ Our fee request, which is approximately 20% of the total benefit of the Settlement identified above, falls at the low end of this range. The requested fee is well below the average in the private contingent-fee marketplace, where contingency fee arrangements often approach or equal 33% to 40 % of any recovery.²⁰

¹⁹ See e.g., *In re Ins. Brokerage Antitrust Litig.*, 2013 U.S. Dist. LEXIS 108042 *108, 2013 WL 3956378 (D. NJ Aug 1, 2013) ("Courts within the Third Circuit often award fees of 25% to 33% of the recovery."); *Martin v. Foster Wheeler Energy Corp.*, No. 06-0878, 2008 WL 906472 at *1, *5 (M.D. Pa. Mar. 31, 2008) ("District Courts within the Third Circuit have typically awarded attorney's fees of 30% to 35% of the recovery, plus expenses, in settlements of this size.") (collecting cases); *In re Rite Aid Corp. Sec. Litig.*, 146 F.Supp.2d 706, 735 (E.D.Pa.2001) (stating that a review of 289 settlements demonstrates "average attorney's fees percentage [of] 31.71%" with a median value of one-third); *In re Gen. Motors*, 55 F.3d at 822 (explaining that in common fund cases "fee awards have ranged from nineteen percent to forty-five percent of the settlement fund"); *In re Remeron Direct Purchaser Antitrust Litig.*, No. Civ. 03-0085 (FSH) 2005 WL 3008808, at *1, *12-17 (D.N.J. Nov. 9, 2005) (awarding 33⅓%); see also *In re Linerboard Antitrust Litig.*, No. MDL 1261, 2004 WL 1221350, at *1, *4-17 (E.D. Pa. June 2, 2004) (awarding 30%); *In re EquiMed, Inc. Sec. Litig.*, No. 98-cv-5374 (NS), 2003 WL 735099, at *4 (E.D. Pa. Mar. 3, 2003) (awarding 33⅓%); *Cullen*, 197 F.R.D. at 150136 (considering other courts' fee awards and awarding 33⅓%); *In re Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 439 (E.D. Pa. 2001) (awarding 33⅓%); *In re Safety Components*, 166 F. Supp. 2d at 102 (fee award of 33⅓% was "reasonable when compared to fee awards in other cases" awarding 33⅓%); *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 133-34 (D.N.J. 2002) (awarding 33⅓% of initial recovery); *In re Unisys Corp. Sec. Litig.*, No. 99-5333, 2001 WL 1563721 at *1, *3 (E.D. Pa. Dec. 6, 2001) (awarding 33%); *Blackman v. O'Brien Env'tl Energy, Inc.*, No. Civ. A. 94-5685, 1999 WL 397389 at *1, *2 (E.D. Pa. May 12, 1999) (awarding 35%); *Ratner v. Bennett*, No. Civ. A. 92-4701, 1996 WL 243645, at *1, *9 (E.D. Pa. May 8, 1996) (awarding 35%); *Zinman v. Avemco Corp.*, No. 75-1254, 1978 WL 5686, at *1, *2 (E.D. Pa. Jan. 18, 1978) (awarding 50%).\.

²⁰ See *In re Synthroid Marketing Litigation*, 264 F.3d 712, 718 (7th Cir. 2001) (citations omitted) (finding in class actions, courts should award counsel the market price for legal

Prosecuting the Claims Against Defendants Required Substantial Time and Labor

38. To support the class action claims outlined above, this case necessitated extensive investigation and discovery [DE 98-3 at ¶¶ 11-18]. Plaintiffs served two sets of requests for production, 200 requests for admission, and two sets of interrogatories. As a result of Plaintiffs' discovery requests, Defendants produced documents of approximately 40,000 pages constituting at least six gigabytes of data [DE 98-3 at ¶ 13]. Class Counsel reviewed and analyzed all of these materials.

39. The Parties also conducted numerous depositions of each other's principals and witnesses [DE 98-3 at ¶ 16]: Several lengthy contentious depositions were taken in various cities and states across the United States. Class Counsel took as lead examiner the depositions of Defendants ATS's and PlatePass LLC's Fed. R. Civ. P. 30(b) (6) designee, Philip Underhill, in Phoenix, Arizona in June 21, 2012; the President of ATS, James Tuton, in New York, New York, on July 23, 2012; and Hertz's corporate representative, Jonathan Jones, in Chicago, Illinois, on October 5, 2012 [DE 98-3 at ¶¶ 16].

40. In addition, Class Counsel in various cities where the witnesses were located deposed: Laura Gibbons, a Hertz marketing employee, in New York, New York, on March 30, 2012; Hertz Customer Service Manager, Deborah Reyes, in Oklahoma City, Oklahoma, on April 4, 2012; Penny Warring, PlatePass General Manager, in Phoenix, Arizona, on May 5, 2012; Heather Hensley, ATS Client Services Liaison, in Phoenix, Arizona, on May 10, 2012; Nikki Woodward, ATS Senior Vice President, in Phoenix, Arizona, on May 11, 2012; Richard Simon,

services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time); *In re Ins. Brokerage Antitrust Litig.*, 2013 U.S. Dist. LEXIS 108042 *110 (“Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non class, commercial litigation.”)

Hertz Senior Director of Administration and Executive Customer Relations, in New York, New York, on May 23, 2012; Jonathan Jones, Director of Hertz Improvement Programs, in Oklahoma City, Oklahoma, on June 28, 2012; and Adam Draizin, ATS Chief Financial Officer, in New York, New York, on July 23, 2012 [DE 98-3 at ¶¶ 17].

41. In turn, Defendants' Counsel deposed Plaintiff Dwight Simonson in Philadelphia, Pennsylvania, on August 14, 2012 and Plaintiff Susan Doherty in Philadelphia, Pennsylvania, on August 15, 2012 [DE 98-3 at ¶¶ 18].

42. Class Counsel has been extensively involved in every aspect of this case from its inception about five years ago. This work has involved a substantial commitment of time and resources by Class Counsel. The Court Docket, which contains 105 entries, more than substantiates this fact.

43. Class Counsel has reviewed their time and expenses, and all of the time and expenses were reasonably necessary for the prosecution of the common issues on behalf of Plaintiffs and the Class, and the hourly rate is in accordance with the market rate for similar services by attorneys of similar experience in the respective geographic area in similar complex class cases. Indeed, the hourly rates in this case have been repeatedly approved by courts in this district in similar complex class actions.²¹

²¹ This Court has found hourly rates for partners ranging from \$500 to \$855 to be reasonable. *In re Mercedes-Benz Tele Aid Contract Litig.*, 2011 U.S. Dist. LEXIS 101995, 2011 WL 4020862 (D.N.J. 2011); *In re Philips/Magnavox Television Litig.*, 2012 U.S. Dist. LEXIS 67287, 2012 WL 1677244 (D.N.J. 2012) (approving partner hourly rates of \$520, \$530, \$690, \$700, \$710, and \$815, respectively). The hourly rates of associates ranging from \$370 to \$475 have also been found reasonable. *In re Mercedes-Benz Tele Aid Contract Litig.*, 2011 U.S. Dist. LEXIS 101995.

44. The total lodestar of Plaintiffs' Counsel is \$1,541,000. This figure is necessarily incomplete as much work remains to be done, including preparing for and presenting arguments at the final approval hearing.

45. The following tables sets out the key personnel and lodestars of the three firms appointed Class Counsel by the Court:

Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.,				
Name	Rank	Hours	Rate	Lodestar
Steven R. Jaffe	P	454.80	\$600	\$272,880
Mark S. Fistos	P	354.70	\$600	\$212,820
Jay M. Klitzner	AS	67.30	\$450	\$30,285
Iris Zambrano	PL	42.80	\$190	\$8,132
Total		919.60		\$524,117

Cohen, Placitella & Roth, PC				
Name	Rank	Hours	Rate	Lodestar
Michael Coren	P	654.7	\$600	\$392,820
Christopher Placitella	P	86.6	\$600	\$51,960
Harry Roth	P	2.8	\$600	\$1,680
Stewart Cohen	P	0.7	\$750	\$525
Jillian Smith	AS	0.2	\$450	\$90
Timothy Peter	A	0.8	\$300	\$240
Matt Fink	LC	45.5	\$200	\$9,100
George MacMillan	PL	24.7	\$190	\$4,693
Total		816		\$461,108

Emanuel & Dunn, PLLC.,				
Name	Rank	Hours	Rate	Lodestar
Stephen A. Dunn	P	459.39	\$600	\$275,634
Matthew E. Lee	AS	36.10	\$450	\$16,245
Brandi Crosmer	PL	148.5	\$190	\$28,215
Darryl Hammill	PL	4.4	\$190	\$836
Naliny Negron	PL	6.0	\$190	\$1,140
Tiffany Tolman	PL	13.7	\$190	\$2,603

Total		668.09		\$324,673
-------	--	--------	--	-----------

Key	
P	Shareholder or member
AS	Senior Associate
A	Associate
LC	Law clerk/Law school graduate
PL	Paralegal

46. The hours and lodestars of associated counsel who previously represented Ms. Doherty (Friedman Doherty) or represents Mr. Soper in the Florida state court class action presented on a firm level aggregated basis are:

Firm	Class Representative Client	Hours	Loadstar
Friedman Doherty, LLC	Doherty	283.9	\$149,500
Zebersky Payne, LLP	Soper	125.0	\$75,000
Baron & Herskowitz	Soper	75.0	\$45,000

47. The total amount of costs and expenses incurred by Class Counsel to date is \$99,582. Detailed cost information can be supplied if necessary. Class counsel will continue to incur expenses in the course of monitoring the administration and attending any hearings.

48. Since the total requested fee of \$ 3,026,100 million and actual costs of \$100,000 have been agreed to by Defendants, and is amply supported by the substantial benefit doctrine as well as the percentage of the fund method, Class Counsel respectfully believes that these amounts should be approved and awarded by the Court at the fairness hearing.

This Case Involved Difficult Questions and Risk Requiring Significant Skill

49. Class Counsel undertook this action on an entirely contingent fee basis, assuming a substantial risk that the litigation would yield no or very little recovery and leave them

uncompensated for their time, as well as for their substantial out-of-pocket expenses totaling approximately \$100,000. The PlatePass program unfolded over a series of months across the country. There was a real risk that one-state's law may not apply to all Class Members and class certification would devolve into subclasses over a multitude of states or be completely unmanageable. Because the case involved non-disclosures of material facts relating to PlatePass fees and charges, Class Counsel also undertook the significant risk that Defendant may prevail at class certification by contending that PlatePass-related fees were adequately disclosed in signage depending on the time and rental location; and that knowledge of the charges could be imputed to some degree to renters who used and paid for the service more than once. Additionally, Defendants demonstrated that they would vigorously present their potentially dispositive arguments at trial and, even if Plaintiffs prevailed, on appeal.

50. Class Counsel have received no compensation for representing Class Representatives and the Class and have advanced approximately \$100,000 in costs in providing legal representation to the Class Representatives and the Class. Further, absent this settlement, there was no guarantee that the Class Members would obtain any relief from Defendants, which would have resulted in Class Counsel receiving nothing for their work on behalf of the Plaintiffs and the Class. Furthermore, the time spent on this case was time that could not be spent on other matters.

Other Factors Favor an Award of the Request Fee

51. Other factors likewise support granting our fee request. In addition to refunds of substantial portions of the PlatePass administration fees and Toll Differentials to class members, the litigation was a catalyst to Hertz and ATS changing their business practices and giving better

disclosures of the program and how its charges are assessed. The Settlement Agreement acknowledges this fact.

52. As noted above, the burdens of this national litigation have precluded my firm's and Emanuel and Dunn's pursuit of other cases. The relatively small size of Jaffe Farmer and Emanuel and Dunn, and the major commitment involved in accepting this representation, precluded us from working on other matters and accepting other representations.

53. In addition, Class Counsel's fee request is firmly rooted in "the economics involved in prosecuting a class action." Without adequate compensation and financial reward, cases such as this simply could not be pursued.

F. CLASS REPRESENTATIVE SERVICE AWARDS

54. The efforts and determination of Plaintiffs' Susan Doherty and Dwight Simonson in bringing and maintaining this action was instrumental in Class Counsel being able to accomplish the settlement benefits for the Class now before the Court pending approval. Their services should be awarded with awards of service fees.

55. Third Circuit authorities consistently recognize the need to provide recognition and award for the services of class representatives and empower courts with the discretion to do so as representative "incentive" or "service awards". *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n65 (3d Cir. N.J. 2011) ("Incentive awards are not uncommon in class action litigation and particularly where ... a common fund has been created for the benefit of the entire class.... The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation and to reward the public service of contributing to the enforcement of mandatory laws.") (*Citations and quotes marks in original omitted*); *In re Budeprion XL Mktg. & Sales Litig.*, 2012 U.S. Dist. LEXIS 91176 (E.D. Pa. Jul.

12, 2012) (citing *Hall v. Best Buy Co.*, 274 F.R.D. 154, 173 (E.D. Pa. 2011)); *Dewey v. Volkswagen of Am.*, 728 F. Supp. 2d 546 (D. NJ 2010 (Shwartz, Mag .J.) (same); *In re Varacallo*, 226 F.R.D. 207, 257-58 (D.N.J. 2005) (collecting cases).

56. In this matter plaintiffs Ms. Doherty and Mr. Simonson each separately discovered they and other consumers as well were being taken advantage of and not being fairly treated by Hertz's PlatePass program. Each strongly felt the conduct was wrong enough that they separately consulted with and retained lawyers to bring suit to do something about it. Each provided information to their counsel, answered Defendants' interrogatories, produced documents requested by Defendants and presented themselves for lengthy (and in many aspects intrusive) depositions. Each faithfully has honored and discharged his or her fiduciary duties to the class by overseeing their lawyers' prosecution of the litigation and consulting with and cooperating with counsel at key events in the litigation. Each, like the other absent Class Members, stands to recovery only a modest amount despite the many, many hours they devoted to the case. Their services and the benefits they generated for the class is exemplary and deserves recognition and reward by the Court as part of the settlement approval process.

57. Pursuant to the Settlement Agreement, Defendants have agreed that the Class Representatives may make an application for a reasonable service award in an amount not to exceed \$5,000 which, to the extent approved by the Court, Defendants will separately pay. [Dkt. 98-4 at ¶ 5.5]. Thus should the Court approve the requested service awards, they will be paid by Defendants separate and apart from the Common Fund and in addition to the relief they may be entitled to under the terms of the Settlement. On behalf of Plaintiffs Class Counsel request service awards in the amount of \$5000 apiece per the Settlement Agreement's provisions.

58. The actions, time, and efforts of Class Representatives' in protecting the interests of the Class by bringing the actions and helping generate the benefits the Class will receive under the Agreement (in addition to the fact that Hertz changed its business practices in response to the lawsuits as Defendants acknowledged in the Settlement Agreement occurred) amply warrant and justify the court granting them the requested \$5,000 service awards.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on September 9, 2013 in Ft. Lauderdale, Florida.

/s/ Steven R. Jaffe
Steven R. Jaffe

Exhibit A

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SUSAN DOHERTY and DWIGHT SIMONSON,
individually and on behalf of all others similarly
situated,

Plaintiffs,

v.

THE HERTZ CORPORATION,
AMERICAN TRAFFIC SOLUTIONS, INC.,
and PLATEPASS LLC

Defendants.

Civil Action No. 1:10-cv-00359-NLH-KMW

**DECLARATION OF JEFFREY D. DAHL REGARDING
ADMINISTRATION AND NEWSPAPER ADVERTISING COSTS**

I, Jeffrey Dahl, pursuant to 28 USCS § 1746, declare as follows:

1. My name is Jeffrey D. Dahl. I am over twenty-one years of age, and am fully competent to make the statements contained in this declaration.
2. I am the President of Dahl Administration who the Court has appointed as Claims Administrator in the captioned class action.
3. I submit this declaration in order to provide the Court with information I have on the amount of the costs of administration for the Court's use in considering Class Counsel's fee petition and setting a fee award. I am familiar first hand with the cost of the administration, both projected and actual-to-date accrual of charges.
4. Dahl Administration has entered into an agreement with the defendants in this matter to provide the notice and settlement administration in accordance with the Settlement Agreement before the Court. The administration contract is confidential but will be provided to the Court under seal if directed by the Court to submit a copy.

5. I am, however, able to disclose to the Court that the total expected settlement administrative fees based on 1,663,248 Class Members is \$1,035,000 or \$.62 per Class Member. This amount includes the cost of direct-mailed class notification, which was sent to 1,663,248 Class Members on July 24, 2013, the newspaper insertions ordered by the Court, claims processing, and distribution of settlement benefits.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of September, 2013.

A handwritten signature in black ink, appearing to read "Jeffrey D. Dahl". The signature is written in a cursive, slightly slanted style.

Jeffrey D. Dahl