

**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. 1153

**NOTICE OF FILING OF PROPOSED REDACTED VERSION OF THE  
MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER  
AUTHORIZING AND APPROVING THE DEBTORS' (I) KEY EMPLOYEE  
INCENTIVE PLAN AND (II) EMPLOYEE INCENTIVE PLAN**

PLEASE TAKE NOTICE that, pursuant to Rule 9018-(d)(ii) of the Local Rules of Bankruptcy Practice and Procedures of the United States Bankruptcy Court for the District of Delaware, the above-captioned debtors and debtors in possession have today filed the attached proposed redacted version of the *Motion of the Debtors for Entry of an Order Authorizing and Approving the Debtors' (i) Key Employee Incentive Plan and (ii) Employee Incentive Plan* [D.I. 1153]<sup>2</sup> with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801.

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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, for which joint administration for procedural purposes has been requested, 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' claims and noticing agent at <https://restructuring.primeclerk.com/hertz>.

<sup>2</sup> Contemporaneously herewith, the Debtors have filed the *Motion of the Debtors for Entry of an Order Authorizing the Debtors to Redact Confidential Information in the Debtors' Motion Authorizing and Approving the Debtors' (i) Key Employee Incentive Plan and (ii) Employee Incentive Plan*.

Dated: August 27, 2020

/s/ Brett M. Haywood

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*Co-Counsel to the Debtors and  
Debtors-in-Possession*

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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)

**Objection Deadline: Sept. 10, 2020 at 4:00 p.m.**

**Hearing Date: Sept. 17, 2020 at 1:00 p.m.**

**NOTICE OF MOTION**

**PLEASE TAKE NOTICE** that on August 27, 2020, the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned cases filed *Debtors’ Motion for Entry of an Order Authorizing and Approving (i) Key Employee Incentive Plan and (ii) Employee Incentive Plan* (the “**Motion**”) with the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

**PLEASE TAKE FURTHER NOTICE** that objections or responses, if any, to the relief requested in the Motion must be in writing and be filed with the Bankruptcy Court on or before **September 10, 2020 at 4:00 p.m. (Eastern Time)** (the “**Objection Deadline**”) and shall be served on: (a) the undersigned co-counsel to the Debtors; (b) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Linda Richenderfer, Esq.); and (c) counsel to the official committee of unsecured creditors appointed in these Chapter 11 Cases.

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**PLEASE TAKE FURTHER NOTICE** that, in any objections or responses to the Motion are received, a hearing on the Motion will be held on **September 17, 2020 at 1:00 p.m. (Eastern Time)** before the Honorable Mary F. Walrath, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 N. Market Street, 5th Floor, Courtroom No. 4, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS OR RESPONSES TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.**

Dated: August 27, 2020

**RICHARDS, LAYTON & FINGER, P.A.**

*/s/ Brett M. Haywood*

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**Objection Deadline: Sept. 10, 2020 at 4:00 p.m. (ET)**  
**Hearing Date: Sept. 17, 2020 at 1:00 p.m. (ET)**

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING AND  
APPROVING THE DEBTORS' (I) KEY EMPLOYEE INCENTIVE PLAN AND  
(II) EMPLOYEE INCENTIVE PLAN**

The debtors and debtors in possession (collectively, the “**Debtors**,” and together with their non-Debtor affiliates, the “**Company**”) in the above-captioned cases (the “**Chapter 11 Cases**”) hereby file this motion (the “**Motion**”) for entry of an order substantially in the form attached hereto as **Exhibit A** (the “**Order**”) granting the relief described below. In support of the Motion, the Debtors submit the declaration of John England (the “**England Declaration**”), Managing Partner of Pay Governance LLC (“**Pay Governance**”), attached hereto as **Exhibit B**; the declaration of Michael Buenzow (the “**Buenzow Declaration**”), Senior Managing Director of FTI Consulting, Inc. (“**FTI**”) , attached hereto as **Exhibit C**; and the declaration of Matthew Pulliam (the “**Pulliam Declaration**”), Compensation Consultant for FTI, attached hereto as **Exhibit D**. In further support of the Motion, the Debtors, by and through their undersigned

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counsel, state as follows:

**PRELIMINARY STATEMENT**

1. The Debtors face extraordinary challenges that will be overcome only by the exceptional efforts of members of their senior and broader management team. These individuals are tasked with continuing to lead, operate, and/or rehabilitate the Debtors' business in the face of unprecedented challenges brought about by the COVID-19 pandemic, while simultaneously bearing the additional burdens of operating in chapter 11. Further compounding these challenges is the significant attrition that the Debtors have recently experienced, including the resignations of a Chief Executive Officer shortly before the Chapter 11 Cases and a Chief Financial Officer this month. These additional demands come at a time when the members of the Debtors' current management team face losing key components of their historical compensation (e.g., equity awards), with past incentives likely no longer achievable due to extraordinary circumstances beyond their control.

2. Just six months ago, no one could have anticipated that these would be the Company's needs or its management's responsibilities. As recently as February, management was focused on achieving an eleventh straight quarter of year-over-year revenue growth. By the middle of March, prospects for achieving that goal had evaporated as plummeting air travel rates and rental car utilization devastated the Company's revenue. In the face of the precipitous drop in revenue, members of the management team turned their attention to controlling costs and implemented a slate of cost-cutting measures, including temporary reductions in their own compensation and extensive reductions in the Debtors' workforce, both at the field and corporate levels.

3. As the challenges mounted, a shrinking number of employees were left to address them. Once the need for a comprehensive restructuring became clear, new burdens of preparing for, and then supporting, a chapter 11 filing were added to the remit of employees up and down the Debtors' management ranks. For those that have remained at the Company, the past five months have seen their workloads grow to unprecedented levels.

4. Now in the midst of these Chapter 11 Cases, it is essential that the Debtors' management remain motivated and be adequately incentivized to accomplish the new and difficult tasks before them. Their continued performance is critical to the success of the Debtors' reorganization efforts. To this end, the compensation committee (the "**Compensation Committee**") of the Company's board of directors (the "**Board**"), based on the advice of its independent advisors, developed two incentive compensation plans calibrated to maximize the enterprise value of these estates for the benefit of all stakeholders.

5. For certain key members of the Debtors' senior management team (the "**KEIP Participants**"), the Debtors seek approval of the Key Employee Incentive Program (the "**KEIP**"). Payments under the KEIP are conditioned on the Company achieving important, challenging objectives, and payment opportunities increase according to the Company's degree of success with respect to each applicable measure. Target individual award opportunities are expressed in cash and range from 50% to 100% of short-term incentive opportunities set for 2020 (prior to the onset of the pandemic) according to, among other things, the degree of responsibility each participant is expected to bear in the Debtors' restructuring efforts.

6. The Debtors also seek approval of an Employee Incentive Plan (the "**EIP**" and together with the KEIP, the "**Incentive Plans**") whose approximately 295 participants include other key members of the Debtors' broader management team (the "**EIP Participants**," and,

together with the KEIP Participants, the “**Participants**”). The EIP shares the same performance measures and scaling according to the Company’s performance as the KEIP. Additionally, for EIP Participants with titles of Vice President or higher, individual target awards are set in the same way as they are for KEIP Participants. For EIP Participants with titles lower than Vice President, the target award opportunities are set at either \$15,000 or \$10,000 according to the Participant’s role with the Company.

7. Each of the Incentive Plans is designed to reward the strong performance of Participants whose efforts will be critical to the Debtors’ operational and restructuring success. As discussed in the Buenzow Declaration, achieving any award threshold under the Incentive Plans will represent a significant challenge for the Participants. The better their performance, the greater the benefits that will flow to the Debtors and the greater the earnings opportunities that will become available to Participants. This true alignment of interests between the Debtors and their management will benefit the Debtors’ estates and all stakeholders in these Chapter 11 Cases.

8. Moreover, as described in the England Declaration and the Pulliam Declaration, the Incentive Plans are reasonable in cost. Whether measured in aggregate size or cost per Participant, the Incentive Plans are well positioned relative to similar plans that have been approved in other chapter 11 cases. In short, the Incentive Plans are reasonable and consistent with chapter 11 practice.

9. On August 26, 2020, the Compensation Committee, which counts no Participants among its members, approved and recommended that the Board approve the Incentive Plans. The Board, without the vote of any Participant, approved the Incentive Plans subject to this Court’s approval. Prior to filing the Motion, the Debtors discussed the Incentive Plans with the

official committee of unsecured creditors in the Chapter 11 Cases (the “**Creditors’ Committee**”) and the Incentive Plans reflect input from the Creditor’s Committee. The Creditors’ Committee has informed the Debtors that, subject to completion of certain due diligence with respect to the performance goals, the Creditors’ Committee supports the Incentive Plans and the relief sought by this Motion.

10. For these reasons, and as more fully set forth below, the Debtors request that the Court authorize the Debtors to implement the Incentive Plans.

**JURISDICTION, VENUE AND PREDICATES FOR RELIEF**

11. This Court has jurisdiction to consider this Motion under 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 (Sleet, C.J.). This is a core proceeding under 28 U.S.C. § 157(b). Venue is proper in this District under 28 U.S.C. §§ 1408 and 1409.

12. The predicates for the relief requested are sections 105(a), 363 and 503(c) of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

13. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

## **BACKGROUND**

### **I. General Background**

14. On May 22, 2020 (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). 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. On June 11, 2020, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) appointed the Creditors Committee pursuant to section 1102 of the Bankruptcy Code. [D.I. 392]. No trustee or examiner has been appointed in these Chapter 11 Cases. To the best of the Debtors’ knowledge, the Debtors are paying undisputed postpetition trade payables in the ordinary course and are current on such payables that are not subject to bona fide dispute.

15. Additional background and information regarding the Company, including its business operations, its corporate and capital structure, its restructuring activities, and the events leading to the commencement of these Chapter 11 Cases, is set forth in detail in the *Declaration of Jamere Jackson in Support of Debtors’ Petitions and Requests for First Day Relief* [D.I. 28] (the “**First Day Declaration**”).

### **II. Background Specific to the Motion**

16. The Debtors have long used incentive pay to align the interests of their employees with those of the Company. From the C-suite to the rental counter, Hertz employees have historically been eligible to earn a substantial portion of their annual target compensation in performance-based pay, whether in the form of incentive pay (including equity awards) or sales commissions. For example, in 2019, Company executives with titles of Vice President or above were targeted to earn, on average, over 50% of their total annual compensation by achieving

performance thresholds, and non-executive corporate managers were targeted to earn, on average, approximately 14% of their total compensation in this way. Similarly, managers within the Company's two primary business units had opportunities to earn performance-based pay approaching, on average, 20% of salary. These corporate and business unit management plans had more than 1,100 participants in 2019 (when the Company's overall staffing levels were well above current levels). The reason that Hertz has historically maintained such a robust and comprehensive incentive pay program is simple: incentive pay can be a highly effective means of motivating employees at every level to drive achievement of Company objectives.

17. When the COVID-19 pandemic struck in March of 2020, the corresponding impact on travel made existing management incentive plans obsolete and ineffective. The cornerstones of a well-functioning management incentive program are (1) performance measures tied to valid corporate objectives; and (2) targets set to challenge employees while still being attainable. The pandemic impacted both of these aspects of the Company's existing management incentive programs.

18. First, the pandemic affected the Company's objectives. Prior to the pandemic, management incentives prioritized profitability and revenue growth as the Company sought to increase market share and expand into new businesses. When the pandemic devastated travel, the Company's objectives necessarily turned to extensive cost cutting, including by adjusting fleet and employment levels to better align with the new market environment. In short, the existing incentive plans no longer reflected the Company's top priorities.

19. Second, by the end of April, the pandemic's effects on revenue had rendered the 2020 incentive targets unachievable, through no fault of the Participants. In March and April alone, the Company's vehicle rental revenue was down from the same months in 2019 by 37%

and 79% respectively. This reduction in business was the equivalent of losing more than five weeks of revenue through the first four months of the year. As a result, regardless of their efforts or performance, most of the Company's managers had no hope of seeing any additional compensation at the end of 2020 based on the objectives set at the beginning of the year.

20. At the same time as their expected compensation went down, the burdens on the management team's remaining members grew, due both to substantial reductions in the Company's workforce and increased responsibilities. To reduce its labor expenses, the Company downsized its workforce by furloughing and/or terminating several thousand employees in March, April, and May 2020. At the corporate level, these actions resulted in some management roles being consolidated and many senior staff positions being eliminated. This left fewer managers with less support to handle an entirely new set of duties imposed by the pandemic.

21. The Debtors' workforce has also suffered losses through voluntary departures. Most notably, the Company's former Chief Executive Officer resigned shortly before the Petition Date and its former Chief Financial Officer resigned his title on August 14 to pursue an opportunity elsewhere (although he has agreed to stay on through September 11 to transition his role). Overall, through mid-August, the Debtors have lost nearly as many employees at the Director level and above in 2020 as they did in all of 2019.

22. The additional duties imposed on this reduced workforce have been substantial. First, the Company had to adapt to operating in the pandemic environment. As an essential industry, rental car counters remained open even as other businesses were closed over health concerns. This required that the Company act quickly to protect the health and safety of its customers, employees, and other stakeholders.

23. Second, the Company had to do the hard work of reducing its costs without compromising the quality of its products. This included revisiting relationships, agreements, strategies, and many of the fundamental assumptions under which the Company had been operating—all while grappling with the uncertainty of a pandemic with no end in sight.

24. Third, as cost-cutting proved inadequate to align expenses with reduced revenues, the Company's management had to prepare for and ultimately commence and prosecute these Chapter 11 Cases. For members of senior management most involved in the restructuring, the Chapter 11 Cases have amounted to a second job, with some reporting working more than twice the hours they did prior to the pandemic. Members of the lower management ranks likewise have taken on new burdens. From procurement managing uneasy vendors, to real estate juggling demands from landlords, to accounting and finance producing a constant stream of reports and studies, to human resources continuing to manage workforce adjustments, the Chapter 11 Cases have increased the workload in nearly every department of the Company. Just three months into these Chapter 11 Cases and with significant work to be done before a plan of reorganization can be developed and prosecuted, these demands are unlikely to subside soon.

25. The Company took an initial step to rebalance pay opportunities relative to increased workloads shortly before the Petition Date. On May 19, 2020, the Company entered into retention agreements with approximately 340 employees resulting in aggregate payments of approximately \$16.2 million.<sup>2</sup> Despite these payments, the overall compensation opportunities at Hertz remain below their historical levels and those of the Company's peers, and are inadequate to appropriately compensate employees relative to their pre-pandemic earning opportunities, their increased workloads, and competitive opportunities in the marketplace.

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<sup>2</sup> These payments are subject to surrender under certain circumstances where the employee leaves the Company before April 2021.

Moreover, the Company has no existing program to tie performance directly to the Company's new objectives in the face of the pandemic and its comprehensive restructuring process.

### **III. Development of the Incentive Plans**

26. Recognizing that providing appropriate incentives to managers tasked with meeting the Debtors' business and restructuring objectives would serve to maximize the value of the Debtors' estates, the Compensation Committee tasked its independent consultant, Pay Governance, with assistance from FTI and at the direction of White & Case, to develop recommendations for incentive plans for management level employees. The Incentive Plans reflect this work, as well as the input of the Compensation Committee, and discussions with the Creditors' Committee.

27. As noted above, the Incentive Plans were developed by the Compensation Committee based on the advice of its independent advisors. The Compensation Committee approved and recommended that the Board approve the Incentive Plans, and the Board approved the Incentive Plans without the vote of any Participants and subject to approval by this Court. In their review of the Incentive Plans, the Compensation Committee and Board were advised by the Debtors' advisors, who are independent. The Incentive Plans were developed by reference to historical programs for the Debtors and precedent programs for debtors with similar financial profiles or other relevant similarities to the Debtors. Appropriate metrics to rigorously align the incentives to key Company objectives were established based on recommendations by FTI in consultation with the Compensation Committee and the Company. Participants in the KEIP were established based on recommendations from Pay Governance with input from the Compensation Committee and the Company by reference to a framework developed by FTI and Pay Governance. Further refinements to the Incentive Plans were made based on comments

received from the Creditors' Committee and its professionals. Finally, the Creditors' Committee has informed the Debtors that, subject to completion of certain due diligence with respect to the performance goals, the Creditors' Committee supports the Incentive Plans.

#### **IV. Overview of the Incentive Plans<sup>3</sup>**

28. The KEIP and EIP are similar in design, differing only with respect to their Participants (roles and number) and the size of the compensation opportunities for Participants. Both are incentive plans with no purely retentive features. They both cover the same period—July through December of 2020 for most metrics, use the same metrics, set the same goals, and scale payments against performance in the same manner. Each of these features is described in greater detail below.

##### **A. Incentive Plan Participants**

###### ***i. KEIP Participants***

29. The fourteen individuals identified by title below, each of whom is a member of the Debtors' senior management team, are proposed to be KEIP Participants:

- Chief Executive Officer & President
- Executive Vice President, Revenue Management
- Executive Vice President General Counsel & Secretary
- Executive Vice President of Finance, Chief Financial Officer
- Executive Vice President of Finance, Chief Operational Finance and Restructuring Officer
- Executive Vice President, Global Sales
- Executive Vice President and Chief Information Officer

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<sup>3</sup> Subject to redaction for privacy of individual opportunity information and individual names, complete Incentive Plan descriptions are attached hereto as **Exhibit E** and **Exhibit F** (the "**Plan Documents**"). The descriptions of the Incentive Plans in this Motion are for convenience only and are qualified in their entirety by the Plan Documents. In the event of an inconsistency between the description of an Incentive Plan in this Motion and the applicable Plan Document, the terms of the applicable Plan Document shall control.

- Group President, Donlen
- Executive Vice President, Global Marketing and Customer Experience Officer
- Executive Vice President, North American Operations
- Interim CHRO and Senior Vice President, Human Resources
- Senior Vice President, Total Rewards
- Senior Vice President & Treasurer
- Senior Vice President, Strategy

30. As members of senior management, the KEIP Participants are critical to the Debtors' day-to-day operations, financial performance, and restructuring efforts. These individuals are responsible for executing the Debtors' strategy and ensuring achievement of the Debtors' overall goals. In addition to substantial day-to-day responsibilities, these executives have generally seen their workloads expand significantly as a result of the Chapter 11 Cases. Moreover, their compensation is currently far below market as a result of the loss of short term incentive pay opportunities resulting from the COVID pandemic and loss in the value of long-term equity compensation (earned and future).

31. Due to the scope of their authority, as well as their appointment by and/or reporting to the Debtors' board of directors, certain of the KEIP Participants would likely be considered "insiders" under section 101(31) of the Bankruptcy Code.

*ii. EIP Participants*

32. Approximately 295 employees are proposed to be EIP Participants, including persons holding titles of, or equivalent to, Senior Vice President (17), Vice President (48), Senior Directors (108), and Directors (122). These individuals perform important business functions that are critical to the Debtors' day-to-day operations. In addition to their day-to-day responsibilities, many have seen their workloads expand far beyond the scope of their prepetition duties as a result of the commencement of these Chapter 11 Cases. And, similar to the KEIP

Participants, many EIP Participants' compensation opportunities have fallen below market as a result of the pandemic's impact on the Company's existing incentive pay programs.

33. Despite their titles, and notwithstanding their importance to the Debtors' day-to-day operations, the EIP Participants do not control or dictate the Debtors' overall strategy. The EIP Participants (a) were not appointed or hired directly by the Debtors' board of directors, (b) do not exercise managerial control over, or have responsibility for, the Debtors' operations as a whole, and (c) do not direct the Debtors' overall corporate policy or governance. As such, the EIP Participants are not likely to be insiders within the meaning of such term in section 101(31) of the Bankruptcy Code.

#### **B. Incentive Plan Common Design Elements and Structure**

34. The KEIP and EIP both contain the following common design features:

- **Incentive Awards.** Subject to certain limitations, the KEIP and EIP Participants will become eligible for cash awards (the "**Incentive Awards**") payable following the conclusion of the Performance Period (defined below) based on the Company's performance relative to goals set with respect to the Metrics (defined below).
- **Performance Period.** The "**Performance Period**" is July 1, 2020 to December 31, 2020, except for the Fleet Utilization Metric, for which the Performance Period is August 1, 2020 to December 31, 2020.
- **Performance Metrics.** The Incentive Plans contain two sets of metrics: one for Participants whose primary responsibilities relate to the Company's U.S. RAC business (the "**Hertz Metrics**") and one for Participants whose primary responsibilities relate to the Donlen business (the "**Donlen Metrics**," and, together with the Hertz Metrics, the "**Metrics**"). The Metrics are weighted as indicated below, meaning that achievement of any particular Metric will result in an Incentive Award corresponding to the weighting percentage of the applicable total Individual Award Opportunity (defined below), scaled for degree of performance as further detailed below in the discussion of "Payout Ranges."
  - **Hertz Metrics.** The Hertz Metrics are: (1) Operating Cash Flow (30%), generally defined to embrace only operating receipts and expenses while excluding restructuring-related costs; (2) Airport Revenue (10%), generally constituting receipts at the Company's U.S. airport locations, and subject to downward adjustment of \$50 million if actual enplanements are less than 45% of the prior year enplanements over the measurement period, and adjusted upwards by \$50 million if actual enplanements are greater than 55% of the prior year enplanements over the

measurement period; (3) Off-Airport Revenue (10%), generally consisting of rental receipts at the Company's Hertz Local Edition locations; (4) Fleet Utilization (30%), generally representing the average proportion of vehicles on rent during the Performance Period; and (5) ABS Debt Paydown (20%), which relates directly to the Company's generation of cash to pay down debt through the sale of vehicles.

- **Donlen Metrics.** The Donlen Metrics are: (1) EBITDA (60%); and (2) revenue (40%).
- **Payout Ranges.** Payment of Incentive Awards will be scaled according to the degree of success the Company had in meeting its goals with respect to each Metric. To define the scaling, goals are described in terms of "Threshold," "Target," and "Reach." Below the Threshold level, no Incentive Award is paid (\$0) on account of the applicable Metric. At the Threshold level, Incentive Awards will be paid at 50% of the Target Award Amount (defined below). At the Target level, Incentive Awards will be paid at 100% of the Target Award Amount. At or above the "Reach" level, incentive awards will be paid at 125% of the Target Award Amount. Performance between Threshold and Target and Target and Reach will be calculated by linear interpolation between the points. By way of example, a Hertz Participant whose Individual Award Opportunity at Target Award Amount is \$10,000 would earn \$1,000 if the Company generated exactly the Target level of Off-Airport Revenue (weighted 10%) during the Performance Period. If, however, the Company earned Off-Airport Revenue at the midpoint between the Target level and the Threshold level, the same individual would earn \$750 (i.e., 75% of the Target Award Amount, representing the midpoint between Threshold payout of 50% and Target payout of 100%).
- **Goals.** The Threshold, Target, and Reach goals for the Metrics (the "Goals") are the performance levels that determine the scaled Incentive Award for each Metric, if any. These levels were set by the Compensation Committee based on recommendations from FTI and the Company, to present true challenges with respect to each Metric. The Goals for each Metric are as set forth in the following table:

<i>(\$s in millions)</i>	<b>Threshold</b>	<b>Target</b>	<b>Reach</b>	<b>Weight</b>
<b>Hertz Metrics</b>				
<i>Operating Cash Flow</i> <sup>4</sup>	(\$50)	(\$30)	\$30	30%
<i>Airport Revenue</i> <sup>5</sup> <i>(subject to adjustment)</i>	\$775	\$850	\$950	10%
<i>Off-Airport Revenue</i> <sup>6</sup>	\$675	\$750	\$850	10%
<i>Fleet Utilization %</i> <sup>7</sup>	60%	65%	70%	30%
<i>ABS Debt Paydown</i> <sup>8</sup>	\$4,100	\$4,200	\$4,400	20%
<b>Donlen Metrics</b>				
<i>EBITDA</i>	\$37	\$41	\$45	60%
<i>Revenue</i>	\$276	\$306	\$337	40%

<sup>4</sup> Operating Cash Flow is defined as the sum of Total Receipts (Line 4 of 13-week cash flow forecast, which includes Customer / Licensee Rental Receipts, Salvage, Claim, Disposal & Other Receipts), Total Disbursements (Line 16, which includes Payroll & Benefits, Location Rent & Concession Payments, License, Title & Registration Payments, Marsh Payments, Insurance Claim & Premium Payments, Sales & Use and Other Tax Payments, P-Card and Fuel Card Payments, Direct Operating, SG&A & Other Payments, Non-Fleet Capital Expenditures, Corporate Debt Interest & Financing Costs, and Other Misc. Cash Activity), and Chapter 11 items (Line 24) including Airport Authorities, Franchisees, Critical Vendors, Utilities Deposits, and US Trustee Fees but excluding Restructuring Professional Fees and Bond Surety payments / collateral postings per the Company's weekly cash-flow forecast, for the weeks-ending 7/10/2020 through 12/25/2020. For the avoidance of doubt, Operating Cash Flow excludes the ABS lease payment (Line 27).

<sup>5</sup> Airport Revenue is defined as total revenue at airport locations only. Threshold / Target / Reach levels to be reduced by \$50 million if actual Enplanements are less than 45% of the prior year Enplanements over the measurement period, and increased by \$50 million if actual Enplanements are greater than 55% of the prior year Enplanements over the measurement period. Enplanements metric is defined as unadjusted, domestic enplanements only per the United States Bureau of Transportation Statistics (see <https://www.transtats.bts.gov/TRAFFIC/> for data source).

<sup>6</sup> HLE / Off-Airport Revenue is defined as HLE Total Rental Revenue from July 1, 2020 through December 31, 2020.

<sup>7</sup> Fleet Utilization is defined as total US RAC fleet utilization for the Fleet Utilization measurement period. Fleet Utilization measurement period is defined as August 1, 2020 through December 31, 2020 (excludes July).

<sup>8</sup> ABS Debt Paydown based on settlement agreement to reach \$4.1B paydown by December 31, 2020 as implemented pursuant to D.I. 805 (the "**ABS Settlement Order**"). Amounts stated are cumulative vehicle disposition proceeds of Lease Vehicles (as such term is defined in the ABS Settlement Order) qualifying to count towards the targets set forth on Schedule I of the ABS Settlement Order (i.e., proceeds generated from June 1, 2020 through December 31, 2020). The Threshold requirement of \$4.1B must be reached by October 31, 2020 in order to be eligible for award payout below Target. Target and Reach goals to be deemed satisfied if applicable amounts are achieved by December 31, 2020.

- **Termination of Employment.** If a Participant's employment is terminated by the Company without "Cause" (as defined in the Plan Documents), or upon death or disability, the Participant will be entitled to a prorated portion, based upon the number of weeks worked within the Performance Period, of such Participant's Incentive Award (adjusted and scaled according to the Company's performance with respect to each applicable Metric). Severance obligations of the Company will further offset the amount of the Participant's Individual Award following termination without Cause. If a Participant's employment is terminated by the Company for Cause, any remaining unpaid portion of the Incentive Award will be forfeited.

**C. Individual Award Opportunities**

35. Each Participant's range of potential Incentive Award payments (the "**Individual Award Opportunity**") is a function of (i) the amount such Participant would be entitled to earn in the event that the Company achieved exactly Target level performance with respect to each Metric applicable to such Participant (such Participant's "**Target Award Amount**"), (ii) adjusted for actual performance of the Company with respect to each applicable Metric during the Performance Period. The Target Award Amount for each Participant is fixed at the outset as set forth below.

*i. KEIP Participant Target Award Amounts*

36. The Target Award Amounts for KEIP Participants are dollar amounts that represent between 50% and 100% of the Participants' target short-term incentive opportunities under the Company's original, pre-COVID 2020 incentive plans, depending upon Participant's expected involvement in, and criticality to the success of, the Debtors' restructuring efforts. Target Award amounts for KEIP Participants range from \$134,750 to \$1,260,000. Aggregate and average Threshold, Target, and Maximum award opportunities, assuming uniform performance across all applicable Metrics, under the KEIP are as follows:

	<b>Threshold Award Opportunity</b>	<b>Target Award Opportunity</b>	<b>Reach Award Opportunity</b>
<i>KEIP Aggregate</i>	\$2,161,588	\$4,323,175	\$5,403,969
<i>Average per Participant</i>	\$154,399	\$308,798	\$385,998

*i. EIP Participant Target Award Amounts*

37. Target Award Amounts are calculated for EIP Participants differently depending upon their level. Like KEIP Participants, Target Award Amounts for EIP Participants with a title of Vice President or higher are set at dollar amounts that represent a percentage of the Participants' target short-term incentive opportunities under the Company's original, pre-COVID 2020 incentive plans (between 50% and 100% depending upon the Participant). Awards at Target Award Amounts range from \$22,500 to \$200,000 for these EIP Participants.

38. Target Award Amounts for the other EIP Participants are set at \$15,000 for those with Senior Director or equivalent titles and at \$10,000 for those with Director or equivalent titles. Aggregate Individual Award Opportunities by title (or equivalent title) under the EIP, assuming uniform performance across all applicable Metrics, are as follows:

<b>Employee Group</b>	<b>No.</b>	<b>Average Salary</b>	<b>Threshold Award Opportunity</b>	<b>Target Award Opportunity</b>	<b>Reach Award Opportunity</b>
<i>Non-KEIP SVPs</i>	17	\$336,575	\$975,314	\$1,950,627	\$2,438,284
<i>VPs</i>	48	\$241,325	\$1,292,205	\$2,584,409	\$3,230,511
<i>Sr. Directors</i>	108	\$138,141	\$810,000	\$1,620,000	\$2,025,000
<i>Directors</i>	122	\$176,935	\$610,000	\$1,220,000	\$1,525,000
<b>EIP Total Award Values</b>			<b>\$3,687,518</b>	<b>\$7,375,036</b>	<b>\$9,218,795</b>
<b>Average Per Participant</b>			<b>\$12,500</b>	<b>\$25,000</b>	<b>\$31,250</b>

**V. Overall Plan Costs at Threshold, Target, and Reach**

39. Based upon the Target Award Amounts set for the Participants, the aggregate cost of the Incentive Plans would range from \$0, for below-Threshold level performance in each Metric, to \$5,849,106 for Threshold level, to \$11,698,211 for Target level, and to a maximum of \$14,622,764 for performance at or above the Reach level in each Metric. In the event that a Participant loses its right to participate in the Incentive Plans as a result of termination or otherwise, such Participant's Target Award Amount may be reassigned, in whole or in part, to new hires or to reflect the promotion of a current participant, with such reassigned Target Award Amount entitling the assignee to an Incentive Award based on actual performance with respect to the applicable Metrics. For the avoidance of doubt, Target Award Amounts will not increase as a result of such assignments and therefore will not increase the overall cost of the Incentive Plans.

**VI. Positioning of the Incentive Plans and Individual Awards Thereunder Relative to Market**

40. In designing the Incentive Plans, Pay Governance and FTI engaged in extensive benchmarking to ensure that the plans are reasonable relative to market in all respects. As described further in the England Declaration, Pay Governance benchmarked Individual Award Opportunities aggregated with Participants' overall 2020 compensation and benchmarked their total reward opportunities against individual opportunities offered by industry peers. To evaluate the overall size and other characteristics of the program, FTI benchmarked the Incentive Plans against programs approved in other large chapter 11 cases specifically identified as relevant to the Debtors' Chapter 11 Cases. As discussed in greater detail in the Pulliam Declaration, this group consisted of 16 large companies that are similar in size or sector to the Debtors or were affected by the COVID-19 pandemic (the "**Bankruptcy Peer Group**"). The Debtors' proposed

Individual Award Opportunities, overall Incentive Plan sizing, and Metrics were also reviewed, approved and recommended by the Compensation Committee and approved the Company's Board of Directors.

**A. Reasonableness of the KEIP**

41. As set forth in the England Declaration, the KEIP is reasonable in light of competitive market practice for non-bankruptcy entities representing both the historical comparison group used by the Company and potential alternative employers for the Debtors' employees. Assuming the KEIP is approved, the KEIP Participants' total direct compensation at target—consisting of base salary, pre-petition retention bonuses and target KEIP payouts—would fall approximately 34 percent below the market median and approximately 24 percent below historical pay, on average. If the value of the KEIP is annualized—i.e. assessing compensation opportunities during the six month Performance Period as an annual rate—total direct compensation to KEIP Participants at target would fall approximately 16 percent below market median and approximately 3 percent below historical pay.

42. As set forth in the Pulliam Declaration, individual KEIP opportunities are also reasonable relative to the Bankruptcy Peer Group. Even after adjusting for differences in measurement periods, at Reach, the KEIP Individual Award Opportunities fall between the 32nd and 48th percentiles for the same positions within the Bankruptcy Peer Group.

43. The KEIP is also reasonable on a total cost basis when compared to incentive plans approved in the Bankruptcy Peer Group. After adjusting for differences in measurement periods, the KEIP's total aggregate cost is in the 35th percentile at Threshold, 50th percentile at Target, and 44th percentile at Reach. The average cost per KEIP Participant of the KEIP at Reach is in the 11th percentile.

44. The absence of an incentive opportunity for the KEIP Participants would significantly reduce the competitiveness of the Debtors' compensation structure, which in turn could negatively impact the Debtors' ability to motivate the KEIP Participants to achieve desired business objectives. Without the KEIP, 2020 pay opportunities for the KEIP Participants are estimated to be approximately 52 and 45 percent below market median and their own historical pay levels, respectively.

**B. Reasonableness of the EIP**

45. As set forth in the England Declaration, the EIP is reasonable in light of the Debtors' historical comparison group. If the EIP is approved, at Target, the EIP Participants with titles of Vice President or above would receive total direct compensation—consisting of base salary, prepetition retention bonuses, and Target EIP awards—between 15 to 22 percent below market median and historical pay on average. Award opportunities at Target levels for EIP Participants that are Senior Directors, Directors and similar level titles will align total direct compensation more closely with market and historical pay norms.

46. As set forth in the Pulliam Declaration, the total cost of the EIP is also reasonable on a total cost basis when compared to the cost of similar employee incentive plans of the Bankruptcy Peer Group. After adjusting for differences in measurement periods, the EIP's total aggregate cost at Reach is only in the 43rd percentile.

47. The absence of an incentive opportunity for the EIP Participants would significantly reduce the competitiveness of the Debtors' compensation structure, which in turn could negatively impact the Debtors' ability to motivate current management to achieve desired business objectives. Without the EIP, 2020 pay opportunities for EIP Participants with titles of Vice President and above would be positioned at approximately 28 to 38 percent below market

median and historical pay. For Senior Directors, Directors and similar level titles, absent the EIP, 2020 pay opportunities would be positioned approximately 4 to 19 percent below market median and historical pay.

## **VII. The Incentive Plans Are Designed to Drive the Company's Key Objectives**

48. As summarized above, Incentive Awards are payable under each of the Incentive Plans only upon the Debtors' achievement of certain operational and financial performance goals with respect to the applicable Metrics through the end of 2020. The Metrics and performance goals were established by the Compensation Committee in consultation with FTI. As set forth in greater detail in the Buenzow Declaration, the Metrics all relate to important operational objectives of the Debtors, and achievement of the performance goals will require substantial effort from the KEIP and EIP Participants. Importantly, the performance goals were developed to be challenging even at Threshold while not being so challenging as to be unrealistic or unattainable, in each case with the objective of creating meaningful incentives.

### **BASIS FOR RELIEF**

#### **I. Applicable Legal Standards**

49. While section 503(c)(1) of the Bankruptcy Code imposes certain restrictions on retention bonuses paid to insiders in bankruptcy, those restrictions do not apply here because the Incentive Plans are performance-based incentive plans and the EIP does not extend to insiders. 11 U.S.C. § 503(c)(1). Rather, the Incentive Plans are consistent with the Debtors' historical practice and industry practice, and thus are ordinary course transactions that, pursuant to section 363 of the Bankruptcy Code, do not require court approval. 11 U.S.C. § 363(a). To the extent the Incentive Plans are outside of the ordinary course of the Debtors' business, they are

appropriate under sections 363(b) and 503(c)(3) as a sound exercise of the Debtors' business judgment and justified by the facts and circumstances of these Chapter 11 Cases.

**II. The Incentive Plans Are Not Retention Plans but Instead Are Specifically Tailored to Accomplish Business and Reorganization Objectives; Section 503(c)(1) Is Therefore Inapplicable.**

50. Section 503(c)(1) of the Bankruptcy Code prohibits payments to “an insider of the debtor for the purpose of inducing such person to remain with the debtor’s business” unless certain stringent standards are met. 11 U.S.C. § 503(c)(1). Thus, by the statute’s plain language, section 503(c)(1) pertains solely to *retention* plans of *insiders* and does not apply to performance-based incentive plans. *See In re Global Home Prods., LLC*, 369 B.R. 778, 785 (Bankr. D. Del. 2007) (“The Court is fully satisfied on the basis of the facts presented that Debtors are asking it to approve incentive, not retention plans and, therefore, § 503(c) does not come into play.”); *see also In re Velo Holdings*, 472 B.R. 201, 209 (Bankr. S.D.N.Y. 2012) (finding section 503(c)(1) inapplicable if an incentive plan is primarily incentivizing).

51. In determining whether an employee compensation plan is primarily incentivizing, courts consider whether the plan is “designed to motivate insiders to rise to a challenge or merely report to work.” *In re Hawker Beechcraft*, 479 B.R. 308, 313 (Bankr. S.D.N.Y. 2012). This analysis recognizes that all compensation, to some degree, has a retentive effect. *In re Global Home Prods., LLC*, 369 B.R. 778, 786 (Bankr. D. Del. 2007) (“The fact . . . that all compensation has a retention element does not reduce the Court’s conviction that [the] Debtors’ primary goal [is] to create value by motivating performance.”); *In re Dana Corp.*, 358 B.R. 567 at 584 (Bankr. S.D.N.Y. 2006) (“However, as noted, this Court also opined that incentivizing plans with some components that arguably have a retentive effect do not necessarily violate section 503(c).”). Instead, the focus remains on whether the plan is, on the

whole, incentivizing in nature by demanding a “stretch” or a “reach” before an award opportunity is achieved. *Id.* at 581.

*i. The KEIP Does Not Implicate Section 503(c)(1) Because It Is Primarily Incentivizing.*

52. The Debtors recognize at least some of the KEIP Participants are likely insiders as defined under the Bankruptcy Code. However, because the KEIP is truly an incentive plan, section 503(c)(1) of the Bankruptcy Code does not apply. The KEIP does not contain purely retentive elements—KEIP Participants will not earn awards merely for maintaining their employment for a certain period of time. Instead, the KEIP provides award opportunities to KEIP Participants only if the Company achieves the Threshold or higher levels of performance with respect to the applicable Metrics. Moreover, the efforts of the KEIP Participants will be critical to whether the Debtors achieve the Goals. To earn Incentive Awards, Participants must work together in order to ensure that the Debtors’ strategies balance the various considerations represented by each of the Metrics in order to maximize overall enterprise value. The Metrics are specifically designed to align the incentives of the Debtors’ management team with the important objectives of the Company, such as cash flow, airport revenue, off-airport revenue, fleet utilization, and ABS debt paydown for the North American RAC business, and conventional revenue and EBITDA measures for the Donlen business. The Goals are set at levels that will, if attained, generate considerable value for the Company and will require the hard work of the KEIP Participants to accomplish. Simply “show[ing] up” will not result in the attainment of these Goals.

53. Additionally, the Company’s historical practice of successfully driving achievement through incentive pay provides further evidence of the KEIP’s non-retentive nature. *See In re Global Home Prods*, 369 B.R. at 786 (“The Court is wholly satisfied, and so finds, that

the Plans are primarily incentivizing and only coincidentally retentive because Debtors employed virtually identical plans prepetition when retention was not the motive.”); *In re Velo Holdings*, 472 B.R. at 213 (noting, as evidence of plan’s incentivizing nature, that “in previous years, the Debtors utilized revenue and EBITDA targets as a means for incentive-based pay for their employees”). As discussed in the England Declaration, the Debtors have historically offered incentive-based compensation to their senior management group, establishing a practice and culture of pay for performance. Moreover, the pay opportunities from the KEIP will likely still provide KEIP Participants total direct compensation that is less than their historical pay levels and opportunities at peer companies. Thus, the KEIP is not a “pay to stay” bonus.

54. The KEIP is also similar to insider compensation plans found to be primarily incentivizing in the Bankruptcy Peer Group. As set forth in the Pulliam Declaration, while measures such as revenue and EBITDA are common in incentive plans, difficulties in projecting these measures in the post-COVID environment have led companies to design programs around a broader range of performance metrics. Sensitive to these considerations, the Compensation Committee, in consultation with FTI, carefully considered the Company’s facts and circumstances in devising the Metrics tied to factors that will drive value for the Debtors and setting Goals to be truly incentivizing for the Participants and value-creating for the Debtors. For example, an adjustment to the Airport Revenue Metric Goal based on actual rates of air travel during the Performance Period, which cannot be accurately predicted now, reflects Company’s desire to compensate management for performance that is reasonably within its control and not penalize it for that which is not.

*ii. The EIP Participants Are Not “Insiders” and Thus the EIP Is Not Subject to Section 503(c)(1).*

55. For the same reasons that the KEIP is an incentive plan, the EIP, which employs the same Metrics and Goals, is too. Accordingly, the EIP could be approved without regard to the insider or non-insider status of the EIP Participants. However, even if the EIP were a retention plan (which it is not) rather than an incentive plan (which it is), it could still be approved because the EIP Participants are not insiders of the Debtors.

56. Section 101(31) of the Bankruptcy Code provides that where a debtor is a corporation, “insiders” include any (i) director of the debtor, (ii) officer of the debtor, [or] (iii) person in control of the debtor . . . .” 11 U.S.C. § 101(31)(B). An employee’s job title, alone, does not make such employee an “insider” as defined by the Bankruptcy Code. *In re Foothills Tex., Inc.*, 408 B.R. 573, 574-75 (Bankr. D. Del. 2009) (“Just as there may be non-statutory insiders that fall within the definition of an insider but are outside of the enumerated categories, there may be persons that fall within the enumerated categories but do not meet the definition of the category.”). Instead, the relevant inquiry is whether a person is taking part in setting the corporate policy of the debtor. *See id.*; *see also In re Velo Holdings*, 472 B.R. at 208 (noting an employee may be an “insider” if such employee “exercise[s] sufficient authority over the debtor so as to unqualifiably dictate corporate policy and the disposition of corporate assets”). Thus, while a person holding an “officer” title may in certain circumstances presumptively be an “insider,” that presumption may be rebutted with “evidence sufficient to establish that the officer is, in fact, not participating in the management of the debtor” or dictating corporate policy. *In re Foothills Tex.*, 408 B.R. at 574-75.

57. Although certain of the EIP Participants hold titles such as “vice president,” “senior director,” or “director,”<sup>9</sup> the Debtors do not believe that any of the EIP Participants are insiders. The Debtors operate a large and complex enterprise with over 18,000 employees in North America and multiple corporate levels. Because the EIP Participants perform critical functions and oversee other employees, the Company gives the EIP Participants vice president or director titles. However, none of the EIP Participants have discretionary control over substantial budgetary amounts or significant control with respect to the Debtors’ corporate policies or governance. *See In re Borders Grp. Inc.*, 453 B.R. 459, 469 (Bankr. S.D.N.Y. 2011) (noting that “[c]ompanies often give employees the title ‘director’ or ‘director-level,’ but do not give them decision-making authority akin to an executive” and concluding that certain “director level” employees in that case were not insiders); *cf. In re Foothills Tex.*, 408 B.R. at 584 (finding presumption not rebutted where employees of a small company with “vice president” titles were given “broad responsibilities over significant aspects of the Debtors’ business” and thus “clearly [were] participating in the management of the Debtors”). Therefore, the EIP Participants are not “insiders” of the Debtors, and the restrictions of section 503(c)(1) of the Bankruptcy Code are inapplicable to the EIP.

58. To the extent that an EIP Participant is an insider of the Debtors, such person would, by definition, have substantial involvement of the overall management and policy of the Debtors. *See In re Foothills Tex.*, 408 B.R. at 575. The EIP is unquestionably incentivizing as to such persons and should be approved for the same reasons that the KEIP should be approved.

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<sup>9</sup> For the avoidance of doubt, persons holding titles including the word “director” are not members of the Company’s Board of Directors but instead are managerial employees generally ranking below vice presidents in the Company’s organizational structure.

**III. The Incentive Plans Are Ordinary Course Transactions Under Section 363(c) of the Bankruptcy Code.**

59. Whether a transaction falls in the ordinary course of business of a debtor's business is determined by whether it is consistent with industry practice (a vertical test) and is it consistent with the company's historical practice (a horizontal test). *See In re Nellson Nutraceutical*, 369 B.R. 787, 797 (Bankr. D. Del. 2007) (applying vertical and horizontal test and approving of employee incentive plan). Both of these tests are met here.

*i. The Incentive Plans Are Consistent with Industry Comparables and Thus Satisfy the Horizontal Test.*

60. The horizontal test "is whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry." *Id.* The KEIP and EIP satisfy the horizontal test because incentive-based structures are commonly employed in the industry and their size is consistent with the programs employed in the industry. *See In re Blitz U.S.A. Inc.*, 475 B.R. 209, 214 (Bankr. D. Del. 2012) (finding horizontal test satisfied where proposed incentive plans were "common to the industry" and "in line with the bonus structures of other similar companies"). As set forth in the England Declaration, incentive programs such as the Incentive Plans are customarily used by similarly-situated companies to drive financial performance and the attainment of key business goals. As discussed above, on average, total direct compensation for KEIP Participants assuming Target level payouts for each Metric would be positioned below market median and historical pay when compared against historical industry peers. Total direct compensation for EIP Participants assuming Target level payouts for each Metric would, on average, be positioned below market median for Vice Presidents and above and would align with the market for Senior Directors, Directors, and similar level titles.

61. The Incentive Plans are also consistent with programs approved in the Bankruptcy Peer Group. The individual KEIP opportunities are consistent with the earning opportunities of individuals with similar positions within the Bankruptcy Peer Group. Moreover, the maximum total aggregate costs of the KEIP and EIP fall below median relative to the Bankruptcy Peer Group. Finally, the earning thresholds and Metrics are also consistent with, or more conservative than, the Bankruptcy Peer Group. Therefore, the Incentive Plans satisfy the horizontal test.

***ii. The Incentive Plans Are Consistent with Company Practice and thus Satisfy the Vertical Test.***

62. Under the vertical test, “the touchstone of ordinariness is the interested parties’ reasonable expectations of what transactions the debtor in possession is likely to enter in the course of business.” *Id.* Thus, a debtor’s pre-petition business practices and conduct is the primary focus of the vertical analysis. *Id.* Here, the Debtors have historically offered incentive-based cash awards to their managers at every level based on the achievement of certain performance targets and the targets for the KEIP and EIP represent a continuation of the prepetition practice of broad-based employee incentive opportunities. The Incentive Plans are also within the range of the Debtors’ prepetition practice in award amounts, as no individual Target Award Amount exceeds 100% of any individual’s corresponding 2020 short-term incentive (as may be adjusted for changes in role). Thus, the vertical test is also satisfied.

***iii. The Incentive Plans Should be Approved as Within the Ordinary Course of the Debtors’ Business***

63. If an incentive plan is in the ordinary course, then the court will not disturb it “provided that the conduct involves a business judgment made in good faith upon a reasonable basis.” *In re Nellson Nutraceutical*, 369 B.R. at 799; *see also In re Blitz USA*, 475 B.R. 209, at

215 (Bankr. D. Del. 2012) (“Because the Bonus Plan is an ordinary course transaction, we need only see if it was taken in good faith and with sound business judgment.”); *In re Mesa Air Group, Inc.*, 2010 Bankr. LEXIS 3334, at \*8-9 (same). As discussed further in the Buenzow Declaration, the Incentive Plans were developed with the advice of the Debtors’ advisors, approved and recommended by the Compensation Committee, and approved by the Debtors’ Board. The design and structure of the Incentive Plans was informed by a robust benchmarking analysis conducted by Pay Governance and FTI. The Incentive Plans serve a sound business purpose as they are intended to incentivize the Debtors’ key executives and other managers to work towards the new business objectives by offering such individuals the opportunity to share in the Company’s success in achieving them. Without the Incentive Plans, the Debtors’ financial performance could be negatively impacted as employees may not be sufficiently incentivized to achieve business objectives. The Incentive Plans should be approved as ordinary course transactions.

#### **IV. The Incentive Plans Are Reasonable Exercise of the Debtors’ Business Judgment Under Section 363(b) of the Bankruptcy Code.**

64. To the extent the Incentive Plans are outside the ordinary course of the Debtors’ business, they should be approved pursuant to section 363(b)(1) of the Bankruptcy Code because they are justified by a “sound business purpose.” 11 U.S.C. § 363(b); *see also Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (affirming bankruptcy court’s approval of employee incentive programs pursuant to section 363(b) as justified by a sound business purpose); *see also In re Mesa Air Grp., Inc.*, Case No. 10-10018, 2010 Bankr. LEXIS 3334, at \*3 (Bankr. S.D.N.Y. Sept. 24, 2010) (approving employee incentive plans under section 363(b)).

65. Implementation of the Incentive Plans is a proper exercise of the Debtors' business judgment and in the best interests of the Debtors' estates and all stakeholders in the Chapter 11 Cases. The Incentive Plans are the result of an independent analysis undertaken by the Compensation Committee with the advice of the Debtors' advisors. The Incentive Plans properly incentivize the Participants, who possess skills, knowledge, and experience critical to the Debtors' ability to operate in the ordinary course during the Chapter 11 Cases, generate value for the Debtors' stakeholders, and drive or otherwise support the Debtors' restructuring efforts.

66. The Incentive Plans result in Incentive Awards only where a challenging minimum Threshold Goal is achieved with respect to an applicable Metric. If the Threshold level of performance is not achieved, Participants are not entitled to an award. If greater performance is achieved, up through the very challenging Reach level, Incentive Awards increase. Thus, the Debtors' proposed Metrics and Goals will drive performance at all levels benefiting all parties if achieved. Moreover, absent the Incentive Plans, the Participants may be undercompensated and under incentivized. The Debtors cannot easily replace these employees without adversely affecting the Debtors' operations and restructuring process. Hiring and training replacements would be difficult and costly, thereby impacting the Debtors' restructuring objectives to the detriment of the estates and their stakeholders.

**V. The Incentive Plans Are Appropriate Under Section 503(c)(3) Because They Are Justified by the Facts and Circumstances of the Chapter 11 Cases**

67. Section 503(c)(3) of the Bankruptcy Code requires non-ordinary course transfers to managers, consultants, and others to be "justified by the facts and circumstances of the case." 11 U.S.C. § 503(c)(3). In determining whether incentive plans satisfy this standard, courts have generally applied section 363(b)'s "sound business judgment" test. *See, e.g., In re Velo Holdings, Inc.*, 472 B.R. at 212 (noting that the "'facts and circumstances' language of section

503(c)(3) creates a standard no different than the business judgment standard under section 363(b)"); *see also In re Mesa Air Grp., Inc.*, 2010 Bankr. LEXIS 3334, at \*3 (“[T]he Debtors have established that the Incentive Payments are “justified by the facts and circumstances of the case” under section 503(c)(3) as they are within the “sound business judgment” of the Debtors); *In re Alpha Nat. Res., Inc.*, 546 B.R. 348, 356 (Bankr. E.D. Va. 2016) (“a majority of courts . . . agree that the ‘facts and circumstances’ test of 503(c)(3) is identical to the business judgment standard under 363(b)(1)”).

68. In *Dana Corp.*, the court identified the following six factors as relevant to whether an incentive plan satisfies section 503(c)(3):

- i. Is there a reasonable relationship between the plan proposed and the results to be obtained, i.e., will the key employee stay for as long as it takes for the debtor to reorganize or market its assets, or, in the case of a performance incentive, is the plan calculated to achieve the desired performance?
- ii. Is the cost of the plan reasonable in relation to the debtor’s assets, liabilities and earning potential?
- iii. Is the scope of the plan fair and reasonable? Or does it discriminate unfairly in favor of certain employees?
- iv. Is the plan or proposal consistent with industry standards?
- v. What due diligence did the debtor undertake in determining the need for the plan and determining which key employees needed to be incentivized?
- vi. Did the debtor receive independent counsel in performing due diligence and in creating and crafting the incentive compensation?

358 B.R. at 576-77. Courts in the Third Circuit and beyond have adopted these factors. *See, e.g., In re Global Home Prods.*, 369 B.R. 778; *In re Res. Capital, LLC*, 491 B.R. 73, 85-86 (Bankr. S.D.N.Y. 2013). No single factor is dispositive, and a court has discretion to weigh each based on the facts and circumstances before it. Failure to satisfy any one factor may not be fatal to a plan, so long as the interests of the estates are sufficiently protected. *See In re Global Home*

*Prods.*, 369 B.R. at 781 (approving incentive plans despite failure to satisfy sixth *Dana Corp.* factor because plans were approved by compensation committee and board of directors).

*i. The Incentive Plans Are Appropriate Under Each of the Six Dana Corp. Factors:*

69. ***There Is a Strong Relationship Between the Incentive Plans and the Results to Be Obtained.*** As discussed in the Buenzow Declaration, the Incentive Plans are tied to the Debtors' ability to meet and exceed various financial and operational performance metrics, each of which is carefully tied to the Debtors' business objectives selected to support the stability and future success of the Debtors' business. Accordingly, the Incentive Plans ensure the Debtors achieve near-term operating performance and business objectives.

70. ***The Cost of the Incentive Plans Is Reasonable in Relation to the Debtors' Assets, Liabilities and Earning Potential.*** The estimated aggregate payout at Reach performance levels under the KEIP is \$5,403,969 and under the EIP is \$9,218,795. At these maximum payout levels, the KEIP and EIP are positioned at the 44th and 43rd percentiles, respectively, on an annualized basis. Payouts are to be earned only if the Participants achieve the challenging goals of meeting or exceeding performance goals with respect to applicable Metrics. Given the difficult-to-achieve goals set by the Incentive Plans, and the significant benefits to the Debtors' estates if those metrics are achieved, the cost of each of the Incentive Plans is reasonable and within market norms.

71. ***The Scope of the Incentive Plans Is Fair and Reasonable and Does Not Unfairly Favor Particular Employees.*** As discussed in the England Declaration, the KEIP and EIP Participants are a carefully selected group of individuals who drive Company performance and are critical to ensuring a successful outcome in the Chapter 11 Cases. The Participants were

selected after a comprehensive evaluation of how critical they are to the Debtors' business and reorganization efforts.

72. *The Incentive Plans Are Consistent with Industry Standards.* As discussed further in the England Declaration and Pulliam Declaration, to evaluate an appropriate compensation structure for the KEIP and EIP Participants, Pay Governance and FTI gathered external market compensation data, including companies in bankruptcy and companies not in bankruptcy. Pay Governance and the Compensation Committee determined that KEIP and EIP Participants are generally be compensated far below market levels for their positions in the absence of the Incentive Plans. The Participants' Target Award Amounts, if earned, would generally raise their total compensation to be closer to market medians and historical pay levels. Providing supplemental compensation opportunities is particularly appropriate considering the additional duties and challenges faced by the Participants and the difficulty of achieving the Goals with respect to each applicable Metric.

73. *The Debtors Undertook a Robust, Independent and Comprehensive Process to Determine the Incentive Plans Are Necessary to Incentivize Appropriate Participants.* The Compensation Committee ascertained a need to develop the Incentive Plans based on, among other things, the need to drive Company performance in the face of new challenges, the loss of compensation opportunities to management resulting from those challenges, and the new responsibilities placed on its management to address those challenges. It directed the Debtors' independent professionals to devise and propose incentive plans and considered the professionals' proposals in light of the Debtors' facts and circumstances. The professionals, in consultation with the Company, identified key corporate objectives and devised appropriate incentives and incentive mechanisms carefully tailored to achieve them. The Incentive Plans

were designed following a comprehensive and independent process that considered, among other things, historical pay opportunities at the Company, pay opportunities available at peer companies, and individual and aggregate sizing and other design concepts that bankruptcy courts have considered appropriate in other cases relevant to the Debtors’.

74. Based on this process, and based upon the assessments of their professionals, the Debtors’ Compensation Committee and their Board concluded that the Incentive Plans should be approved, subject to approval of this Court.

75. *The Debtors’ Relied Heavily on Independent Counsel in Performing Due Diligence and in Creating and Crafting the Incentive Plans.* The Debtors relied on Pay Governance and consultants from the executive compensation and restructuring groups at FTI to design and evaluate the Incentive Plans, and engaged their legal advisors regarding the development and implementation of the Incentive Plans. These advisors drew on their expertise to ensure that the Incentive Plans are reasonable and appropriately designed to drive corporate performance for the benefit of the Debtors and their stakeholders.

76. Because implementing the Incentive Plans will motivate the Debtors’ employees to the ultimate benefit of all parties in interest, the Incentive Plans reflect a sound exercise of the Debtors’ business judgment and are justified by the facts and circumstances of the Chapter 11 Cases, and therefore satisfy the requirements of section 503(c)(3) of the Bankruptcy Code.

#### **RESERVATION OF RIGHTS**

77. Nothing contained herein is intended or shall be construed as: (i) an admission as to the validity, amount or priority of any claim against the Debtors; (ii) a waiver of the Debtors’ rights to dispute any claim; (iii) a promise or requirement to pay any claim; (iv) a waiver of any claim or cause of action of the Debtors that exists against any entity; (v) a

ratification or assumption of any agreement, contract or lease under section 365 of the Bankruptcy Code; (vi) a waiver of limitation of the Debtors' rights under the Bankruptcy Code, any other applicable law or any agreement; or (vii) an admission or concession by the Debtors that any lien is valid, and the Debtors expressly reserve and preserve their rights to contest the extent, validity, or perfection, or seek avoidance of, any lien.

**WAIVER OF BANKRUPTCY RULE 6004(a) and 6004(h)**

78. To implement the foregoing successfully, and given the nature of the relief requested herein, the Debtors respectfully request a finding that (x) the notice requirements under Bankruptcy Rule 6004(a) are met and (y) the 14-day stay under Bankruptcy Rule 6004(h) is waived. The relief requested herein is essential to capitalize on relief that will substantially benefit the Debtors and their estates. Accordingly, the Debtors submit that, to the extent that Bankruptcy Rule 6004(h) applies, ample cause exists to justify a waiver of the fourteen-day stay.

**NOTICE**

79. Notice of this Motion has been provided to the following parties, or, in lieu thereof, their counsel: (i) the U.S. Trustee<sup>10</sup>; (ii) the U.S. Notes Agent; (iii) the Senior Credit Agreement Agent; (iv) the agent under the L/C Facility (v) the administrative agent under the ALOC Facility; (vi) the successor trustee under the Promissory Notes; (vii) the U.S. ABS Agent; (viii) the indenture trustee under the HFLF ABS Notes; (ix) the administrative agent and collateral agent under the U.S. Vehicle RCF; (x) the indenture trustee and collateral agent under the Hertz Canadian Securitization Notes; (xi) the lender under the Donlen Canada Securitization Program; (xii) the indenture trustee and collateral agent under the 2L Notes; (xiii) the ad hoc group of certain holders of the Company's Senior Notes (the "**Ad Hoc Noteholder Group**");

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<sup>10</sup> Capitalized terms used in this paragraph shall have the meanings given to such terms in the First Day Declaration.

(xiv) the Official Committee of Unsecured Creditors; (xv) the Internal Revenue Service; (xvi) the Securities and Exchange Commission; (xvii) the United States Attorney for the District of Delaware; (xviii) the state attorneys general for all states in which the Debtors conduct business; (xix) the Airport Authorities that are counterparties to the Agreements or counsel to such Airport Authorities, and (xx) any such other party entitled to receive notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no other or further notice need be provided.

**NO PRIOR REQUEST**

80. No previous request for the relief sought herein has been made by the Debtors to this Court or any other court.

**CONCLUSION**

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court grant the relief requested in this Motion and the Order, and such other and further relief as is just and proper.

Dated: August 27, 2020

**RICHARDS, LAYTON & FINGER, P.A.**

*/s/ Brett M. Haywood*

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**Exhibit A**

**Proposed Order**

**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: Docket No. \_\_\_\_**

**ORDER AUTHORIZING AND APPROVING THE DEBTORS’  
(I) KEY EMPLOYEE INCENTIVE PLAN AND (II) EMPLOYEE INCENTIVE PLAN**

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for entry of an order (this “**Order**”) pursuant to sections 363 and 506 of the Bankruptcy Code, authorizing and approving the Debtors’ key employee incentive program (the “**KEIP**”) and employee incentive program (the “**EIP**”) for non-insider participants as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief request therein in accordance with 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 (Sleet, C.J.); and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28. U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and Local Rules, and it appearing that no other or further

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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, for which joint administration for procedural purposes has been requested, 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’ 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.

notice need be provided; and hearing on the Motion having been held, if necessary, to consider the relief requested in the Motion (the “**Hearing**”), if any; and upon the England Declaration, the Buenzow Declaration, the Pulliam Declaration (each as attached to the Motion), and the First Day Declaration; and upon the record of the Hearing and due deliberation; and this Court having determined that the legal and factual bases set forth in the Motion and at the hearing establish good and sufficient cause for the relief granted herein; now, therefore, it is **HEREBY ORDERED THAT:**

1. The Motion is granted on the term set forth herein.
2. Pursuant to sections 363 and 503(c) of the Bankruptcy Code, the KEIP and EIP are each approved in their entirety.
3. The Debtors are authorized, but not directed, to take any and all actions necessary and appropriate to implement the Incentive Plans and to perform any and all obligations contemplated thereby, including making the payments contemplated thereunder.
4. The Debtors are authorized, but not directed, to reallocate or reassign, in whole or in part, Target Award Amounts surrendered by Participants terminated prior to the conclusion of the Performance Period to persons hired or promoted during the Performance Period. Upon such reallocation or reassignment, a Target Award Amount shall entitle the recipient to Incentive Awards calculated in accordance with the applicable Incentive Plan as a Participant according to the value of the assigned Target Award Amount. For the avoidance of doubt, the aggregate Target Award Amounts as of the conclusion of the Performance Period may not exceed the aggregate Target Award Amounts of \$11,698,211 authorized pursuant to this Order.

5. Absent further order of this Court, requested only after consultation with the Creditors' Committee, the Debtors shall not pay any further bonuses to any KEIP Participant in 2020 or for performance during 2020, other than under the Incentive Plans.

6. The Debtors are authorized to take all reasonable actions necessary or appropriate to effectuate the relief granted in this Order.

7. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: September \_\_\_\_\_, 2020

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Hon. Mary F. Walrath  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit B**

**England Declaration**

**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

**DECLARATION OF JOHN ENGLAND IN SUPPORT OF MOTION OF THE DEBTORS  
FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING  
THE DEBTORS' (I) KEY EMPLOYEE INCENTIVE PLAN, AND  
(II) EMPLOYEE INCENTIVE PLAN**

I, John England, under the penalty of perjury, declare as follows:

1. I make this declaration (the “**Declaration**”) in support of the *Motion of the Debtors for Entry of an Order Authorizing and Approving the Debtors’ (i) Key Employee Incentive Plan, and (ii) Employee Incentive Plan* (“*Motion*”).<sup>2</sup> Except as otherwise indicated, the matters set forth in this Declaration are based upon the following: (i) my personal knowledge with respect to the Debtors and the industry in which the Debtors operate, (ii) my discussions with the Debtors’ management and the Compensation Committee, (iii) my discussions with the Debtors’ consultants, FTI Consulting, Inc. and White & Case, LLP, (iv) my review of the Debtors’ relevant documents, or (v) my independent research and extensive experience in employee and executive compensation, including key employee compensation plans.

2. Based on my analysis, I have concluded that the incentive compensation

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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, for which joint administration for procedural purposes has been requested, 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 not otherwise defined herein shall have the meaning ascribed to them in the Motion.

contemplated by the Debtors' proposed Key Employee Incentive Plan (“**KEIP**”) and Employee Incentive Plan (“**EIP**”) and together with the KEIP, the “**Incentive Plans**”) is reasonable and consistent with market practice. This conclusion is based upon my analysis of the proposed incentive awards and participants. I performed a comparative analysis between the Debtors' compensation for its executives and employees and the compensation paid by comparable companies, and found that the Debtors' compensation is below market. Without an incentive opportunity, the competitiveness of the Debtors' compensation structure would be reduced, and could negatively impact the Debtors' ability to motivate current management to achieve desired business objectives.

3. I have reviewed the Motion, and I believe that it accurately reflects the facts and circumstances regarding development of the Incentive Plans. I believe that the Court's approval of the Incentive Plans is necessary to incentivize the Debtors' management to maximize the value of the Debtors' estates and minimizing disruption to their business operations.

**I. Qualifications and Background**

4. I am the Managing Partner of Pay Governance LLC (“**Pay Governance**”), which the Debtors have retained to serve as their employee and executive compensation consultant. I have more than 39 years of experience in the fields of employee and executive compensation.

5. Prior to May 22, 2020, when the Debtors filed the petitions that initiated the Chapter 11 Cases, the Debtors engaged Pay Governance to provide compensation consulting services. In that capacity, Pay Governance advised the Debtors on various compensation-related matters. The Debtors have also retained Pay Governance to continue to provide such services to the Debtors during these Chapter 11 Cases as an ordinary course professional.

6. On June 23, 2020, Pay Governance was retained by White & Case LLP (“W&C”) to assist W&C in providing legal advice to the Company relating to certain employee compensation matters in the Chapter 11 Cases (the “W&C Engagement”). Pursuant to the W&C Engagement, Pay Governance, through me and other partners and employees of Pay Governance, has assisted the Company regarding the design of the Incentive Plans.

## **II. Debtors’ Pre-COVID Incentive Structure**

7. The Debtors continue to operate their businesses and manage their properties as debtors in possession. In an attempt to incentivize management to perform at optimal levels during the Chapter 11 Cases, the Company’s Compensation Committee requested that Pay Governance, with assistance from FTI Consulting and at the direction of W&C, develop recommendations to restore competitive compensation opportunities for managers whose performance will impact the success of the Company’s restructuring efforts.

8. My review of the Debtors’ pre-bankruptcy compensation practices revealed that the Debtors have long used incentive pay to align the interests of their employees with those of the Company. In fact, most Hertz employees proposed as participants in either the KEIP or EIP have historically been eligible to earn a substantial portion of their annual target compensation in performance-based pay, whether in the form of incentive pay (including equity awards) or sales commissions.

9. For example, according to the Company’s records, in 2019, Company corporate executives with titles of Vice President or above were targeted to earn, on average, over 50% of their total annual compensation by achieving performance thresholds, and non-executive corporate managers were targeted to earn, on average, approximately 14% of their total compensation in this way. Similarly, managers within the Company’s two primary business units had opportunities to

earn performance-based pay approaching, on average, 20% of salary. These corporate and business unit management plans had more than 1,100 participants in 2019.

10. When the COVID-19 pandemic struck the Company in March of 2020, the Company's existing management incentive plans quickly became obsolete and ineffective. First, the pandemic affected the Company's objectives. Prior to the pandemic, management incentives prioritized profitability and revenue growth but, with the impact that the pandemic had on travel, the Company's goals now include several extensive cost cutting initiatives, including adjusting fleet and employment levels. Second, by the end of April 2020, the pandemic's effects on revenue had rendered the 2020 incentive targets unachievable, through no fault of the Participants. For instance, in March and April 2020, the Company's vehicle rental revenue was down from the same months in 2019 by 37% and 79%, respectively. Thus, regardless of their efforts or performance, most of the Company's managers stand no chance of receiving incentive compensation at the end of 2020 based on the objectives set at the beginning of the year.

11. While their expected compensation was decreasing, the burdens on the management team's remaining members continued to mount, due to increased responsibilities being delegated to them and substantial reductions in the Company's workforce (through furloughs and/or the Company's termination of thousands of employees in March, April and May 2020). At the corporate level, the workforce reductions led to roles being consolidated and many senior staff positions being eliminated.

12. In addition to the actions the Debtors took to reduce their workforce, the Debtors also suffered losses through voluntary departures, including the voluntary resignations of the Company's former Chief Executive Officer shortly before the Petition Date, and their former Chief Financial Officer, who has agreed to stay on through September 11, 2020 to transition his role.

Overall, through mid-August, the Debtors have lost nearly as many employees at the Director level and above in 2020 as they did in all of 2019. These departures throughout the management team have further compounded the Debtors' challenges, and the remaining executives are being asked to do more with, and for, less.

13. The additional duties imposed on this reduced workforce have been substantial. First, the Company had to adapt to operating in the pandemic environment, which required new procedures to protect the Company's employees and customers. Second, the Company had to focus on efforts to reduce costs, including revisiting relationships, agreements, strategies, and many of the fundamental assumptions under which the Company operated. Third, as it became clear that the Company's cost-cutting initiatives would not compensate for its reduced revenues, the Company's management had to prepare for and ultimately commence and prosecute these Chapter 11 Cases. For members of senior management most involved with the restructuring, the Chapter 11 Cases have amounted to a second job, with some reporting working more than twice the hours they did prior to the pandemic.

14. Because of the increased work and pressure on the Company's remaining executives and employees, and their dwindling hopes of receiving bonuses, on May 19, 2020, the Company entered into retention agreements with approximately 340 employees, resulting in aggregate payments of approximately \$16.2 million. Despite these payments, however, the overall compensation opportunities at Hertz remains below the Company's historic levels and are inadequate to appropriately compensate employees relative to competitive opportunities in the marketplace. Moreover, the Company has no existing program to tie performance directly to the Company's new objectives in the face of the pandemic and its comprehensive restructuring process.

**III. Development of the Incentive Plans**

15. The purpose of the Incentive Plans is to assist the Debtors in reaching key goals and in promoting the success of their business and restructuring efforts by aligning the incentives of the Company's key employees with the Company's key objectives.

16. During the Chapter 11 process, the Debtors' management team must be incentivized to simultaneously do the following: (i) continue to address the business challenges associated with operating during the COVID-19 crisis, (ii) sustain and further develop aspects of the business that have been less affected by the crisis, (iii) reduce their vehicle fleet to align with current demand, (iv) develop a strategy and financing structure that will allow the Debtors flexibility to expand their fleet when business returns, (v) develop a revised business plan for the post-COVID environment, (vi) operate subject to the constraints and obligations of the Bankruptcy Code, including by obtaining Court approval for non-ordinary course transactions and providing periodic reporting and other information to parties in interest; and (vii) develop, negotiate, obtain confirmation of, and consummate a comprehensive plan of reorganization.

17. The Incentive Plans, while developed in the mold of the Company's historical incentive plans, are intended to realign employee incentives with the Company's new business objectives by offering opportunities to share in the Company's success in achieving them.

18. The Incentive Plans were developed by the Compensation Committee based on the advice of its independent advisors. The Compensation Committee approved and recommended that the Board approve the Incentive Plans, and the Board approved the Incentive Plans without the vote of any Participants and subject to approval by this Court. In their review of the Incentive Plans, the Compensation Committee and Board were advised by the Debtors' advisors, who are independent. The Incentive Plans were developed by reference to historical programs for the

Debtors and precedent programs for debtors with similar financial profiles or other relevant similarities to the Debtors. Appropriate metrics to rigorously align the incentives to key Company objectives were established based on recommendations by FTI in consultation with the Compensation Committee and the Company. Participants in the KEIP were established based on recommendations from Pay Governance with input from the Compensation Committee and the Company by reference to a framework developed by FTI and Pay Governance. Further refinements to the Incentive Plans were made based on comments received from the Creditors' Committee and its professionals. Finally, the Creditors' Committee has informed the Debtors that, subject to completion of certain due diligence with respect to the performance goals, the Creditors' Committee supports the Incentive Plans.

#### **IV. Identifying Participants**

19. Participants in the KEIP were established based on recommendations from Pay Governance with input from the Compensation Committee and the Company by reference to a framework developed by FTI and Pay Governance. Participants in the EIP were determined by the Compensation Committee with input from the Company and in consultation with Pay Governance and FTI. Among other relevant considerations, Pay Governance analyzed the following issues to assist the Compensation Committee in determining the appropriate KEIP Participants:

- i. The employee's role in the Company and how important that role is to the Company;
- ii. How effectively the employee has been fulfilling its role;
- iii. Whether the employee is the sole employee in the Company who can perform the tasks associated with that role;
- iv. Whether the employee's individual performance is materially important to the Company's prospects for success;

- v. Whether the employee plays a significant role in the Company’s reorganization efforts;
- vi. Whether the employee’s departure would be materially disruptive to the Company’s business or reorganization efforts;
- vii. Whether the employee’s departure would result in a deficit in management or operational control with material value impact on the Company;
- viii. Whether it would be difficult for the Company to replace the employee;
- ix. Whether there is a “ready now” successor to the employee, who could reasonably satisfy the requirements of the role in the event of the employee’s departure;
- x. Whether the employee possesses mission-critical Company knowledge that is not otherwise documented or transferable in the event of the employee’s departure;
- xi. Whether the employee’s compensation level (total direct compensation, exclusive of proposed Plan incentives) is at-or-below market-competitive rates;
- xii. Whether the employee’s compensation level is in line with the tasks that the employee is performing;
- xiii. Whether the employee historically has received incentive compensation;
- xiv. If the employee historically has received incentive compensation, whether that aspect of the employee’s compensation has been impacted or threatened by the Chapter 11 Cases;
- xv. Whether the employee has an existing and valid job offer for alternative employment;
- xvi. Whether the employee possesses unique skills or abilities;
- xvii. The strength of the job market demand for employees with similarly skills and experience; and
- xviii. Whether the employee has a risk/impact score greater than or equal to 60, based on the following chart:

		Operational / Financial / Reputational Impact (10 is Highest)									
		1	2	3	4	5	6	7	8	9	10
Risk of Departure (9-10 are Existing Job Offer)	1	1	2	3	4	5	6	7	8	9	10
	2	2	4	6	8	10	12	14	16	18	20
	3	3	6	9	12	15	18	21	24	27	30
	4	4	8	12	16	20	24	28	32	36	40
	5	5	10	15	20	25	30	35	40	45	50
	6	6	12	18	24	30	36	42	48	54	60
	7	7	14	21	28	35	42	49	56	63	70
	8	8	16	24	32	40	48	56	64	72	80
	9	9	18	27	36	45	54	63	72	81	90
	10	10	20	30	40	50	60	70	80	90	100

20. Based on this analysis, the Compensation Committee identified fourteen members of the Debtors' senior management team, holding the titles below, as proposed KEIP participants (**"KEIP Participants"**):

- Chief Executive Officer and President
- Executive Vice President, Revenue Management
- Executive Vice President General Counsel & Secretary
- Executive Vice President of Finance, Chief Financial Officer
- Executive Vice President of Finance, Chief Operational Finance and Restructuring Officer
- Executive Vice President, Global Sales
- Executive Vice President and Chief Information Officer
- Group President, Donlen
- Executive Vice President, Global Marketing & Customer Experience Officer
- Executive Vice President, North American Operations
- Interim CHRO and Senior Vice President, Human Resources
- Senior Vice President, Total Rewards
- Senior Vice President & Treasurer
- Senior Vice President, Strategy

21. The KEIP Participants were identified as being critical to the Debtors' day-to-day operations, financial performance, and restructuring efforts. These individuals are responsible for executing the Debtors' strategy and ensuring that the Debtors achieve their overall goals. In addition to substantial day-to-day responsibilities, these executives have generally seen their workloads expand significantly as a result of the Chapter 11 Cases. Moreover, based on a recent comparative analysis, their compensation is below market as a result of the loss of short term incentive pay opportunities resulting from the COVID pandemic, and loss in the value of long-term equity compensation (earned and future).

22. To select EIP Participants, the Compensation Committee, with the assistance of the Debtors' advisors and the input of the Debtors' management, worked to identify employees whose work is important to the Debtors' business and whose performance would have the greatest impact

on the Debtors' Chapter 11 Cases, as well as those individuals whose job duties had been disproportionately affected by the Chapter 11 Cases, requiring them to undertake additional responsibilities and expend significantly more working hours than contemplated by the normal terms of their employment.

23. Approximately 295 employees are proposed EIP participants ("**EIP Participants**") and together with the KEIP Participants, the "**Participants**"). These individuals perform important business functions that are critical to the Debtors' day-to-day operations. Among the EIP Participants are Senior Vice Presidents (17), Vice Presidents (48), Senior Directors (108) and Directors (122). In addition to their day-to-day responsibilities, many of the EIP Participants have seen their workloads expand far beyond the scope of their pre-petition duties as a result of the commencement of these Chapter 11 Cases. And, similar to the KEIP Participants, many EIP Participants' compensation opportunities have fallen below market as a result of the pandemic and its impact on the Company's existing incentive pay programs. Notwithstanding their importance to the Debtors' day-to-day operations, Pay Governance has been advised that the EIP Participants do not control or dictate the Debtors' overall strategy, and that the EIP Participants (a) were not appointed or hired directly by the Debtors' board of directors, (b) do not exercise managerial control over, or have responsibility for, the Debtors' operations as a whole, and (c) do not direct the Debtors' overall corporate policy or governance.

24. Pursuant to the terms of the Incentive Plans, if a Participant's employment is terminated by the Company without "Cause" (as defined in the Plan Documents), or upon death or disability, the Participant will be entitled to a prorated portion, based upon the number of weeks worked within the Performance Period, of such Participant's Incentive Award (adjusted and scaled according to the Company's performance with respect to each applicable Metric). Severance

obligations of the Company will further offset the amount of the Participant's Individual Award following termination without Cause. If a Participant's employment is terminated by the Company for Cause, any remaining unpaid portion of the Incentive Award will be forfeited.

25. To maintain the appropriate incentive structure throughout the duration of the Incentive Plans, the Incentive Plans allow the Company to reallocate or reassign, in whole or in part, target award amounts surrendered by Participants to persons hired or promoted during the performance measurement period, provided that the combined aggregate target award amounts for the 2020 KEIP and 2020 EIP as of the conclusion of the performance measurement period may not exceed the aggregate target award amounts approved by the Board and the Bankruptcy Court.

**V. Setting Target Award Amounts**

26. KEIP and EIP Participants become eligible for cash awards (the "**Incentive Awards**") based on the Company's performance relative to certain performance goals, measured over a six-month period. Once the Participants, and their importance to the Company's new goals, were identified, Pay Governance advised and assisted the Compensation Committee to determine the appropriate target award amount for each Participant (such Participant's "**Target Award Amount**").

a. **KEIP Target Award Amounts**

27. The Target Award Amount for KEIP Participants are dollar amounts that represent between 50% and 100% of the KEIP Participant's target short-term incentive opportunities under the Company's original, pre-COVID 2020 incentive plans, depending upon the Participant's expected involvement in, and importance to the success of, the Debtors' restructuring efforts. The Target Award amounts for KEIP Participants range from \$134,750 to \$1,260,000. Aggregate and

average Threshold, Target and Maximum award opportunities, assuming uniform performance across all applicable Metrics, under the KEIP are as follows:

	<b>Threshold Award Opportunity</b>	<b>Target Award Opportunity</b>	<b>Reach Award Opportunity</b>
<i>KEIP Aggregate</i>	\$2,161,588	\$4,323,175	\$5,403,969
<i>Average/ Participant</i>	\$154,399	\$308,798	\$385,998

28. Under the Incentive Plans, payment of Incentive Awards will be scaled according to the degree of success the Company had in meeting its Goals. To define the scaling, Goals are described in terms of “Threshold,” “Target,” and “Reach.” At the Threshold level, Incentive Awards will be paid at 50% of the Target Award Amount. At the Target level, Incentive Awards will be paid at 100% of the Target Award Amount. At or above the “Reach” level, Incentive Awards will be paid at 125% of the Target Award Amount. Linear interpolation of the Incentive Awards will be applied for achievement of performance above the “Threshold” level and below the “Reach” level.

b. **EIP Target Award Amounts**

29. Target Award Amounts are calculated for EIP Participants differently depending upon their level. Like KEIP Participants, Target Award Amounts for EIP Participants with a title of Vice President or higher are set at dollar amounts that represent a percentage of the Participants’ target short-term incentive opportunities under the Company’s original, pre-COVID 2020 incentive plans (between 50% and 100% depending upon the Participant). Awards at Target Award Amounts range from \$22,500 to \$200,000 for these EIP Participants. Target Award Amounts for other EIP Participants are set at \$15,000 for those with Senior Director or equivalent titles and at \$10,000 for those with Director or equivalent titles. Aggregate Individual Award

Opportunities by title (or equivalent title) under the EIP, assuming uniform performance across all applicable Metrics, are as follows:

<b>Employee Group</b>	<b>No.</b>	<b>Average Salary</b>	<b>Threshold Award Opportunity</b>	<b>Target Award Opportunity</b>	<b>Reach Award Opportunity</b>
<i>Non-KEIP SVPs</i>	17	\$336,575	\$975,314	\$1,950,627	\$2,438,284
<i>VPs</i>	48	\$241,325	\$1,292,205	\$2,584,409	\$3,230,511
<i>Sr. Directors</i>	108	\$138,141	\$810,000	\$1,620,000	\$2,025,000
<i>Directors</i>	122	\$176,935	\$610,000	\$1,220,000	\$1,525,000
<b>EIP Total Award Values</b>			<b>\$3,687,518</b>	<b>\$7,375,036</b>	<b>\$9,218,795</b>
<b>Average Per Participant</b>			<b>\$12,500</b>	<b>\$25,000</b>	<b>\$31,250</b>

## **VI. Benchmarking Analysis**

30. The aggregate cost of the Incentive Plans would range from \$0, for below-Threshold performance in each Metric, to \$5,849,106 for Threshold level, to \$11,698,211 for Target level, and to a maximum of \$14,622,764 for performance at or above the Reach level in each Metric.

31. To ensure that the proposed Incentive Awards resulted in compensation that was commensurate with that paid by comparable companies, Pay Governance benchmarked Participants' total potential compensation for 2020, including reward opportunities under the Incentive Plans, by comparing such compensation to individual opportunities offered by industry peers. Our analysis confirms that the Incentive Awards are necessary to raise the Participants' compensation closer to market levels.

32. Separately, FTI benchmarked the Incentive Plans against similar programs approved in other bankruptcy cases specifically identified as relevant to the Debtors' Chapter 11 Cases and determined that the Incentive Plans were reasonable in that context, as well.

33. Based on Pay Governance’s benchmarking analysis, the total pay opportunities for KEIP Participants are reasonable. With the adoption of the proposed KEIP, the KEIP Participants’ total direct compensation at the “Target” level—consisting of base salary, pre-petition bonuses and target KEIP payouts—would fall, on average, approximately 34 percent *below* the market median and approximately 24 percent *below* historical pay.

34. If the value of the KEIP were annualized, total direct compensation to KEIP Participants at the “Target” level would fall approximately 16 percent *below* market median and approximately 3 percent *below* historical pay.

35. The absence of an incentive opportunity for KEIP Participants would significantly reduce the competitiveness of the Debtors’ compensation structure, which in turn could negatively impact the Debtors’ ability to motivate KEIP Participants to achieve desired business objectives. Without the KEIP, 2020 pay opportunities for KEIP Participants are estimated to be approximately 52 and 45 percent *below* market median and their own historical pay levels.

36. Similarly, Pay Governance conducted a benchmarking analysis of the EIP Participants’ compensation compared to the general industry market. The results of the benchmarking analysis vary based on the Participants’ level, but the analysis shows that, like the KEIP Participants, the EIP Participants’ proposed payouts are reasonable in comparison to the Debtors’ peers.

37. At the “Target” level, the EIP Participants with titles Vice Presidents and above would receive total direct compensation—consisting of base salary, pre-petition bonuses, and Target EIP awards—between 15 to 22 percent *below* market median and historical pay average. Award opportunities at the “Target” level for EIP Participants with Senior Director, Director, and

similar level titles will align total direct compensation more closely with market and historical norms.

38. The absence of an incentive opportunity for the EIP Participants would significantly reduce the competitiveness of the Debtors' compensation structure, which in turn could negatively impact the Debtors' ability to motivate current management to achieve desired business objectives. Without the EIP, 2020 pay opportunities for EIP Participants with titles of Vice President and above would be positioned at approximately 28 to 38 percent *below* market median and historical pay. For Senior Directors, Directors and similar level titles, absent the EIP, 2020 pay opportunities would be positioned approximately 4 to 19 percent *below* market median and historical pay.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: August 27, 2020  
New York, N.Y.

*/s/ John England*  
\_\_\_\_\_  
John England  
Managing Partner  
Pay Governance LLC

**Exhibit C**

**Buenzow Declaration**

**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

**DECLARATION OF MICHAEL BUENZOW IN SUPPORT OF MOTION OF THE  
DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING  
THE DEBTORS' (I) KEY EMPLOYEE INCENTIVE PLAN, AND  
(II) EMPLOYEE INCENTIVE PLAN**

I, Michael Buenzow, under the penalty of perjury, declare as follows:

1. I make this declaration (the “**Declaration**”) in support of the *Motion of the Debtors for Entry of an Order Authorizing and Approving the Debtors’ (i) Key Employee Incentive Plan, and (ii) Employee Incentive Plan* (“*Motion*”).<sup>2</sup> Except as otherwise indicated, the matters set forth in this Declaration are based upon the following: (i) my personal knowledge with respect to the Debtors, including the Debtors’ current finances and operations, and the industry in which the Debtors operate, (ii) my discussions with the Debtors’ management and the Compensation Committee, (iii) my discussions with the Debtors’ consultants, Pay Governance and White & Case, LLP, (iv) my review of the Debtors’ relevant documents, or (v) my independent research and extensive experience in financial restructuring, interim management, turnaround and management consulting.

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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, for which joint administration for procedural purposes has been requested, 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 not otherwise defined herein shall have the meaning ascribed to them in the Motion.

2. Based on my analysis, I have concluded that the metrics and goals established under the Debtors' proposed Key Employee Incentive Plan (“**KEIP**”) and Employee Incentive Plan (“**EIP**”) and together with the KEIP, the “**Incentive Plans**”) are reasonable and provide management with a financial incentive to operate efficiently and effectively toward the Company's new objectives. Based upon discussions with the Compensation Committee, members of management, Pay Governance and White & Case LLP, FTI developed recommended metrics to align compensation incentives to key Company objectives. The metrics, and the goals associated with them, require the Debtors' management teams to meet challenging milestones in order to receive incentive-based rewards. In my opinion, the Incentive Plans adequately and appropriately supplement the Company's pre-petition compensation programs to properly incentivize management and employees toward the Company's post-COVID goals.

3. I have reviewed the Motion, and I believe that it accurately reflects the facts and circumstances regarding development of the Incentive Plans. I believe that the Court's approval of the Incentive Plans is essential to maximizing the value of the Debtors' estates and minimizing further disruption to the Debtors' business operations.

**I. Qualifications**

4. I am a Senior Managing Director and Vice Chairman of Restructuring of FTI Consulting, Inc. (“**FTI**”), which Debtors have retained to serve as their restructuring advisor. FTI is a financial advisory services firm with offices throughout the United States, and it has extensive experience in providing restructuring services in and out of Chapter 11 proceedings.

5. I have more than twenty five (25) years of experience in the fields of financial restructuring, interim management, turnaround and management consulting.

## **II. Development of the Incentive Plans**

6. The Compensation Committee requested that Pay Governance, with assistance from FTI and White & Case, LLP, design incentive-based compensation plans that would restore competitive compensation opportunities for employees whose performance will impact the success of the Company's restructuring efforts. The Compensation Committee instructed that the Incentive Plans should reward management only upon the Company's achievement of challenging, pre-established performance objectives that will help to maximize the Company's value for the benefit of all stakeholders. The design and structure of the Incentive Plans was informed by a robust benchmarking analysis conducted by Pay Governance and FTI.

7. The KEIP and EIP are incentive-based, conditioning any Incentive Awards on the Company meeting certain performance metrics. They use the same metrics, set the same goals, scale payments against performance in the same manner and measure performance over the same period, from July 1, 2020 to December 31, 2020 for most metrics.

8. With advice from FTI, the Compensation Committee identified and approved metrics to measure employee and executive performance with respect to the Incentive Plans. The chosen metrics are challenging, even at the "Threshold" level, but also are realistic enough to provide a strong incentive for management to maximize the value of Debtors' estate. The relevant performance metrics and goals are explained in detail below.

9. The Incentive Plans were developed by the Compensation Committee based on the advice of its independent advisors. The Compensation Committee approved and recommended that the Board approve the Incentive Plans, and the Board approved the Incentive Plans without the vote of any Participants and subject to approval by this Court. In their review of the Incentive Plans, the Compensation Committee and Board were advised by the Debtors' advisors, who are

independent. The Incentive Plans were developed by reference to historical programs for the Debtors and precedent programs for debtors with similar financial profiles or other relevant similarities to the Debtors. As set forth below, appropriate metrics to rigorously align the incentives to key Company objectives were established based on recommendations by FTI in consultation with the Compensation Committee and the Company. Participants in the KEIP were established based on recommendations from Pay Governance with input from the Compensation Committee and the Company by reference to a framework developed by FTI and Pay Governance. Further refinements to the Incentive Plans were made based on comments received from the Creditors' Committee and its professionals. Finally, the Creditors' Committee has informed the Debtors that, subject to completion of certain due diligence with respect to the performance goals, the Creditors' Committee supports the Incentive Plans.

### **III. Setting Performance Metrics**

10. The Incentive Plans are based on financial metrics that relate to areas of significant priority for the Debtors. Appropriate metrics to rigorously align the incentives to key Company objectives were developed by FTI in consultation with the Company, and approved by the Compensation Committee. Because no one metric was sufficient to capture the complexity of the Debtors' business operations, the Incentive Plans use several metrics to achieve their incentivizing purpose.

11. The Incentive Plans contain two sets of metrics: one for Participants whose primary responsibilities relate to the Company's U.S. RAC business (the "**Hertz Metrics**") and one for Participants whose primary responsibilities relate to the Donlen business (the "**Donlen Metrics**," and, together with the Hertz Metrics, the "**Metrics**"). Except as otherwise noted, the Metrics are measured over the six-month period from July 2020 through December 2020.

12. The Hertz Metrics are as follows (the percentages indicated reflect the weighting given to such Metric in calculating overall awards):

- a. Operating Cash Flow (30%) is generally defined to include only operating receipts and expenses, while excluding restructuring-related costs and disbursements. This metric is based on a recent 13-week cash flow forecast, extended through the end of 2020, which assumes that Debtors' operations remain at current levels through the end of 2020, with incremental adjustments that would result from achieving higher levels of Airport Revenue and HLE / Off-Airport Revenue (discussed below). Specifically, Operating Cash Flow is defined as the sum of Total Receipts (Line 4 of 13-week cash flow forecast, which includes Customer / Licensee Rental Receipts, Salvage, Claim, Disposal & Other Receipts), Total Disbursements (Line 16, which includes Payroll & Benefits, Location Rent & Concession Payments, License, Title & Registration Payments, Marsh Payments, Insurance Claim & Premium Payments, Sales & Use and Other Tax Payments, P-Card and Fuel Card Payments, Direct Operating, SG&A & Other Payments, Non-Fleet Capital Expenditures, Corporate Debt Interest & Financing Costs, and Other Misc. Cash Activity), and Chapter 11 items (Line 24) including Airport Authorities, Franchisees, Critical Vendors, Utilities Deposits, and US Trustee Fees but excluding Restructuring Professional Fees and Bond Surety payments / collateral postings per the Company's weekly cash-flow forecast, for the weeks-ending 7/10/2020 through 12/25/2020. Operating Cash Flow excludes the ABS lease payment (Line 27).

- b. Airport Revenue (10%), measured from July 1, 2020 to December 31, 2020, generally consists of receipts at the Company's U.S. airport locations. This metric has a built-in adjustment, which (i) reduces the "Threshold," "Target" and "Reach" Goals by \$50 million if actual enplanements are less than 45% of the prior year's enplanements over the measurement period, and (ii) increases those same Goals by \$50 million if the actual enplanements are greater than 55% of the prior year enplanements over the measurement period. For purposes of this metric, "enplanements" is defined as unadjusted, domestic enplanements only per the United States Bureau of Transportation Statistics (see <https://www.transtat.bts.gov/TRAFFIC/> for data source). The adjustment mechanism was intended to prevent the Airport Revenue metric from rewarding or penalizing management for performance and variables that are not reasonably within management's control;
- c. HLE / Off-Airport Revenue (10%), generally consists of rental receipts at the Company's Hertz Local Edition and Off-Airport locations from July 1, 2020 through December 31, 2020;
- d. Fleet Utilization (30%), generally representing the average proportion of US RAC vehicles on rent from August 1, 2020 through December 31, 2020; and
- e. ABS Debt Paydown (20%), relating directly to the Company generating cash to pay down ABS indebtedness by selling a certain amount of vehicles from June 1, 2020 through December 31, 2020, with payouts available only if management either (i) achieves the Threshold amount by October 31, 2020 or (ii) achieves the Target or Reach amounts by December 31, 2020.

13. The Hertz Metrics—which include incentives for maximizing revenue and minimizing costs—reward management for reaching challenging milestones that balance the Debtors’ important business considerations. The Hertz Metrics provide an appropriate checks and balances system designed to enhance total operational performance. For instance, the metrics that are tied to maximizing revenue (i.e. Airport Revenue and Off-Airport Revenue) ensure that management does not reduce the Company’s fleet to sub-optimal levels simply to maximize the Fleet Utilization or ABS Debt Paydown metrics. Simply put, to maximize their Incentive Awards (defined below), management must maximize the efficiency of Debtors’ total operations.

14. The Donlen Metrics are fewer than the Hertz Metrics. Because the ongoing pandemic has affected the Donlen business in different ways from the Hertz business, the Donlen Plan uses two financial metrics to incentivize employees whose primary responsibilities relate to the Donlen business: (i) EBITDA (60%); and (ii) revenue (40%). These Metrics are critical elements that drive the overall valuation of the Donlen business, which is a highly valuable and meaningful asset of the Debtors.

15. The Metrics are weighted as indicated above, meaning that achievement of any particular Metric will result in an Incentive Award corresponding to the weighting percentage of the applicable total Individual Award Opportunity, scaled for the Company’s degree of performance.

#### **IV. Setting Performance Goals**

16. Subject to certain limitations, the KEIP and EIP Participants will become eligible for cash awards (the “**Incentive Awards**”), payable following the conclusion of the performance period, based on the Company’s performance relative to goals set for each Metric (“**Goals**”).

17. Payment of Incentive Awards will be scaled according to the degree of success the

Company had in meeting its Goals. To define the scaling, Goals are described in terms of “Threshold,” “Target,” and “Reach.” The purpose of this is to present true challenges with respect to each Metric. The better management performs, the greater the benefits that will flow to the Debtors, and the greater the earning opportunities that become available for the Participants.

18. To develop its recommendations with respect to the Goals associated with the Hertz Metrics, FTI reviewed the Company’s recent operational forecasts. These forecasts are based on an outlook that analyzed three scenarios for the Company’s operational performance. For purposes of setting the Goals, FTI selected the mid-point in that analysis and compared it against the Company’s current operational performance levels, to provide a short-term outlook for the Company’s expected performance over the Incentive Plan’s six-month performance period (July 1, 2020 through December 31, 2020). Given COVID-19’s adverse effect on the Company’s operational performance, the Company’s current preliminary results trail behind the forecasted levels.

19. The hallmark of an effective incentive plan are goals that are challenging and, with focused energy and effort, the participants have a realistic chance of attaining. To ensure the incentivizing nature of the Goals, the “Threshold,” “Target,” and “Reach” payout levels take into account the Company’s recent performance. To do so properly, FTI analyzed the Company’s current operations and key qualitative factors—such as current TSA data, COVID-19 cases in key markets (e.g. Florida, California, Texas, Arizona and Hawaii), customer demand and behavior with respect to advance reservations—to determine the highest levels of performance that management could reasonably be expected to attain, in a business environment that continues to trend downward.

20. With respect to the Goals for the Donlen business, FTI based its analysis on the

Company's 5+7 forecast, which FTI believes is an appropriate metric because Donlen's business has been much less volatile than the Company's U.S. RAC business.

21. The Goals, as follows:

<i>(\$s in millions)</i>	<b>Threshold</b>	<b>Target</b>	<b>Reach</b>	<b>Weight</b>
<b>Hertz Metrics</b>				
<i>Operating Cash Flow</i>	(\$50)	(\$30)	\$30	30%
<i>Airport Revenue (subject to adjustment)</i>	\$775	\$850	\$950	10%
<i>Off-Airport Revenue</i>	\$675	\$750	\$850	10%
<i>Fleet Utilization %</i>	60%	65%	70%	30%
<i>ABS Debt Paydown</i>	\$4,100 <sup>3</sup>	\$4,200	\$4,400	20%
<b>Donlen Metrics</b>				
<i>EBITDA</i>	\$37	\$41	\$45	60%
<i>Revenue</i>	\$276	\$306	\$337	40%

22. If the Company does not meet the "Threshold" amount for a particular Metric, no Incentive Awards will be paid on account of that Metric.<sup>4</sup> At the Threshold level, Incentive Awards will be paid at 50% of the Target Opportunity Amount. At the Target level, Incentive Awards will be paid at 100% of the Target Opportunity Amount. At or above the "Reach" level, Incentive Awards will be paid at 125% of the Target Opportunity Amount. Linear interpolation of the Incentive Awards will be applied for achievement of performance above the "Threshold" level and below the "Reach" level.

23. Based upon my analysis and conversations with senior management and the

<sup>3</sup> See Paragraph 11(e), above.

<sup>4</sup> Target and Reach amounts may be paid for the ABS Debt Paydown metric, so long as the relevant amounts are reached by December 31, 2020, even if the Threshold amount has not been reached by October 31, 2020 (the date on which the Threshold amount is tested for this Metric).

Compensation Committee, I believe the Goals are ambitious and will be challenging to attain, even at the “Threshold” level, while not being so challenging, even at the “Reach” level, to be unrealistic or unattainable. In my opinion, the Metrics demand an appropriate “stretch” from Participants to drive outperformance, while being realistic enough to serve the motivational purpose of the Incentive Plans. The Incentive Plans are reasonable, well within the Debtors’ business judgment, and will enhance enterprise value for the benefit of their economic stakeholders.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: August 27, 2020  
Chicago, IL

/s/ Michael Buenzow  
Michael Buenzow  
Senior Managing Director  
FTI Consulting, Inc.

**Exhibit D**

**Pulliam Declaration**

**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

**DECLARATION OF MATTHEW PULLIAM IN SUPPORT OF MOTION OF THE  
DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING AND APPROVING  
THE DEBTORS' (I) KEY EMPLOYEE INCENTIVE PLAN, AND  
(II) EMPLOYEE INCENTIVE PLAN**

I, Matthew Pulliam, under the penalty of perjury, declare as follows:

1. I make this declaration (the “**Declaration**”) in support of the *Motion of the Debtors for Entry of an Order Authorizing and Approving the Debtors’ (i) Key Employee Incentive Plan, and (ii) Employee Incentive Plan* (“*Motion*”).<sup>2</sup> Except as otherwise indicated, the matters set forth in this Declaration are based upon the following: (i) my personal knowledge with respect to the Debtors, including the Debtors’ current finances and operations, and the industry in which the Debtors operate, (ii) my discussions with the Debtors’ management and the Compensation Committee, (iii) my discussions with the Debtors’ consultants, Pay Governance and White & Case, LLP, (iv) my review of the Debtors’ relevant documents, or (v) my independent research and extensive experience in executive and employee compensation consulting.

2. Based on my analysis, I have concluded that the proposed payouts under the

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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, for which joint administration for procedural purposes has been requested, 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 not otherwise defined herein shall have the meaning ascribed to them in the Motion.

Debtors' proposed Key Employee Incentive Plan (“**KEIP**”) and Employee Incentive Plan (“**EIP**”) and together with the KEIP, the “**Incentive Plans**”) are reasonable and consistent with market practice in similar Chapter 11 cases of companies that are comparable to the Debtors. This conclusion is based upon my analysis of the Incentive Plans' design structure and proposed payouts. I compared the Incentive Plans to plans for comparable companies going through Chapter 11 and concluded that the payment amounts and structure of the Incentive Plans, including the performance metrics used to determine the payouts, compare favorably to previously-approved plans in Chapter 11. Moreover, I analyzed the proposed individual levels of compensation for the Incentive Plans with the levels of compensation for similar positions within the Bankruptcy Peer Group (defined below) and found that the proposed payment amounts are in line with the market.

3. I have reviewed the Motion, and I believe that it accurately reflects the facts and circumstances regarding development of the Incentive Plans.

#### **I. Qualifications**

4. I am a Compensation Consultant of FTI Consulting, Inc. (“**FTI**”), which the Debtors have retained to serve as their restructuring advisor. FTI is a financial advisory services firm with offices throughout the United States, and it has extensive experience in providing restructuring services in and out of Chapter 11 proceedings.

5. I have more than 19 years of experience in the fields of executive and employee compensation consulting and management, with previous employment under the compensation consulting groups of Mercer and Watson Wyatt Worldwide (now WillisTowersWatson).

#### **II. Development of the Incentive Plans**

6. The Compensation Committee requested that its independent consultant, Pay Governance, with assistance from FTI and at the direction of White & Case, design incentive-

based compensation plans for executives and employees whose performance will impact the success of the Company and its restructuring efforts.

7. To ensure that the Incentive Plans were reasonable compared to those offered by similarly situated companies in bankruptcy, with respect to overall size and other relevant characteristics, I conducted a benchmarking analysis of companies that have filed bankruptcy since mid-2015. The results of that analysis are set forth below.

### **III. Identifying Debtors' Bankruptcy Peer Group**

8. To identify the appropriate precedent programs, FTI used the DebtWire bankruptcy database to identify all listed bankruptcy cases from mid-2015 through mid-2020, a total of 1,064 cases (the “**Master List**”). FTI then applied three separate filters to narrow the results.

9. First, FTI applied a “size-based” filter to the Master List, which identified companies with between \$1B and \$50B in pre-petition assets (as self-reported on bankruptcy petitions for statistical purposes). FTI further filtered this group to include only Chapter 11 cases in which at least one management incentive plan was reported. This peer group, which consisted of twenty companies, was designed to study typical practices, and incentive plans, within other bankruptcies that involved large companies.

10. Second, FTI applied a “sector-based” filter to the Master List, which limited the results to bankruptcies filed by “transportation” companies. This peer group, which consisted of thirteen companies, was designed to study typical incentive-based compensation plans used by other transportation companies in bankruptcy.

11. Third, FTI applied a “COVID-based” filter to the Master List, which limited the results to cases commenced after February 2020, and was designed to study practices developed across industries in response to the unusual market conditions related to the COVID-19 pandemic.

This peer group included twenty companies.

12. FTI then reviewed the three filtered groups for details regarding the proposed incentive plans in those cases. After that review, FTI removed several cases from consideration based on inapplicable plan types (e.g., key employee retention plans or exit equity incentive plans) or lack of adequate plan information. The remaining sixteen companies were combined into a single peer group (“**Bankruptcy Peer Group**”).<sup>3</sup> The Bankruptcy Peer Group comports with the number of comparable companies typically used in an executive compensation peer group analyses, usually between ten and twenty. Likewise, FTI’s review of bankruptcy cases confirmed that restructuring consultants also use between ten and twenty cases to support their KEIP analyses.

13. To ensure that the Bankruptcy Peer Group contained comparable incentive plans, for each case, FTI reviewed the relevant pleadings, including the motion for approval of the plan, supporting declarations, any objections to the incentive plan, and the Court’s approval order. FTI’s research has confirmed that companies in Chapter 11 routinely use incentive programs to drive financial performance and the attainment of key business goals, and that the Incentive Plans are comparable to such programs.

#### **IV. Comparative Cost Analysis**

14. Under the Incentive Plans, payment of Incentive Awards will be scaled according to the degree of success the Company had in meeting its Goals. To define the scaling, Goals are described in terms of “Threshold,” “Target,” and “Reach” (“**Performance Levels**”). By creating

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<sup>3</sup> The Bankruptcy Peer Group consists of the following companies: Avaya Inc., Diamond Offshore Drilling, Inc., Exide Holdings, Inc., iHeartMedia, Inc., Intelsat S.A., LINN Energy, LLC, McDermott International, Inc., Neiman Marcus Group Ltd., OneWeb Global Limited, Peabody Energy Corp., Republic Airways Holdings Inc., Sears Holdings Corp., SunEdison, Inc., Waypoint Leasing Holdings Ltd., Windstream Holdings, Inc. and Frontier Communications Corp.

milestones for which portions of the Incentive Awards are paid out, the Incentive Plans appropriately incentivize the Participants. The Performance Levels were set by Compensation Committee, in consultation with FTI, to present true challenges with respect to each Metric.

15. Based on my research, the cost of the Incentive Awards, in the aggregate and on an individual basis, and the Metrics used to measure them, compare favorably to similarly situated companies that have implemented incentive plans in Chapter 11.

**a. The KEIP**

16. The KEIP covers fourteen members of the Debtors' senior management team who were identified as critical to the Debtors' day-to-day operations, financial performance, and the success of the Debtors' restructuring efforts.

17. FTI's benchmarking analysis shows that the KEIP is reasonable on a total cost basis when compared to incentive plans approved in the Bankruptcy Peer Group. After adjusting for differences in measurement periods, the KEIP's total aggregate cost is in the 35th percentile at Threshold, 50th percentile at Target, and 44th percentile at Reach.

18. The average cost per KEIP Participant at the "Reach" level is in the 11th percentile.

19. Likewise, individual KEIP opportunities are consistent with those available in the Bankruptcy Peer Group. Even after adjusting for differences in measurement periods, at the Reach level, the KEIP Individual Award Opportunities fall between the 32nd and 48th percentiles for the same positions within the Bankruptcy Peer Group.

**b. The EIP**

20. Approximately 295 employees were selected to be EIP Participants. Although they do not control the Debtors' overall strategy, the EIP Participants were identified as individuals who perform important business functions that are critical to the Debtors' day-to-day operations.

21. FTI's benchmarking analysis shows that, like the KEIP, the EIP is less costly than comparable programs implemented by Chapter 11 debtors. After adjusting for differences in measurement periods, the EIP's total aggregate cost when compared to incentive plans approved in the Bankruptcy Peer Group is in the 43rd percentile. In terms of size and maximum individual opportunity, the EIP is in the 45th percentile.

22. In general, the proposed Incentive Plans have a larger number of participants and lower aggregate and average costs per participant relative to the Bankruptcy Peer Group.

23. Based on my analysis, the cost of the Incentive Plans falls well within market norms, with respect to size, total aggregate cost, individual cost and cost per Participant.

#### V. Performance Levels and Measures

24. As discussed above, Incentive Awards are scaled according to the degree of success that the Company has in meeting its Goals. The Performance Levels used to determine payout of the Incentive Awards are "Threshold" (50% payout), "Target" (100% payout) and "Reach" (125% payout). As shown in the chart below, the Incentive Plans' proposed "Threshold" and "Target" payout percentages are consistent with the most common practice among the Bankruptcy Peer Group, while the "Reach" payout percentage falls toward the lower end of the competitive norm:

<b>Payout Ranges by Peer Company</b>	<b>Threshold</b>	<b>Target</b>	<b>Max / Reach</b>
Avaya Inc.	80.0%	100.0%	100.0%
Diamond Offshore Drilling*	50.0%	100.0%	150.0%
Exide Holdings, Inc.*	N/A	100.0%	200.0%
Frontier Communications Corporation*	70.0%	100.0%	130.0%
iHeartMedia, Inc.	80.0%	100.0%	120.0%
Intelsat S.A.*	50.0%	100.0%	150.0%
LINN Energy, LLC	50.0%	100.0%	100.0%
McDermott International, Inc.	50.0%	100.0%	200.0%
Neiman Marcus Group Ltd LLC*	50.0%	100.0%	200.0%
OneWeb Global Limited*	28.5%	100.0%	200.0%
Peabody Energy Corporation	N/A	100.0%	150.0%
Republic Airways Holdings Inc.	50.0%	100.0%	200.0%
Sears Holdings Corporation	60.0%	90.0%	120.0%
SunEdison, Inc.	N/A	N/A	N/A
Waypoint Leasing Holdings Ltd.	N/A	100.0%	150.0%
Windstream Holdings, Inc.	50.0%	100.0%	200.0%
<b>MAX</b>	<b>80.0%</b>	<b>100.0%</b>	<b>200.0%</b>
<b>MEDIAN</b>	<b>50.0%</b>	<b>100.0%</b>	<b>150.0%</b>
<b>MODE</b>	<b>50.0%</b>	<b>100.0%</b>	<b>200.0%</b>
<b>MIN</b>	<b>28.5%</b>	<b>90.0%</b>	<b>100.0%</b>
<b>Hertz</b>	50.0%	100.0%	125.0%

25. Likewise, the Debtors' chosen Metrics – (i) operating cash flow, (ii) certain revenue metrics, (iii) fleet utilization, (iv) ABS Debt Paydown and (v) EBITDA and revenue for the Donlen business – are similar to those used by the Bankruptcy Peer Group. Companies in bankruptcy adopt varying measures to align employee incentives with the debtors' restructuring objectives. As set forth in the chart below, like the Incentive Plans, the performance metrics used in the Bankruptcy Peer Group's approved plans rely heavily on (a) cash flow metrics (29% of the metrics used by the Bankruptcy Peer Group), (b) operational metrics (29%), (c) expense measures (12%) and (d) variants of revenue (10%).

Performance Measure Prevalence by Peer Group Company	# of Measures	EBITDA, Cash Flow, and Variants	Operations Measures	Expense Measures	Asset Sale/Transaction Measure	Revenue and Variants	Milestones	Other	Cash Measure
Avaya Inc.	2	1					1		
Diamond Offshore Drilling*	3		2	1					
Exide Holdings, Inc.*	2	1			1				
Frontier Communications Corporation*	3	1	1			1			
iHeartMedia, Inc.	1	1							
Intelsat S.A.*	3	1	2						
LINN Energy, LLC	3		1	2					
McDermott International, Inc.	7	2	1		1			2	1
Neiman Marcus Group Ltd LLC*	3			1		1	1		
OneWeb Global Limited*	1				1				
Peabody Energy Corporation	3	2	1						
Republic Airways Holdings Inc.	3	1	2						
Sears Holdings Corporation	1	1							
SunEdison, Inc.	1				1				
Waypoint Leasing Holdings Ltd.	3		1	1		1			
Windstream Holdings, Inc.	3	1	1			1			
<b>TOTALS</b>	<b>42</b>	<b>12</b>	<b>12</b>	<b>5</b>	<b>4</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>1</b>
<i>Percent of All Performance Measures</i>	<b>100%</b>	<b>29%</b>	<b>29%</b>	<b>12%</b>	<b>10%</b>	<b>10%</b>	<b>5%</b>	<b>5%</b>	<b>2%</b>

26. In my opinion, the Incentive Plans are reasonable and compare favorably with other incentive plans approved by bankruptcy courts across the country.

[signature appears on following page]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: August 27, 2020  
West Bloomfield, Michigan

/s/ Matthew Pulliam  
Matthew Pulliam  
Compensation Consultant  
FTI Consulting, Inc.

**Exhibit E**

**2020 Key Employee Incentive Plan (KEIP)**

**2020 Key Employee Incentive Plan (KEIP)**

for Hertz Global Holdings, Inc. and its affiliated debtors (collectively, the “Company”) in the jointly administered chapter 11 cases, *In re The Hertz Corporation* (the “Chapter 11 Cases”)

1. Purpose. The 2020 Key Employee Incentive Plan (“2020 KEIP”) is intended to motivate the achievement of certain of the Company’s key goals. The 2020 KEIP is also intended to offer appropriate competitive total cash opportunities to key members of the Company’s management team whose efforts will be needed to create value for the Company’s creditors and other stakeholders (and who may have lost incentive-based compensation due to the COVID 19 pandemic and its impact on the Company as well as value in their equity-based compensation).<sup>1</sup>
2. Eligible Participants. The 2020 KEIP is limited to fourteen key members of the Company’s senior management team who are critical to the Company’s day-to-day operations, financial performance, and the success of the Debtors’ restructuring.
3. 2020 KEIP Awards. Individual 2020 KEIP awards are expressed as a target dollar amount. 2020 KEIP Awards vary by individual, with opportunities varying based on participants’ expected involvement in, and criticality to the success of, the Company’s restructuring efforts. KEIP Award opportunities have been calibrated to deliver, at target, between 50% and 100% of participants’ pre-restructuring annual incentive opportunity (as may have been adjusted for promotion).

Each 2020 KEIP award will be a cash amount payable (to the extent earned based on actual performance) upon the conclusion of the performance measurement period set forth below. Potential payments are based on achievement of specified performance metrics for the performance measurement period and are subject to continued employment of the participant through the payment date (except as provided in paragraph 8 below). Participants whose performance evaluation is determined to be “unsatisfactory” during the performance measurement period covered by the plan will forfeit eligibility for any 2020 KEIP award.

The 2020 KEIP is contingent upon and will only be in effect following Bankruptcy Court approval, and then only to the extent approved by the Bankruptcy Court (including subject to agreed modifications to obtain approval, if any).

4. Performance Measurement Period. The performance measurement period will be July 1, 2020 – December 31, 2020, except that the performance measurement period for Fleet Utilization Percentage (defined below) will be from August 1, 2020 – December 31, 2020 and performance for ABS Debt Paydown (as defined below) will be measured as described in note 6, below.
5. 2020 KEIP Payment Timing. The precise payment timing will be determined at a later date but, in any event, no payments will be made later than March 15, 2021. Approval and payments will be subject to the Company’s review and certification of results following the conclusion of the performance measurement period. Except as otherwise provided in paragraph 8 below, participants must be actively employed in good standing on the payment date to be eligible for a 2020 KEIP award.

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<sup>1</sup> Existing equity grants remain in place and will be addressed by the chapter 11 plan. As a condition to participating in the 2020 KEIP, participants shall forfeit rights to any other future equity grants during the Chapter 11 Cases and shall not receive any other bonuses for this year (including under the Company’s original 2020 annual bonus plan).

6. 2020 KEIP Payout Ranges. The 2020 KEIP is based on four opportunities tied to performance outcomes: Below Threshold (0% of target award), Threshold (50% of target award), Target (100% of target award), and Reach (125% of target award). Except as provided in note 6, below, with respect to ABS Debt Paydown (as defined below), linear interpolation of 2020 KEIP payments will be applied for achievement of performance metrics between the values shown below for performance above Threshold and below Reach.

Participant	Position	Short-term Incentive (STI)	2020 KEIP Target Award Opportunity							
			Below Threshold (No Payment)		Threshold (Paid @50% of Target Payout Amount)		Target (Paid @100% of Target Payout Amount)		Maximum / Reach (Paid @125% of Target Payout Amount)	
			% of STI	\$	% of STI	\$	% of STI	\$	% of STI	\$
Stone, Paul Estel	CEO & President	\$1,400,000	0%	\$0	45%	\$630,000	90%	\$1,260,000	113%	\$1,575,000
Esper, Richard Eric	EVP of Finance, Chief Financial Officer	\$382,500	0%	\$0	50%	\$191,250	100%	\$382,500	125%	\$478,125
<b>Aggregate Target Awards</b>				<b>\$0</b>	<b>\$2,161,588</b>	<b>\$4,323,175</b>	<b>\$5,403,969</b>			

7. **Performance Measures and Weightings.** The 2020 KEIP will be driven by achievements versus set performance metrics designed and weighted to align employee incentives with the Company's performance and restructuring objectives.

#### Hertz Metrics

Measures (\$ in millions)	Weighting	Threshold (50% Payout)	Target (100% Payout)	Reach (125% Payout)
Operating Cash Flow <sup>2</sup>	30%	\$(50.0)	\$(30.0)	\$30.0
Airport Revenue (subj. to adj.) <sup>3</sup>	10%	\$775.0	\$850.0	\$950.0
HLE / Off-Airport Revenue <sup>4</sup>	10%	\$675.0	\$750.0	\$850.0
Fleet Utilization % <sup>5</sup>	30%	60.0%	65.0%	70.0%
ABS Debt Paydown <sup>6</sup>	20%	\$4,100.0	\$4,200.0	\$4,400.0

#### Donlen Metrics

Measures (\$ in millions)	Weighting	Threshold (50% Payout)	Target (100% Payout)	Reach (125% Payout)
EBITDA	60%	\$37.0	\$41.0	\$45.0
Revenue	40%	\$276.0	\$306.0	\$337.0

8. **Termination of Employment.** If a participant's employment is terminated by the Company without "cause," or upon death or disability, the participant will be entitled to a prorated award based upon the number of weeks worked within the weeks available to work in the performance measurement period (based on actual level of performance measured after the conclusion of the performance

<sup>2</sup> Operating Cash Flow is defined as the sum of Total Receipts (Line 4 of 13-week cash flow forecast, which includes Customer / Licensee Rental Receipts, Salvage, Claim, Disposal & Other Receipts), Total Disbursements (Line 16, which includes Payroll & Benefits, Location Rent & Concession Payments, License, Title & Registration Payments, Marsh Payments, Insurance Claim & Premium Payments, Sales & Use and Other Tax Payments, P-Card and Fuel Card Payments, Direct Operating, SG&A & Other Payments, Non-Fleet Capital Expenditures, Corporate Debt Interest & Financing Costs, and Other Misc. Cash Activity), and Chapter 11 items (Line 24) including Airport Authorities, Franchisees, Critical Vendors, Utilities Deposits, and US Trustee Fees but excluding Restructuring Professional Fees and Bond Surety payments / collateral postings per the Company's weekly cash-flow forecast, for the weeks-ending July 10, 2020 through December 25, 2020. For the avoidance of doubt, Operating Cash Flow excludes the ABS lease payment (Line 27).

<sup>3</sup> Airport Revenue is defined as total revenue at airport locations only. Threshold / Target / Reach levels to be reduced by \$50 million if actual Enplanements are less than 45% of the prior year Enplanements over the measurement period, and increased by \$50 million if actual Enplanements are greater than 55% of the prior year Enplanements over the measurement period. Enplanements metric is defined as unadjusted, domestic enplanements only per the United States Bureau of Transportation Statistics (see <https://www.transtats.bts.gov/TRAFFIC/> for data source).

<sup>4</sup> HLE / Off-Airport Revenue is defined as HLE Total Revenue from July 1, 2020 through December 31, 2020.

<sup>5</sup> Fleet Utilization is defined as total US RAC fleet utilization for the Fleet Utilization measurement period. Fleet Utilization measurement period is defined as August 1, 2020 through December 31, 2020 (excludes July).

<sup>6</sup> ABS Debt Paydown based on settlement agreement to reach \$4.1B paydown by December 31, 2020 as implemented pursuant to Bankr. D.I. 805 (the "ABS Settlement Order"). Amounts stated are cumulative vehicle disposition proceeds of Lease Vehicles (as such term is defined in the ABS Settlement Order) qualifying to count towards the targets set forth on Schedule I of the ABS Settlement Order (i.e., proceeds generated from June 1, 2020 through December 31, 2020). The Threshold requirement of \$4.1B must be reached by October 31, 2020 in order to be eligible for award payout below Target. Target and Reach goals to be deemed satisfied if applicable amounts are achieved by December 31, 2020.

measurement period), subject to the execution of a release of claims in favor of the Company. If a participant's employment is terminated by the participant or by the Company for cause, any remaining unpaid portion of the KEIP payment will be forfeited. "Cause" shall mean a participant's (i) continued failure to perform the participant's duties with the Company (other than any such failure resulting from the participant's incapacity as a result of physical or mental illness) after a written demand for substantial performance specifying the manner in which the participant has not performed such duties is delivered to the participant by the person or entity that supervises or manages the participant, (ii) engaging in misconduct that is injurious to the Company or any of its subsidiaries, (iii) one or more acts of fraud or personal dishonesty resulting in or intended to result in personal enrichment at the expense of the Company or any of its Subsidiaries, (iv) abusive use of alcohol, drugs or similar substances that, in the sole judgment of the Company, impairs your job performance, (v) material violation of any Company policy that results in harm to the Company or any of its subsidiaries or (vi) indictment for or conviction of (or plea of guilty or nolo contendere) to a felony or of any crime (whether or not a felony) involving moral turpitude. A termination for "Cause" shall include a determination by the Company following the participant's termination of employment for any other reason that, prior to such termination of employment, circumstances constituting Cause existed with respect to the participant.

9. Payments under the 2020 KEIP will be reduced by termination entitlements of the participants, if any. In the event that a 2020 KEIP participant is terminated prior to the payment of such participant's earned award entitlement under the 2020 KEIP, such participant's award entitlement under the 2020 KEIP shall be reduced, offset, and extinguished by the payment obligations of the Company to such participant relating to such participant's termination pursuant to any severance plan, change in control agreement, employment agreement, or other plan, agreement, statute, regulation, or law, and including without limitation any nonworking notice period or damages payable pursuant to the Worker Adjustment and Retraining Notification Act or any similar state or local law or regulation, (any such payment obligation, a "**Termination Obligation**") as follows:
- a. as to Termination Obligations subject to treatment only as general unsecured claims in the Chapter 11 Cases, the amount of such Termination Obligations multiplied by the last reported trading price of the Company's 6.250% Senior Notes due 2022 on or before the date of the participant's termination; and
  - b. dollar-for-dollar with respect to Termination Obligations subject to treatment other than as general unsecured claims in the Chapter 11 Cases.
10. Reallocation of Forfeit Target Award Amounts. The Company may reallocate or reassign, in whole or in part, target award amounts surrendered by 2020 KEIP or 2020 EIP participants to persons hired or promoted during the performance measurement period. Upon such reallocation or reassignment, a target award amount shall entitle the recipient to incentive awards calculated in accordance with the applicable plan as a participant according to the value of the assigned target award amount. For the avoidance of doubt, the combined aggregate target award amounts for the 2020 KEIP and 2020 EIP as of the conclusion of the performance measurement period may not exceed the aggregate target award amounts approved by the Board and the Bankruptcy Court.

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**Exhibit F**

**2020 Employee Incentive Plan (EIP)**

**2020 Employee Incentive Plan (EIP)**

for Hertz Global Holdings, Inc. and certain affiliated debtors (collectively, the “**Company**”) in the jointly administered chapter 11 cases, *In re The Hertz Corporation* (the “**Chapter 11 Cases**”)

1. Purpose. The 2020 Employee Incentive Plan (the “**2020 EIP**”) is intended to motivate the achievement of certain of the Company’s key goals. The 2020 EIP is also intended to offer appropriate competitive total cash opportunities to members of the Company’s management team whose efforts will be needed to create value for the Company’s creditors and other stakeholders (and who may have lost incentive-based compensation due to the COVID 19 pandemic and its impact on the Company as well as value in their equity-based compensation).<sup>1</sup>
2. Eligible Participants. The 2020 EIP is limited to members of the Company’s management team whose efforts will be important to the Company’s business and restructuring efforts and whose participation in an annual incentive plan is customary for the Company and in the marketplace in the ordinary course. At start, the 2020 EIP will have 295 eligible management participants. A list of such participants and their proposed target award amounts are annexed hereto as **Schedule I**.
3. 2020 EIP Awards. For VPs and above, individual 2020 EIP awards are expressed as a target dollar amount. 2020 EIP Awards vary by individual, with opportunities varying based on participants’ expected involvement in, and criticality to the success of, the Company’s restructuring efforts. For VPs and above, EIP Award opportunities have been calibrated to deliver, at target, between 50% and 100% of participants’ pre-restructuring annual incentive opportunity (as may have been adjusted for promotion). For Senior Director and Director-level roles, the 2020 EIP individual target awards are \$15,000 and \$10,000, respectively.

Each 2020 EIP award will be a cash amount provided (to the extent earned based on actual performance) upon the conclusion of the performance measurement period set forth below. Potential payments are based on achievement of specified performance metrics for the performance measurement period and are subject to continued employment of the participant through the payment date (except as provided in paragraph 8 below). Participants whose performance evaluation is determined to be “unsatisfactory” during the performance measurement period covered by the plan will forfeit eligibility for any 2020 EIP award.

The 2020 EIP is contingent upon and will only be in effect following Bankruptcy Court approval, and then only to the extent approved by the Bankruptcy Court (including subject to agreed modifications to obtain approval, if any).

4. Performance Measurement Period. The performance measurement period will be July 1, 2020 – December 31, 2020, except that the performance measurement period for Fleet Utilization Percentage (defined below) will be from August 1, 2020 – December 31, 2020 and performance for ABS Debt Paydown (as defined below) will be measured as described in note 6, below.
5. 2020 EIP Payment Timing. The precise payment timing will be determined at a later date but, in any event, no payments will be made later than March 15, 2021. Payments will be subject to the

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<sup>1</sup> Existing equity grants remain in place and will be addressed by the chapter 11 plan. As a condition to participating in the 2020 EIP, participants shall forfeit rights to any other future equity grants during the Chapter 11 Cases and shall not receive any other bonuses for this year (including under the Company’s original 2020 annual bonus plan).

Company's review and certification of results following the conclusion of the performance measurement period. Except as otherwise provided in paragraph 8 below, participants must be actively employed on the payment date to be eligible for a 2020 EIP award.

6. 2020 EIP Payout Ranges. The 2020 EIP Plan is based on four opportunities tied to performance outcomes: Below Threshold (0% of target award), Threshold (50% of target award), Target (100% of target award), and Reach (125% of target award). Except as provided in note 6, below, with respect to ABS Debt Paydown (as defined below), linear interpolation of 2020 EIP payments will be applied for achievement of performance metrics between the values shown below for performance above Threshold and below Reach.

a. SVPs and VPs.

Participant Level	Number	Average Short-term Incentive (STI)	2020 EIP Target Award Opportunity							
			Below Threshold No Payment		Threshold (Paid at @50% of Target Payout Amount)		Target (Paid @100% of Target Payout Amount)		Maximum / Reach (Paid @125% of Target Payout Amount)	
			% of Avg. STI	\$	% of Avg. STI	\$	% of Avg. STI	\$	% of Avg. STI	\$
SVPs	17	\$163,365	0%	\$0	35%	\$57,371	70%	\$114,743	88%	\$143,428
VPs	48	\$89,012	0%	\$0	30%	\$26,921	60%	\$53,842	76%	\$67,302
<b>Aggregate Target Awards</b>			<b>\$0</b>		<b>\$2,267,518</b>		<b>\$4,535,036</b>		<b>\$5,668,795</b>	

b. Senior Directors and Directors.

Participant Level	Number	Average Short-term Incentive (STI)	2020 EIP Target Award Opportunity							
			Below Threshold (@0% of Target)		Threshold (Paid at @50% of Target Payout Amount)		Target (Paid @100% of Target Payout Amount)		Maximum / Reach (Paid @125% of Target Payout Amount)	
			% of Avg. STI	\$	% of Avg. STI	\$	% of Avg. STI	\$	% of Avg. STI	\$
Senior Directors	108	\$45,715	0%	\$0	16%	\$7,500	33%	\$15,000	41%	\$18,750
Directors	122	\$22,833	0%	\$0	19%	\$5,000	38%	\$10,000	48%	\$12,500
<b>Aggregate Target Awards</b>			<b>\$0</b>		<b>\$1,420,000</b>		<b>\$2,840,000</b>		<b>\$3,550,000</b>	

7. Performance Measures and Weightings. The 2020 EIP will be driven by achievements versus set performance metrics and weightings designed to align employee incentives with the Company's restructuring objectives.

#### Hertz Metrics

Measures (\$ in millions)	Weighting	Threshold (50% Payout)	Target (100% Payout)	Reach (125% Payout)
Operating Cash Flow <sup>2</sup>	30%	\$(50.0)	\$(30.0)	\$30.0
Airport Revenue (subj. to adj.) <sup>3</sup>	10%	\$775.0	\$850.0	\$950.0
HLE / Off-Airport Revenue <sup>4</sup>	10%	\$675.0	\$750.0	\$850.0
Fleet Utilization % <sup>5</sup>	30%	60.0%	65.0%	70.0%
ABS Debt Paydown <sup>6</sup>	20%	\$4,100.0	\$4,200.0	\$4,400.0

#### Donlen Metrics

Measures (\$ in millions)	Weighting	Threshold (50% Payout)	Target (100% Payout)	Reach (125% Payout)
EBITDA	60%	\$37.0	\$41.0	\$45.0
Revenue	40%	\$276.0	\$306.0	\$337.0

8. Termination of Employment. If a participant's employment is terminated by the Company without "cause," or upon death or disability, the participant will be entitled to a prorated award based upon

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- <sup>2</sup> Operating Cash Flow is defined as the sum of Total Receipts (Line 4 of 13-week cash flow forecast, which includes Customer / Licensee Rental Receipts, Salvage, Claim, Disposal & Other Receipts), Total Disbursements (Line 16, which includes Payroll & Benefits, Location Rent & Concession Payments, License, Title & Registration Payments, Marsh Payments, Insurance Claim & Premium Payments, Sales & Use and Other Tax Payments, P-Card and Fuel Card Payments, Direct Operating, SG&A & Other Payments, Non-Fleet Capital Expenditures, Corporate Debt Interest & Financing Costs, and Other Misc. Cash Activity), and Chapter 11 items (Line 24) including Airport Authorities, Franchisees, Critical Vendors, Utilities Deposits, and US Trustee Fees but excluding Restructuring Professional Fees and Bond Surety payments / collateral postings per the Company's weekly cash-flow forecast, for the weeks-ending 7/10/2020 through 12/25/2020. For the avoidance of doubt, Operating Cash Flow excludes the ABS lease payment (Line 27).
- <sup>3</sup> Airport Revenue is defined as total revenue at airport locations only. Threshold / Target / Reach levels to be reduced by \$50 million if actual Enplanements are less than 45% of the prior year Enplanements over the measurement period, and increased by \$50 million if actual Enplanements are greater than 55% of the prior year Enplanements over the measurement period. Enplanements metric is defined as unadjusted, domestic enplanements only per the United States Bureau of Transportation Statistics (see <https://www.transtats.bts.gov/TRAFFIC/> for data source).
- <sup>4</sup> HLE / Off-Airport Revenue is defined as HLE Total Revenue from July 1, 2020 through December 31, 2020.
- <sup>5</sup> Fleet Utilization is defined as total US RAC fleet utilization for the Fleet Utilization measurement period. Fleet Utilization measurement period is defined as August 1, 2020 through December 31, 2020 (excludes July).
- <sup>6</sup> ABS Debt Paydown based on settlement agreement to reach \$4.1B paydown by December 31, 2020 as implemented pursuant to Bankr. D.I. 805 (the "ABS Settlement Order"). Amounts stated are cumulative vehicle disposition proceeds of Lease Vehicles (as such term is defined in the ABS Settlement Order) qualifying to count towards the targets set forth on Schedule I of the ABS Settlement Order (i.e., proceeds generated from June 1, 2020 through December 31, 2020). The Threshold requirement of \$4.1B must be reached by October 31, 2020 in order to be eligible for award payout below Target. Target and Reach goals to be deemed satisfied if applicable amounts are achieved by December 31, 2020.

the number of weeks worked within the weeks available to work in the performance measurement period (based on the actual level of performance measured after the conclusion of the performance measurement period), subject to the execution of a release of claims in favor of the Company. If a participant's employment is terminated by the participant or by the Company for cause, any remaining unpaid portion of the EIP payment will be forfeited. "Cause" shall mean a participant's (i) continued failure to perform the participant's duties with the Company (other than any such failure resulting from the participant's incapacity as a result of physical or mental illness) after a written demand for substantial performance specifying the manner in which the participant has not performed such duties is delivered to the participant by the person or entity that supervises or manages the participant, (ii) engaging in misconduct that is injurious to the Company or any of its subsidiaries, (iii) one or more acts of fraud or personal dishonesty resulting in or intended to result in personal enrichment at the expense of the Company or any of its Subsidiaries, (iv) abusive use of alcohol, drugs or similar substances that, in the sole judgment of the Company, impairs your job performance, (v) material violation of any Company policy that results in harm to the Company or any of its subsidiaries or (vi) indictment for or conviction of (or plea of guilty or nolo contendere) to a felony or of any crime (whether or not a felony) involving moral turpitude. A termination for "Cause" shall include a determination by the Company following the participant's termination of employment for any other reason that, prior to such termination of employment, circumstances constituting Cause existed with respect to the participant.

9. Payments under the 2020 EIP will be reduced by termination entitlements of the participants, if any. In the event that a 2020 EIP participant is terminated prior to the payment of such participant's earned award entitlement under the 2020 EIP, such participant's award entitlement under the 2020 EIP shall be reduced, offset, and extinguished by the payment obligations of the Company to such participant relating to such participant's termination pursuant to any severance plan, change in control agreement, employment agreement, or other plan, agreement, statute, regulation, or law, and including without limitation any nonworking notice period or damages payable pursuant to the Worker Adjustment and Retraining Notification Act or any similar state or local law or regulation, (any such payment obligation, a "**Termination Obligation**") as follows:
- a. as to Termination Obligations subject to treatment only as general unsecured claims in the Chapter 11 Cases, the amount of such Termination Obligations multiplied by the last reported trading price of the Company's 6.250% Senior Notes due 2022 on or before the date of the participant's termination; and
  - b. dollar-for-dollar with respect to Termination Obligations subject to treatment other than as general unsecured claims in the Chapter 11 Cases.
10. Reallocation of Forfeit Target Award Amounts. The Company may reallocate or reassign, in whole or in part, target award amounts surrendered by 2020 KEIP or 2020 EIP participants to persons hired or promoted during the performance measurement period. Upon such reallocation or reassignment, a target award amount shall entitle the recipient to incentive awards calculated in accordance with the applicable plan as a participant according to the value of the assigned target award amount. For the avoidance of doubt, the combined aggregate target award amounts for the 2020 KEIP and 2020 EIP as of the conclusion of the performance measurement period may not exceed the aggregate target award amounts approved by the Board and the Bankruptcy Court.

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**SCHEDULE I**  
**to 2020 Employee Incentive Plan (EIP)**

**Filed Under Seal**