

Dear Mr./Mrs. \_\_\_\_\_,

This letter shall serve as a Loss of use claim concerning the above-referenced matter.

### LOSS OF USE

The court in Harris v. Dixon Cadillac Company (1982) 132 Cal.App.3d 485, at 491, set forth the scope of Civil Code section 3333:

Civil Code section 3333 provides, 'For the breach of an obligation not arising from contract, the measure of damages, except or otherwise expressly provided by this code, is the amount which will compensate for all the detriment proximately caused thereby, whether it could have been anticipated or not.' In Reynolds v. Bank of America (1959) 53 Cal.2d 49, our Supreme Court discusses the operation of this section in a situation somewhat analogous to our present case. The court identified the issue by stating: 'The sole question presented on this appeal is whether the owner of personal property which has been wrongfully destroyed has been limited in damages to the value of the property at the time of destruction or may also recover for loss of use during the period reasonably required for replacement.' After citing section 3333, the court then said, 'It is established, under this section, that where a vehicle is injured by the wrongful act of another, the owner is entitled to recover for the damage done to the vehicle and also for the loss sustained by being deprived of its use during the time reasonably required for the making of repairs.'

(Emphasis added.)

The Harris court held, at page 492, "The analogy is clear, it is not the value of the property itself that controls the amount of compensatory damages. Damages are allowable for the detriment proximately caused by the wrongful destruction *or detention* as long as the damages itself are provable and reasonable. (See also Zhadan v. Downtown Los Angeles Motor Distributors, Inc. (1980) 100 Cal.App.3d 821, where the value of the automobile was \$1,200 to \$1,700 and \$5,342 in compensatory damages were allowed as well as punitive damages.)

Where property obtained has a reasonable value, its owner is entitled to recover damages equivalent to the reasonable value of such use during the period he has been wrongfully deprived thereof up to the time of rendition of judgment. Harris v. Dixon Cadillac Company, supra, 132 Cal.App.3d 485, at 491, citing Tucker v. Hagerty (1918) 37 Cal.App. 789.

Further, where a vehicle's rental equivalent is available, the court may take notice of the daily rental rate as the cost for the vehicle's loss of use.

[31] Appellant next contends that there is no evidence to support the court's finding as to the reasonable value of the loss of use of the truck. This contention is without merit. The following summary of the evidence on this issue set forth [106 CalApp2d Page 73].

[32] in the opinion of the trial court finds ample support in the record: [33] "The truck was not repaired by plaintiff, but had it been it would have taken 30 days to get it fixed. He traded it in on a new truck and was unable to get his new truck on the road until about July 10. Plaintiff's testimony that it would have taken 30 days to get it fixed is not too clear, but again giving the defendant the benefit of the doubt I assume that what plaintiff meant was that if he had had it

fixed he could have had it out again by July 7. Between June 7 and July 7 there were four Sundays on which days plaintiff did not haul logs, and consequently those four days should be deducted from the 30 days, which leaves 26 days. Neither did plaintiff establish too clearly the rental value of the truck nor what his net earnings with it could be. The gross was estimated all the way from \$80.00 to \$110.00 per day, but quite a few expenses had to come out of that and the Court is not informed as to just what all of those expenses were. Very conservatively, however, the Court is justified in concluding that the net value of the use of that truck was \$50.00 per day, and 26 days at \$50.00 per day is \$1,300.00." [34] As stated in *Valencia v. Shell Oil Co.*, 23 Cal. 2d 840, at page 844 [147 P.2d 588]: "An owner's recovery for being deprived of the use of the damaged vehicle is generally to be determined with reference to the period of time reasonably required for the making of repairs." [35] The evidence was sufficient to show that the rental value of the truck was in excess of the \$50 per day allowed by the court. If there were some items of cost of operation that were not clearly brought out in the evidence no prejudice resulted to appellant there from. Appellant could have easily brought out these items if he had deemed it important. Furthermore, as stated in *Johnson v. Snyder*, 99 Cal. App. 2d 86 at page 90 [221 P.2d 164]: "[For] services of a commonplace or nontechnical character, the trial judge can call on his own general knowledge of their value. (*Estate of Reinhertz*, 82 Cal. App. 2d 156, 160 [185 P.2d 858, 186 P.2d 755] and cases cited.)" No other points raised required discussion. [36] In view of the foregoing the judgment is affirmed. The appeal from the order denying the motion for a new trial is dismissed. (*Parmalee v. Bartolomei* (1951) 106 Cal. App. 2d 68 (Cal.App.Dist.3 08/14/1951).)

To date, \_\_\_\_\_ has lost the use of her vehicle for 1 month. It would cost approximately \$35.00 per day to rent a vehicle to replace her 2006 Hyundai Tucson. Therefore, Ms. Cagle total loss of use claim is \$1,050.00.

If you have any questions or concerns, please don't hesitate to give me a call.

Very truly yours,

David L. Milligan, Esq.  
DLM/mr