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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

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| PEOPLE OF THE STATE OF CALIFORNIA, acting by and through San Francisco City Attorney DENNIS J. HERRERA,<br><br>Plaintiff,<br><br>vs.<br><br>THE HERTZ CORPORATION, AMERICAN TRAFFIC SOLUTIONS, INC., ATS PROCESSING SERVICES, L.L.C., AMERICAN TRAFFIC SOLUTIONS CONSOLIDATED, L.L.C., PLATEPASS, L.L.C., and DOES 1 through 20, inclusive,<br><br>Defendants. | Case No. CGC-17-557336<br><br>**COMPLAINT FOR INJUNCTIVE RELIEF AND CIVIL PENALTIES FOR VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTIONS 17200 AND 17500**<br><br>[VERIFIED ANSWER REQUIRED PURSUANT TO CODE OF CIVIL PROCEDURE SECTION 446] |

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Plaintiff, the People of the State of California (the "People"), acting by and through San Francisco City Attorney Dennis J. Herrera, brings this action against Defendants the Hertz Corporation ("Hertz") and its partner American Traffic Solutions, Inc. ("ATS")[1] (collectively, "Defendants") and alleges as follows:

## INTRODUCTION

1. In 1988, the California legislature enacted the Rental Passenger Vehicle Transactions law (Assembly Bill 3006) to protect consumers from unscrupulous practices by the rental car industry. The law prohibits rental car companies from requiring the purchase of optional services or inducing renters to purchase such services through unfair, deceptive, or coercive conduct.

2. Nevertheless, Hertz and its partner ATS are fraudulently and deceptively inducing Hertz customers who drive across San Francisco's iconic Golden Gate Bridge to purchase an "optional" toll service called PlatePass. Customers neither choose the service, nor receive sufficient notice to avoid it. They neither receive its supposed benefits, nor consent to its charges. Instead, by simply driving over the Golden Gate Bridge a single time, as millions of tourists do each year, each Hertz customer is charged not only the undiscounted toll rate, but up to $24.75 in extra fees. Worse, Hertz does not charge and disclose these fees on the receipt it provides to customers upon the close of the rental, but instead provides its customers' confidential personal credit card information to a third party who slips in the charge at a later date. These practices are not only unfair; they are unlawful.

3. Opened in 1937, the Golden Gate Bridge is the oldest and most iconic of California's eight toll bridges. With its 746-foot tall towers, sweeping main cables, signature International Orange color, and Art Deco styling, this 1.7-mile suspension bridge has been deemed one of the "Seven Wonders of the Modern World" and is one of the top-10 tourist destinations in the United States. It was and remains the only roadway between San Francisco and California's northern counties. Forty million vehicles cross the bridge every year.

[1] References to "ATS" include American Traffic Solutions, Inc., and its subsidiaries and operational divisions named as Defendants herein: ATS Processing Services, L.L.C., American Traffic Solutions Consolidated, L.L.C., and PlatePass, L.L.C.

4. Since 2009, Defendants have enabled every Hertz rental car in California with PlatePass. The service permits Hertz customers to bypass cash lanes and use the faster electronic (FasTrak) lanes on California's eight toll bridges (without having to establish a FasTrak account or incur toll violations). This convenience does not come cheap. PlatePass costs $4.95 per day for the duration of the rental, including days on which the renter does not use it, and is capped at $24.75, plus an inflated charge for the toll itself.

5. On March 27, 2013, the Golden Gate Bridge converted to All Electronic Tolling ("AET"). It is the only AET bridge in the state. Motorists may no longer stop at the bridge's Toll Plaza to pay their tolls in cash. Instead, they drive through the Toll Plaza and pay their tolls via FasTrak or one of several free new payment methods—including the option to pay *before* or *after* crossing the bridge (in person, online, by phone, or by mail).

6. Since the conversion to AET, PlatePass on the Golden Gate Bridge is a scam. Motorists no longer receive the advertised benefit of faster passage. Every lane is the same and available to everyone, with or without PlatePass and with or without FasTrak. And motorists can no longer avoid the service and its steep fees by paying their tolls via an optional cash lane—an option available to motorists on every other toll bridge.

7. Defendants compound these defects by actively misleading consumers about the optional nature of PlatePass and the ways consumers can avoid it. In stark contrast, customers are afforded a clear and direct way to affirmatively accept or decline *every other* optional service (*e.g.*, infant car seats, satellite radio, Loss Damage Waiver, etc.).

8. Finally, Hertz unlawfully provides the customer's billing information to ATS, a third-party, which—without proper disclosures or express informed consent—charges the customer's credit or debit card several weeks after the conclusion of the car rental.

9. Over the past four years, tens of thousands of Hertz customers have unwittingly paid millions of dollars in PlatePass fees for the simple act of crossing San Francisco's iconic Golden Gate Bridge.

10. These and similar practices by other rental car companies have caused confusion and prompted complaints. For example, a recent article about the Golden Gate Bridge's conversion to

AET notes that rental car toll service fees come "as a surprise to some car renters who don't learn about the charges until they get their credit card bills." (Cabanatuan, *Golden Gate Bridge Tolls Broadside Tourists Who Rent Cars*, San Francisco Chronicle (June 3, 2015) p. E1.)[2] John Goodwin, a spokesman for the Metropolitan Transportation Commission, was quoted as saying his agency received a lot of complaints, most of which "are about the obscure or allegedly deceptive practices of rental car companies . . ." (*Ibid.*)

11. In addition to the aforementioned Rental Passenger Vehicle Transactions law, Defendants' scheme violates several other laws, including the Unfair Competition Law (Bus. & Prof. Code, § 17200, *et seq.*), the False Advertising Law (Bus. & Prof. Code, § 17500, *et seq.*), the Consumer Legal Remedies Act (Civ. Code, § 1750, *et seq.*), and the federal Restore Online Shopper's Confidence Act (15 U.S.C. §§ 8401-05).

12. As described in more detail below, this action seeks to put a stop to this illegal scheme, and force Defendants to pay back their victims.

**PARTIES**

13. Plaintiff, the People of the State of California, by and through San Francisco City Attorney Dennis J. Herrera, prosecutes this action pursuant to California Business and Professions Code section 17200 *et seq.*

14. Defendant Hertz is a Delaware corporation with its principal place of business in Estero, Florida, and is registered to conduct business in California. Hertz is engaged in the business of, *inter alia*, renting vehicles to consumers in California and around the world. Hertz maintains hundreds of rental offices in California, and maintains a website, www.hertz.com, available to California consumers.

15. With annual revenues over $10 billion, Hertz is among the largest rental car companies in the world. It operates the Hertz, Dollar, Thrifty, and Firefly car rental brands in approximately 10,000 locations throughout approximately 150 countries in North America, Europe, Latin America, Asia, Australia, Africa, the Middle East, and New Zealand. Hertz is one of three companies that

[2] San Francisco Chronicle webpage, <http://www.sfchronicle.com/bayarea/article/Golden-Gate-Bridge-tolls-broadside-tourists-who-6304954.php> [as of February 24, 2017].

comprise an oligopoly in the rental car industry; the three largest companies control 90% of the U.S. market and more than 98% of the airport business.

16. Defendant American Traffic Solutions, Inc. is a privately-held, Kansas corporation with its principal place of business in Mesa, Arizona, and is registered to conduct business in California. It is engaged in the business of, *inter alia*, developing and providing electronic toll and traffic management solutions worldwide, including California. It serves the nation's largest rental car companies, including Hertz, and processes nearly 50 million toll transactions every year.

17. Defendant ATS Processing Services, L.L.C. is based in Scottsdale, Arizona, and is a division of American Traffic Solutions, Inc.

18. Defendant American Traffic Solutions Consolidated, L.L.C. is a Delaware limited liability company with its principal place of business in Scottsdale, Arizona. It is a subsidiary of American Traffic Solutions, Inc.

19. Defendant PlatePass, L.L.C. is a Delaware limited liability company with its principle place of business is in Scottsdale, Arizona. It is an operational division of American Traffic Solutions Consolidated, L.L.C. PlatePass, L.L.C. administers ATS's PlatePass system and collects tolls and PlatePass administrative fees throughout the country, including California.

20. Notwithstanding corporate formalities, American Traffic Solutions, Inc., ATS Processing Services, L.L.C., American Traffic Solutions Consolidated, L.L.C., and PlatePass, L.L.C., (collectively, "ATS") have combined operations, and at all times relevant to this litigation, American Traffic Solutions, Inc. has actively directed and controlled the daily activities of its subsidiaries and their operational divisions, to the extent that the subsidiaries and operational divisions have no separate corporate interests of their own and function solely to achieve the purposes of American Traffic Solutions, Inc.

21. ATS maintains a website, www.platepass.com ("PlatePass website"), available to California consumers.

22. The true names and capacities of Defendants sued herein under the fictitious names Does 1 through 20, inclusive, are unknown to the People. The People will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

23. The People are informed and believe that, at all relevant times, all the acts and omissions described in this Complaint by any Defendant were aided and abetted by all other Defendants. All Defendants have worked together, in cooperation and/or in concert, to carry out a common scheme for profit. All Defendants have intended to and did participate in the acts and omissions described in this Complaint.

24. The People are informed and believe that, at all relevant times, each of the Defendants acted as the principal, agent, or representative of each of the other Defendants, and in doing the acts or omissions described in this Complaint, each Defendant was acting within the course and scope of the agency relationship with each of the other Defendants, and with the permission and ratification of each of the other Defendants.

25. The People are informed and believe that, at all relevant times, each Defendant has conspired with all other Defendants in committing the acts and omissions described in this Complaint.

26. For example, the Hertz website identifies "PlatePass®" as a "service partner."[3] It further explains that "PlatePass®, a division of American Traffic Solutions, administers this service for Hertz" and directs consumers to visit the PlatePass website "for more questions."[4] PlatePass, in turn, maintains a dedicated "Renting with Hertz" page on its website, which describes how PlatePass is offered to Hertz customers.[5] Printed materials at Hertz locations also describe how PlatePass works and direct consumers to PlatePass's website.

## JURISDICTION AND VENUE

27. The San Francisco Superior Court has jurisdiction over this action. Defendants are conducting unlawful and deceptive business practices in San Francisco, and the City Attorney has the right and authority to prosecute this case on behalf of the People. People in San Francisco have been victimized by Defendants' unlawful, unfair, and fraudulent business practices.

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[3] Hertz webpage, <https://www.hertz.com/rentacar/partner/index.jsp?targetPage=partnersView.jsp&partner Type=S&leftNavUserSelection=globNav_8_1> [as of February 24, 2017].

[4] Hertz webpage, <https://www.hertz.com/rentacar/productservice/index.jsp?targetPage=USplatepass.jsp> [as of February 24, 2017].

[5] PlatePass webpage, <https://platepass.com/locations/faq/renting-with-hertz/> [as of February 24, 2017].

28. Venue is proper in this Court because Defendants transact business in the City and County of San Francisco and some of the acts complained of occurred in this venue.

## BACKGROUND FACTUAL ALLEGATIONS

### I. California's Toll Bridges And FasTrak.

29. There are eight toll bridges in California: the Antioch Bridge, the Benicia-Martinez Bridge, the Carquinez Bridge, the Dumbarton Bridge, the Golden Gate Bridge, the Richmond-San Rafael Bridge, the San Francisco-Oakland Bay Bridge, and the San Mateo-Hayward Bridge.

30. Each of the eight toll bridges is located in the greater San Francisco Bay Area, and each has been open and collecting tolls from motorists for decades. Tolls are collected in one direction only.

31. The Golden Gate Bridge is owned and operated by the Golden Gate Bridge, Highway and Transportation District (the "District"). (See Cal. Sts. & High. Code, §§ 27500-27567.) The Golden Gate Bridge Toll Plaza, located at the southern end of the bridge, is located in the City and County of San Francisco.

32. Motorists are charged tolls for crossing the Golden Gate Bridge in the southbound direction only. Between September 2, 2008 and April 6, 2014, the undiscounted toll rate was $6.00. Between April 7, 2014 and June 30, 2015, the undiscounted toll rate was $7.00. Between July 1, 2015 and June 30, 2016, the undiscounted toll rate was $7.25. Between July 1, 2016 and today, the undiscounted toll rate is $7.50. During all these times, motorists who paid via FasTrak were afforded a $1.00 discount.

33. The other seven toll bridges are owned by the State of California, and operated by the California Department of Transportation.

34. The Bay Area Toll Authority ("BATA") manages FasTrak, which is the electronic toll collection system used in the State of California.

35. By October 2000, all eight California toll bridges were compatible with FasTrak and all eight bridges maintained a mix of "cash" and "FasTrak-only" lanes. FasTrak-only lanes are not staffed by toll collectors; FasTrak users can drive through the toll plaza without having to stop.

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36. To pay a bridge toll using FasTrak, motorists must complete several steps: 1) purchase a FasTrak "toll tag" (also called a "transponder") for $25 ($20 refundable deposit and $5 in prepaid tolls) online or at a retail store, 2) open a FasTrak account online, by phone, or in person, and 3) mount the FasTrak toll tag in the vehicle. FasTrak is not a "pay as you go" system. Customers deposit money into their FasTrak account and each time they use the toll tag, the toll amount is deducted from the account balance.

37. It is a violation of California law to evade a toll, which includes driving through a FasTrak-only lane without a valid, funded FasTrak account. (See Veh. Code, § 23302 *et seq.*, Cal. Sts. & High. Code, § 30843.) Toll evasion violations are enforced by the issuance of notices of toll evasion and the imposition of civil penalties. (Veh. Code, § 40250 *et seq.*)

38. The first notice requests payment for the toll amount and an additional $25 penalty. Upon failure to respond, a second notice will be sent for the toll amount plus a $70 penalty ($25 penalty plus $45 late penalty). Failure to respond to the second notice will result in additional penalties and referral of the amount due to a collections agency and/or the withholding of vehicle registration by the DMV.

39. To establish violations and send notices, BATA maintains a toll violation processing system whereby it captures license plate images of all violators.

## II. Hertz And ATS Partner To Provide The PlatePass Toll Service.

40. The FasTrak-only lanes on California's toll bridges are typically faster than the cash lanes. But it would be highly impractical for most rental car customers to make use of them—particularly those customers who do not own their own car and/or do not live in the San Francisco Bay Area. The convenience of the FasTrak lanes would be substantially outweighed by the time and expense of opening a FasTrak account, obtaining a FasTrak toll tag (which currently requires a $25 deposit), temporarily linking the toll tag to the rental car, mounting the toll tag in the rental car, crossing a bridge in a FasTrak-only lane, and then returning the toll tag by U.S. mail to recoup the deposit.

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41. To allow its customers to make use of FasTrak-only lanes, Hertz partnered with ATS to offer a toll service called PlatePass. Defendants have always described the service as optional—customers can choose to use it or not.[6]

42. To provide this service, in 2009, ATS entered into a contract with BATA. The contract remains in effect today. ATS funds a "fleet account" with BATA for Hertz rental cars, and provides BATA with an up-to-date list of Hertz rental car license plate numbers. When Hertz customers—identified by license plate—travel through a FasTrak-only lane without a valid FasTrak account, BATA does not process this crossing as a violation. Rather, it deducts the toll from the ATS/Hertz fleet account.

43. PlatePass provides a simple benefit: it permits Hertz customers to lawfully (*i.e.*, without penalty) drive through the faster FasTrak-only lanes without going to the time and expense of establishing a valid FasTrak account and using a FasTrak toll tag. Both Hertz and ATS repeatedly emphasize this singular benefit.

a. Hertz maintains a dedicated webpage regarding PlatePass entitled, "PlatePass® Toll Road Payment." The first question and answer commences, "**What is PlatePass®?** It's an electronic means for paying road tolls. If you choose to use it, you'll avoid delays at toll lanes and be on your way faster. If you use PlatePass® . . . you'll be able to bypass long cash lanes."[7]

b. Hertz also distributes a printed brochure, which provides, in part, that PlatePass "provides Hertz customers the convenience of utilizing the express lanes without incurring any toll road fines or penalties." (A copy of the brochure is attached here as Exhibit A and incorporated herein by this reference.)

c. The very first words on the PlatePass homepage similarly purport to identify the benefits of the service: "**What is PlatePass?** PlatePass® is an electronic toll payment system that enables renters to use high-speed electronic toll collection lanes and bypass backups at cash lanes.

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[6] See, *e.g.*, Hertz webpage, <https://www.hertz.com/rentacar/productservice/index.jsp?targetPage=USplatepass.jsp> [as of February 24, 2017]; PlatePass webpage, <https://platepass.com/locations/faq/renting-with-hertz/> [as of February 24, 2017].

[7] Hertz webpage, <https://www.hertz.com/rentacar/productservice/index.jsp?targetPage=USplatepass.jsp> [as of February 24, 2017].

The PlatePass® service also means that rental car customers will avoid costly toll violation fines otherwise incurred if high speed toll lanes are used without special equipment or prior enrollment."[8]

d. The PlatePass homepage links to a webpage entitled "How It Works," which similarly advertises the benefit of PlatePass: "PlatePass® is an automated Electronic Toll Payment Service that enables rental car customers to use high speed, cashless toll lanes to avoid having to stop and pay tolls with cash. . . . PlatePass enables rental car customers to avoid waiting in toll lines to pay cash or coins by using FasTrak toll lanes in California. . . "[9]

e. A PlatePass FAQ webpage entitled "Renting with Hertz" provides, in part: "Why should I be interested? Speed and convenience. With PlatePass, you don't need to wait in long lines to pay cash so you can get where you are going faster."[10]

f. A PlatePass FAQ webpage entitled "Travelling to San Francisco" provides, in part: "PlatePass® is an electronic toll payment system that enables renters to use high-speed electronic toll collection lanes and bypass backups at cash lanes. The PlatePass service also enables rental car customers to avoid costly toll violation fines otherwise incurred if high-speed toll lanes are used without special equipment. . . . If a customer travels on the any [sic] of the Bay Area Bridges when driving a Hertz rental car, the renter has the option of using the FasTrak® non-gated fast lanes. . . Why should I use PlatePass? Speed and convenience. With PlatePass, you don't need to wait in long lines to pay cash so you can get where you are going faster."[11]

44. To reap this benefit, customers pay a hefty price. If PlatePass is used for a single bridge crossing, the customer is charged a $4.95 service fee for each day of the rental—*including any days on which PlatePass is not used*—up to a maximum of $24.75 per rental, plus incurred tolls at the Toll Authority's cash toll rate or highest undiscounted toll rate. Defendants have charged this price since at least May 25, 2013.

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[8] PlatePass webpage, <https://platepass.com/> [as of February 24, 2017].

[9] PlatePass webpage, <https://platepass.com/how-it-works/> [as of February 24, 2017].

[10] PlatePass webpage, <https://platepass.com/locations/faq/renting-with-hertz/> [as of February 24, 2017].

[11] PlatePass webpage, <https://platepass.com/locations/faq/traveling-to-san-francisco/> [as of February 24, 2017].

## III. The Golden Gate Bridge Converts To All Electronic Tolling.

45. After years of planning—and to achieve various travel time, safety, environmental, service, and efficiency benefits—the Golden Gate Bridge converted to All Electronic Tolling on March 27, 2013. This conversion had a series of practical and legal consequences for motorists paying their Golden Gate Bridge tolls.

46. First, motorists were no longer permitted to stop at the Toll Plaza. Instead, from March 27, 2013 continuing through today, motorists travelling southbound through the Toll Plaza are instructed to "keep moving" and "do not stop." The speed limit is 25 miles per hour.

47. Second, motorists were no longer permitted to pay their tolls in cash. Instead, from March 27, 2013 continuing through today, the District has provided motorists with several ways to pay their tolls, including the traditional FasTrak method (discussed above) and two new options—"One-Time Payment" and "Toll Invoice."

a. One-Time Payment. Motorists can make a One-Time Payment up to 30 days before crossing the Golden Gate Bridge or within 48 hours after. They can make this payment online or by phone using a credit card, or in person at more than a hundred locations throughout the Bay Area using cash, check, money order, or credit card. There are no added fees or penalties when making a One-Time Payment.

b. Toll Invoice. For motorists who do not pay through another method, a Toll Invoice is generated and mailed to the registered owner of the vehicle. The Toll Invoice is only for the toll amount due. There are no added fees or penalties. The first Toll Invoice is mailed four or more days after crossing the Golden Gate Bridge. Motorists may pay a Toll Invoice 1) by mail using a credit card, check, or money order, 2) by phone using a credit card, or 3) in person at various locations using cash, credit card, check, or money order. The Toll Invoice must be paid within 21 days of receiving the invoice to avoid a toll violation and fine.

48. Third, because these new payment options were offered, it was no longer prima facie evidence of a toll violation to cross the Golden Gate Bridge without making an immediate toll payment. (Veh. Code, § 23302(d).) In contrast, it remains prima facie evidence of a toll violation to

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cross every other toll bridge in California without making an immediate toll payment. (Veh. Code, § 23302(a).)

49. Fourth, there were no longer cash lanes and FasTrak-only lanes. Instead, from March 27, 2013 continuing through today, each southbound lane permits toll payment via all available payment options.

50. Despite these changes, Defendants continued to—and still do today—advertise and provide PlatePass to Hertz customers who cross the Golden Gate Bridge *in the same manner and on the same terms* as they advertise and provide the service to Hertz customers who cross California's seven other toll bridges.

**IV. Hertz's Gold Plus Rewards Membership Program.**

51. Hertz maintains a "Gold Plus Rewards" membership program (previously called "#1 Club Gold"). Membership is free and entitles members to various perks and benefits.

52. With a driver's license and a valid credit card linked to the membership address, any individual over the age of 21 may enroll in the Gold Plus Rewards program via the hertz.com website.

53. In the course of enrolling in the Gold Plus Rewards program, customers pre-select their default decision to "accept" or "decline" various optional services that are typically made available to customers at the Hertz rental counter, including "Prepay the Fuel (Fuel Purchase Option)," "Loss Damage Waiver," "Liability Insurance Supplement," "Personal Accident Insurance/Personal Effects Coverage," "NeverLost, The In-Car Navigation System," and "SiriusXM Satellite Radio."

54. PlatePass is not among these optional items or services that consumers pre-select. These optional items and services do not mention tolls or toll services.

55. To complete the Gold Plus Rewards enrollment process, customers agree to be bound by the Terms and Conditions applicable to Gold Plus Rewards members ("Gold Terms"). The Gold Terms provide, in part, "YOU WILL BE RESPONSIBLE FOR AND PAY ALL TOLL OCCURRENCES." These Gold Terms do not describe or offer PlatePass or any other toll service. (A copy of the current Gold Terms, applicable in the United States, is attached here as Exhibit B and incorporated herein by this reference.)

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56. According to Hertz's 2013 Annual Report, there were over 5.6 million members of the Gold Plus Rewards program as of December 31, 2013. According to Hertz's 2015 Annual Report, rentals by Hertz Gold Plus Rewards members accounted for approximately 40% of worldwide rental transactions in 2015.

## DEFENDANTS' UNLAWFUL, UNFAIR, AND/OR FRAUDULENT BUSINESS PRACTICES

57. The following paragraphs set forth the unlawful, unfair, and/or fraudulent business practices encountered by a typical customer who, from March 27, 2013 and continuing through today, rents a Hertz car, drives southbound across the Golden Gate Bridge, and is subsequently charged for PlatePass.

58. Hertz has sought to insulate itself from the growing chorus of anger over these practices. In order to rent a Hertz car, customers are required to waive their right to a jury trial and waive their right to participate in a class action lawsuit.

### I. Customers Cannot Decline PlatePass When Reserving Their Rental Car.

59. Most consumers commence their Hertz car rental by booking a reservation on the Internet, via the hertz.com website. To book a reservation via hertz.com, customers enter information into a series of webpages, labeled "Book a Car," "Edit Itinerary," "Choose a Car," "Choose Extras," and "Review & Book."

60. On the "Book a Car" page, customers choose whether to "Book as a Member" or "Book as a Guest."[12] By booking as a member of the Gold Plus Rewards program, some fields are pre-populated and some options are pre-selected based on information previously provided by the member.

61. On the "Choose a Car" page, customers select their vehicle and choose to "Pay Later" or "Save $ Pay Now."[13] For customers who choose the "Save $ Pay Now" option, a portion of the total charges will be charged to their credit card upon completing the reservation.

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[12] Hertz webpage, <https://www.hertz.com/rentacar/reservation/> [as of February 24, 2017].

[13] Hertz webpage, <https://www.hertz.com/rentacar/reservation/#vehicles> [as of February 24, 2017].

62. On the "Choose Extras" webpage, customers are provided the opportunity to select various "Protection Options," "Convenience Options," and "Service Options."[14] To select one of these optional services, customers must affirmatively check a box labeled "Add" before continuing to the next webpage.

**Screen shot of select portion of Hertz "Choose Extras" webpage**

**Protection Options**

| Add | | Item Description | Price |
|---|---|---|---|
| ☐ | | **Protect the Car - Loss Damage Waiver**<br>Get peace of mind. Covers all vehicle damage to the Hertz rental car.<br>Watch this video on Hertz Car Rental Protection<br>More Details | 11.00<br>USD Per Day |

**Convenience Options**

| Add | | Item Description | Price |
|---|---|---|---|
| ☐ | SiriusXM SATELLITE RADIO | **SiriusXM® Satellite Radio**<br>More Details | 7.99<br>USD Per Day |

**Safety Options**

| Add | | Item Description | Quantity | Price |
|---|---|---|---|---|
| ☐ | | **Booster Seat**<br>For children weighing 40 to 80 lbs or 18kg-36kgs.<br>More Details | ☑ | 13.99<br>USD Per Day |
| ☐ | | **Infant Child Seat**<br>For infants less than one year and weigh up to 20 pounds or up to 9 kgs<br>More Details | ☑ | 13.99<br>USD Per Day |
| ☐ | | **Child Seat**<br>Forward facing for children weighing 20-40 pounds or 8kgs-18 kgs and up to 40 inches/101 cms in height.<br>More Details | ☑ | 13.99<br>USD Per Day |

[14] Hertz webpage, <https://www.hertz.com/rentacar/reservation/#extras> [as of February 24, 2017].

63. Elsewhere on its website, Hertz identifies PlatePass as one of its "convenience options."[15] But PlatePass is not among the optional items or services presented here. These optional items and services do not mention tolls or toll services.

64. Customers are afforded no opportunity to make any decision regarding PlatePass in this booking process. They do not accept, decline, choose, or opt out of the service.

65. In addition to these optional services that can be selected while booking the reservation, the bottom right corner of the "Choose Extras" webpage identifies additional optional items that will be made available to customers at the rental counter when they pick up their car.

**Screen shot of select portion of Hertz "Choose Extras" webpage**

**AVAILABLE OPTIONAL ITEMS AT THE COUNTER**

? Liability Insurance Supplement
daily 15.38 USD

? Loss Damage Waiver
daily 11.00 USD

? Personal Accident Insurance / Personal Effects Coverage
daily 6.95 USD

? Premium Emergency Roadside Service
daily 7.99 USD

Rates for Optional Items are Exclusive of taxes, Location Fees and other associated charges.

66. PlatePass is not among these optional items or services. These optional items and services do not mention tolls or toll services.

67. On the "Review and Book" webpage, customers who book as members and customers who elect to "pay now" must provide valid credit card information.[16] Members are permitted to use the credit card information saved with their membership profile or input new information. Defendants do not clearly and conspicuously disclose the terms of PlatePass to these consumers prior to obtaining their billing information.

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[15] Hertz webpage, <https://www.hertz.com/rentacar/productsandservices/productsandservicesRegions.do> [as of February 24, 2017].

[16] Hertz webpage, <https://www.hertz.com/rentacar/reservation/#review-and-book> [as of February 24, 2017].

68. At the end of this reservation process, the final sentence of the "Review & Book" webpage provides, "By clicking on the "Submit" button, you confirm that you understand and accept our Rental Qualification and Requirements, Terms and Conditions and you understand the Age Restrictions." The underlined passages are hyperlinks, and the Terms and Conditions are also presented in a scrollable text box.

69. Clicking on the "Terms and Conditions" hyperlink opens a pop-up window, which provides, in part: "**TOLLS, PLATEPASS.** You are responsible for the payment of all toll charges incurred during the rental period. If PlatePass is used to pay a toll, you will be charged for tolls incurred at the applicable tolling authority's highest undiscounted rate, plus the service fee set forth on your rental record." (A complete copy of these Online Terms and Conditions is attached here as Exhibit C and incorporated herein by this reference.)

70. Clicking on the "Rental Qualifications and Requirements" hyperlink opens a pop-up window, which has the text "Please choose a topic" above a drop-down list of thirty-three topics. Upon selecting the "PlatePass" topic, the text in the pop-up window provides: "If PlatePass is used to pay a toll, you will be charged for tolls incurred at the applicable tolling authority's highest undiscounted rate, plus the service fee set forth on your rental record. For further information see PlatePass® Electronic/Video Toll Payment."

71. The underlined passage is a hyperlink. Clicking on it opens a Hertz webpage entitled "PlatePass® Toll Road Payment," which provides information about PlatePass and concludes with the following text and hyperlink: "For more questions, please visit www.PlatePass.com."

72. In addition to booking a reservation via the hertz.com website, customers may book a reservation by telephone, in person at a rental location, or via authorized third parties. On information and belief, customers provide essentially the same information and are presented with essentially the same options, terms, and conditions when booking a reservation through these alternate channels.

## II. Customers Cannot Decline PlatePass When Picking Up Their Rental Car.

73. After booking the reservation, customers pick up their rental car at the Hertz location specified in the reservation.

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74. Many customers must go the rental counter at the Hertz location and speak with a Hertz rental agent. The agent typically offers the customer additional optional items and services, including, but not limited to, "Prepay the Fuel (Fuel Purchase Option)," "Loss Damage Waiver," "Liability Insurance Supplement," "Personal Accident Insurance/Personal Effects Coverage," "NeverLost, The In-Car Navigation System," and/or "SiriusXM Satellite Radio."

75. Customers affirmatively accept or decline these optional items and services.

76. PlatePass is not among these optional items and services presented to customers. Customers are afforded no opportunity to make any decision regarding PlatePass in this pick-up process. They do not accept, decline, choose, or opt out of the service.

77. Along with the car keys, customers are typically provided two printed documents: the "Rental Record" and the "Rental Agreement Terms and Conditions" (also referred to as the "Rental Jacket").

78. In select locations, Gold Plus Rewards members are not required to go to the rental counter. They can bypass the rental counter entirely and proceed directly to their vehicles upon arrival at the facility.

79. These Gold Plus Rewards members who bypass the rental counter do not "accept" or "decline" these optional items and services at the time of pick up. Instead, they "accept" or "decline" these optional items based on the preferences they selected when establishing their membership, and which they can update via their online account at any time. PlatePass is not among the preferences Gold Plus Rewards members select when establishing their membership. Therefore, these customers are afforded no opportunity to make any decision regarding PlatePass in this pick-up process. They do not accept, decline, choose, or opt out of the service.

80. For these Gold Plus Rewards members, a copy of the Rental Record and/or the Rental Agreement Terms and Conditions may be left in the members' vehicles or handed to them by a parking lot attendant as they exit the parking facility.

## III. Defendants Provide Misleading Information About Avoiding PlatePass.

81. For guests and members alike, the entire rental car agreement between Hertz and the customer is comprised of a dizzying array of documents. When they pick up the rental car, many

customers receive at least two printed documents: a "Rental Record" and the "Rental Agreement Terms and Conditions." (A representative copy of the Rental Record is attached here as Exhibit D and incorporated herein by this reference;[17] a representative copy of the Rental Agreement Terms and Conditions is attached here as Exhibit E and incorporated herein by this reference.)

82. The "Rental Agreement Terms and Conditions," however, explains that the *entire* "Agreement" is comprised of these two documents and "any other documents which you are required to sign when you rent the car, and which may be signed by you electronically." This includes the various terms associated with booking an online reservation—*i.e.*, "Rental Qualification and Requirements," "Terms and Conditions," and "Age Restrictions"—and, when applicable, the terms and conditions associated with membership in the Gold Plus Rewards program.

83. Customers are not permitted to negotiate this Agreement or any of its components. Hertz's agents have no authority to waive or alter any terms in the Agreement. In fact, the Rental Agreement Terms and Conditions specifically provide, "Rental representatives are not authorized to waive or change any terms of the Rental Agreement." (Exhibit E, ¶ 14(a).) This is a quintessential contract of adhesion.

84. The Rental Record is the first and only component of the entire Agreement that includes any discussion of PlatePass and its material terms. The Rental Record is six pages, printed in approximately 7.5-point Arial Narrow font, on paper 7.25 inches by 3.25 inches in size.

85. The first page includes a "Total Estimated Charge," which is the sum of the following line items: the "Rental Rate" (per day), "Additional Products," "Service Charges/Taxes," and "Adjustments." Any charges that will be calculated at return—*e.g.*, "Fuel & Service"—are identified but the price is listed as "*****." PlatePass is not listed or identified on this first page.

86. The only mention of PlatePass is on the fourth page of the six-page Rental Record, which is entitled "Important Information Regarding Tolls." A copy of a representative Rental Record is attached to this Complaint as Exhibit D. For convenience, the fourth page is reproduced here:

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[17] All personally identifiable information has been redacted from this copy of the Rental Record.

**Hertz** PG 1 OF 6 #01 RT RR [redacted]

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## IMPORTANT INFORMATION REGARDING TOLLS

You are responsible to pay all tolls. For your convenience, we offer PlatePass, an electronic toll payment system operated by PlatePass LLC, for use on toll roads in the areas specified below.

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In the following areas all our vehicles (even without a windshield toll transponder) may use any cashless electronic toll lane: The entire States of FLORIDA, GEORGIA, COLORADO, NORTH CAROLINA, and TEXAS, the SAN FRANCISCO BAY AREA BRIDGES, and in Seattle, the TACOMA NARROWS BRIDGE and the SR 520 BRIDGE.

TO USE PLATEPASS IN THESE AREAS, pass through a cashless toll lane. You will be billed automatically as outlined below.

IF YOU DO NOT WISH TO USE PLATEPASS IN THESE AREAS, use only traditional cash toll lanes (if available) and make payment directly to the toll authority.

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IN DELAWARE, ILLINOIS, INDIANA, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, OHIO, PENNSYLVANIA, VIRGINIA AND WEST VIRGINIA, only vehicles equipped with a windshield toll transponder may access the cashless toll lanes (The toll authority may allow for an alternative pay method, such as payment by mail).
TO USE PLATEPASS IN THESE STATES, slide the transponder out of the shield box and pass through a cashless toll lane. You will be billed automatically as outlined below.

IF YOU DO NOT WISH TO USE PLATEPASS IN THESE STATES, keep the transponder fully within the shield box and use only traditional cash lanes (if available) to make payment directly to the toll authority.

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**NOTE: Certain toll roads do not accept cash. If you travel on such a toll road without a personal transponder that can be used on the toll road, you will be required to use PlatePass and be billed automatically as outlined below, or incur toll charges or violations for which you will be responsible. In Southern California, for toll roads that accept PlatePass, the toll authority allows for payment by phone/online within five (5) days of accessing the toll road. If you travel in the excluded HOV lanes in Southern California or if you travel on toll roads in Southern California that do not accept PlatePass, you will also be charged an administrative fee of $30.00.**

Where permitted by Toll Authorities, you may opt to use your personal transponder. Follow the instructions above for NOT utilizing PlatePass and install a compatible transponder properly.

**If PlatePass is used, PlatePass LLC will charge you a service fee of $4.95 for each day of your rental including prior or subsequent days on which the PlatePass service is not used (capped at $24.75 per rental) plus incurred tolls at the Toll Authority's cash toll rate or highest undiscounted toll rate.** PlatePass LLC will separately charge your credit or debit card the applicable charges after the close of your rental. Charges typically take 1-3 weeks after the rental closes to appear on your statement, but a longer delay may occur. Cash customers will be invoiced.

FAILURE TO PAY ALL TOLLS MAY RESULT IN A TOLL CHARGE AND/OR VIOLATION. You will be charged for any toll/parking/traffic charges, violation fines/penalties incurred, plus applicable administrative fees. You authorize us to release your billing/rental information to PlatePass LLC and American Traffic Solutions to process and bill all such toll, violation, and administrative charges and service fees.

[redacted] Redacted

87. For many Hertz customers, this page—the fourth of a six-page Rental Record, which is one of several electronic and hardcopy contractual documents that comprise the entire Agreement—is the first and only time they are provided any information about PlatePass.

88. The representations made on this page are vague, ambiguous, incomplete, false, misleading, and/or deceptive in the following respects:

a. The second paragraph identifies the purported benefit of the service: "all our vehicles . . . may use any cashless electronic toll lane." But PlatePass provides no benefit to motorists who cross the Golden Gate Bridge. Regardless of PlatePass, motorists may use any and all of the cashless toll lanes on the Golden Gate Bridge.

b. The second paragraph identifies "the SAN FRANCISCO BAY AREA BRIDGES" as among the areas where PlatePass is available. The fourth paragraph provides, in full: "IF YOU DO NOT WISH TO USE PLATEPASS IN THESE AREAS, use only traditional cash toll lanes (if available) and make payment directly to the toll authority." The Golden Gate Bridge does not maintain any "traditional cash toll lanes," so this instruction for avoiding PlatePass is inapplicable. Worse still, the disclosure fails to identify this fact, so customers are wrongly led to believe that this instruction is sufficient to avoid PlatePass on the Golden Gate Bridge. It is not. Finally, this disclosure does not indicate or even suggest that there are *other* ways to avoid or decline PlatePass when crossing the cashless Golden Gate Bridge.

c. The fifth, six, and seventh paragraphs are not directly applicable because they address how PlatePass works outside of California. However, the fifth paragraph indicates that toll authorities in those states "may allow for an alternative pay method, such as payment by mail." To mention this fact—while failing to similarly indicate that the Golden Gate Bridge also accepts payment by mail (and other methods)—leaves customers with the impression that no such options are available in California, including at the Golden Gate Bridge. This is not true.

d. The eighth paragraph commences, "NOTE: Certain toll roads do not accept cash. If you travel on such a toll road without a personal transponder that can be used on the toll road, you will be required to use PlatePass and be billed automatically as outlined below, or incur toll charges or violations for which you will be responsible." This is false and/or misleading in several respects.

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i. First, it is not clear that this paragraph applies to the Golden Gate Bridge. It does not indicate that the Golden Gate Bridge does not accept cash nor mention the Golden Gate Bridge at all. And it only addresses "toll roads" rather than "toll bridges."

ii. Second, to the extent that this instruction is *intended* to apply to motorists who cross the Golden Gate Bridge, it only identifies a disfavored method of avoiding PlatePass—using a FasTrak personal transponder. (As explained at paragraph thirty-six, *supra*, it takes several steps to sign-up for and use FasTrak.) For this reason, even BATA recognizes that it is highly impractical for most rental car customers to pay their Golden Gate Bridge toll via FasTrak. It instructs, "A One-Time Payment is the best option for rental vehicle users."[18] The District similarly indicates, "One-Time Payments are suggested for drivers who infrequently cross the Golden Gate Bridge."[19] This disclosure in the Rental Record expressly fails to mention the preferred One-Time Payment method.

iii. Third, using a FasTrak transponder is not just impractical, it is limiting. Motorists may only use a FasTrak transponder *at the time* of crossing, whereas the other payment options not mentioned here may be used *before or after* crossing. Therefore, FasTrak is unavailable to motorists who first learn about the Golden Gate Bridge toll procedures at the time of crossing.

e. This eighth paragraph concludes by explaining that some Southern California toll roads provide another way to avoid PlatePass: they "allow for payment by phone/online within five (5) days of accessing the toll road." To mention this fact—while failing to similarly indicate that the Golden Gate Bridge also accepts payment online (and via other methods)—leaves customers with the impression that no such options are available at other California toll roads and bridges, including at the Golden Gate Bridge. This is not true.

f. The ninth paragraph reiterates that in some instances, motorists may use a personal transponder to pay their tolls. This again leaves customers with the impression that

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[18] FasTrak webpage, <https://www.bayareafastrak.org/en/guide/GGBridgeToll.shtml> [as of February 24, 2017].

[19] District webpage, <http://goldengate.org/tolls/tollpaymentoptions.php #licenseplate> [as of February 24, 2017].

transponders are the only way to avoid or decline PlatePass. This is false with respect to the Golden Gate Bridge.

89. All told, this fourth page of the Rental Record—the entire offer of the PlatePass service—does not even mention the Golden Gate Bridge, much less disclose that there are several, convenient ways to pay the bridge tolls and thus avoid PlatePass service fees.

90. In addition to the foregoing representations on page four of the Rental Record, Hertz and PlatePass make *additional* false and/or misleading representations with respect to avoiding or opting out of PlatePass on the Golden Gate Bridge:

a. The Hertz website provides, "**If you don't want to use PlatePass®, you must pay all tolls with cash (if cash option is available) or with your own toll transponder compatible to the toll road**" (emphasis in original).[20]

b. The PlatePass website similarly indicates that the Golden Gate Bridge is among the facilities that no longer accept cash. "If you use any of these facilities without using a personal toll transponder you will be charged for using PlatePass as no cash option is available."[21]

c. Hertz distributes a brochure about PlatePass, which provides, in part, "**Some toll roads no longer accept cash payments**. If you incur toll on these roads without using your own compatible transponder, you will be enrolled in PlatePass" (emphasis in original.) (See Exhibit A.)

## IV. When Crossing The Golden Gate Bridge, Customers Cannot Decline PlatePass Nor Do They Receive Its Proffered Benefits.

91. In California, PlatePass is a license-plate based system. Even though customers do not sign-up, enroll, accept, or otherwise agree to the service, every Hertz rental car is still "PlatePass® enabled" or "PlatePass ready." The service cannot be turned off or disabled.

92. Even if a customer is aware that the Hertz rental car is PlatePass-enabled, the customer has no way of avoiding or declining the service at the time of crossing the Golden Gate Bridge—there

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[20] Hertz webpage, <https://www.hertz.com/rentacar/productservice/index.jsp?targetPage=USplatepass.jsp> [as of February 24, 2017]..

[21] PlatePass webpage, <https://platepass.com/locations/> [as of February 24, 2017].

is no opportunity to pay the toll at the time of crossing. Every lane is the same, and Defendants treat passage through any lane as "use" of PlatePass.

93. Moreover, customers do not reap the service's advertised benefit—*i.e.*, they do not bypass slower cash lanes nor are they afforded faster passage through a lane that would otherwise be unavailable to them.

94. In stark contrast, on all other California toll bridges, motorists are presented with a real choice: 1) they can decline (or avoid) PlatePass by driving through a cash lane and paying a cash toll, or 2) they can accept (or choose) PlatePass by driving through a faster, FasTrak-only lane that would otherwise be unavailable to the motorist but for the PlatePass service. No such choice is afforded to Hertz customers on the Golden Gate Bridge.

## V. With Credit Card Information Provided by Hertz, ATS Charges Customers Without Proving Disclosures Or Receiving Consent.

95. Upon returning a rental car to Hertz at the close of the rental, Hertz charges the customer for the rental car and <u>all</u> optional services *except for* PlatePass. Customers are typically provided with a receipt. The receipt does not mention PlatePass.

96. Pursuant to its contract with the BATA, ATS pays the Golden Gate Bridge toll for every Hertz rental car customer who has not otherwise paid the toll within approximately two days of crossing the bridge. Defendants deem these customers to have used and purchased PlatePass. This practice has the effect of precluding Hertz customers from utilizing the District's Toll Invoice payment option.

97. In order for ATS to charge these customers, Hertz provides customer billing information, including credit or debit card information, to ATS. Hertz previously obtained this billing information from customers on the Internet (when they reserved the rental car) or in person (when they picked up the rental car).

98. Between one and three weeks after the rental closes, and without providing any contemporaneous disclosures or receiving any contemporaneous consent, ATS charges the customer's credit or debit card for two components of the PlatePass service:

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a. a "service fee" of $4.95 for each day of the rental—including prior or subsequent days, even when the service is not used—capped at $24.75, and

b. incurred tolls at the Toll Authority's cash toll rate or highest undiscounted toll rate.

99. Each component is improper. As described in the preceding paragraphs, Hertz customers who crossed the Golden Gate Bridge never accepted or chose the optional PlatePass service nor did they receive its benefits. In other words, they never "used" or "utilized" the service, thus Defendants should not charge them for it.

100. The toll charge is also improper. Pursuant to the Rental Agreement Terms and Conditions, customers "agree to indemnify Hertz and/or American Traffic Solutions, Inc. and PlatePass LLC" for an amount equal to the amount these Defendants pay in tolls. (Exhibit E, ¶ 7(f).) But during all periods relevant to this litigation, Defendants have charged customers $1 more for Golden Gate Bridge tolls than what Defendants paid.

a. Between September 2, 2008 and April 6, 2014, Defendants paid the District a discounted toll rate of $5.00 for Hertz customers, and then charged those customers the undiscounted rate of $6.00 as part of the PlatePass service.

b. Between April 7, 2014 and June 30, 2015, Defendants paid the District a discounted toll rate of $6.00 for Hertz customers, and then charged those customers the undiscounted rate of $7.00 as part of the PlatePass service.

c. Between July 1, 2015 and June 30, 2016, Defendants paid the District a discounted toll rate of $6.25 for Hertz customers, and then charged those customers the undiscounted rate of $7.25 as part of the PlatePass service.

d. Between July 1, 2016 and today, Defendants paid the District a discounted toll rate of $6.50 for Hertz customers, and then charged those customers the undiscounted rate of $7.50 as part of the PlatePass service.

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## FIRST CAUSE OF ACTION
## VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
## AGAINST ALL DEFENDANTS
## (Unfair Competition)

101. The People incorporate by reference the allegations contained in each paragraph above, as if those allegations were fully set forth in this cause of action.

102. California Business and Professions Code section 17200 prohibits any "unlawful, unfair or fraudulent business act or practices."

103. From March 27, 2013 to the present, Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in unlawful, unfair and/or fraudulent business acts and practices in violation of Business and Professions Code section 17200 *et seq.*, including but not limited to the following:

a. Each of the Defendants has violated, and continues to violate, the False Advertising Law, codified at Business and Professions Code section 17500 *et seq.*, as alleged in the Second Cause of Action.

b. Each of the Defendants has violated, and continues to violate, the Rental Passenger Vehicle Transactions law, currently codified at California Civil Code section 1939.01, *et seq.*

i. Defendant Hertz is a "rental company" as defined by Civil Code section 1939.01(a).

ii. The individuals who seek or acquire Hertz rental cars are "renters" as defined by California Civil Code section 1939.01(b) because they enter into contracts for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

iii. PlatePass is an optional service as that term is used in Civil Code sections 1939.13 and 1939.19.

iv. Each of the Defendants has violated, and continues to violate, Civil Code section 1939.13, subd. (a), which provides that a rental company shall not require the purchase of an optional service.

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v. Each of the Defendants has violated, and continues to violate, Civil Code section 1939.13, subd. (b), which provides that a rental company shall not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase an optional service.

vi. Each of the Defendants has violated, and continues to violate, Civil Code section 1939.19, subd. (c), which provides that a rental company may only charge for a service if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service.

c. Each of the Defendants has violated, and continues to violate, the Consumer Legal Remedies Act, codified at Civil Code section 1750, *et seq.*

i. The Consumer Legal Remedies Act is to be "liberally construed and applied to promote its underlying purposes, which are to protect consumers against unfair and deceptive business practices and to provide efficient and economical procedures to secure such protection." (Civ. Code, § 1760.)

ii. Each Defendant is a "person" as defined by California Civil Code section 1761(c).

iii. The individuals who seek or acquire Hertz rental cars and PlatePass are "consumers" as defined by California Civil Code section 1761(d) because they do so for personal, family, or household purposes.

iv. Defendants rent cars and provide PlatePass "for other than a commercial or business use" as defined by California Civil Code section 1761(b).

v. The renting of a car and the purchase of PlatePass are both "transactions" as defined by California Civil Code section 1761(e).

vi. Each of the Defendants has violated, and continues to violate, Civil Code section 1770(a)(5), which prohibits Defendants from representing that PlatePass has characteristics, uses, or benefits that it does not have, and Civil Code section 1770(a)(14), which prohibits Defendants from representing that a transaction confers or involves rights, remedies, or obligations which it does not have or involve, or which are prohibited by law. These provisions extend to both affirmative representations as well as omissions when a defendant has a duty to

disclose. Defendants have a duty to disclose the fact that Hertz renters have other options to pay the Golden Gate bridge toll, thereby avoiding the PlatePass service fees, because of Defendants' active concealment and partial representations. Defendants' failure to disclose the fact that Hertz renters have other options to pay the Golden Gate bridge toll is material because customers would have elected to use these other options to avoid the PlatePass service fees had Defendants disclosed these payment options.

vii. Each of the Defendants has violated, and continues to violate, Civil Code section 1770(a)(9), which prohibits Defendants from advertising PlatePass with the intent not to sell it as advertised. Defendants' advertisements of PlatePass, as applied to the Golden Gate Bridge, are misleading and or likely to deceive a reasonable consumer.

viii. Civil Code section 1770(a)(19) prohibits Defendants from inserting an unconscionable provision in a contract. The unconscionability doctrine ensures that contracts, particularly contracts of adhesion, do not impose terms that have been variously described as overly harsh, unduly oppressive, so one-sided as to shock the conscience, or unfairly one-sided—*i.e.*, terms that are unreasonably favorable to the more powerful party. Each of the Defendants has violated, and continues to violate, Civil Code section 1770(a)(19) by inserting unconscionable PlatePass service terms into a consumer's rental car agreement with Hertz. These include, but are not limited to, terms that are false and misleading with respect to avoiding PlatePass. They are presented via fine print, in one of several documents that comprise a quintessential contract of adhesion, at the very end of the rental car transaction. These terms, presented in this manner, impair the integrity of the bargaining process or otherwise contravene the public interest or public policy, attempt to alter in an impermissible manner fundamental duties otherwise imposed by the law, and/or seek to negate the reasonable expectations of the nondrafting party.

d. Each of the Defendants has violated, and continues to violate, the Restore Online Shoppers' Confidence Act, codified at 15 U.S.C., section 8401 *et seq.*

i. Congress enacted the Restore Online Shoppers' Confidence Act, effective December 29, 2010, because "[c]onsumer confidence is essential to the growth of online commerce. To continue its development as a marketplace, the Internet must provide consumers with

clear, accurate information and give sellers an opportunity to fairly compete with one another for consumers' business." (15 U.S.C. § 8401.)

ii. Defendant Hertz is an "initial merchant" as defined by 15 U.S.C. section 8402, subd. (d)(1).

iii. Defendant ATS is a "post-transaction third party seller" as defined by 15 U.S.C. section 8402, subd. (d)(2).

iv. Defendant Hertz has violated, and continues to violate, 15 U.S.C. section 8402, subd. (b), which prohibits initial merchants from disclosing the credit card, debit card, or other billing information that Hertz uses to charge its customers, to ATS for use in an Internet-based sale of services from ATS.

v. Defendant ATS has violated, and continues to violate, 15 U.S.C. section 8402, subd. (a)(1), which requires post-transaction third party sellers to make specific disclosures before obtaining the consumer's credit card information.

vi. Defendant ATS has violated, and continues to violate, 15 U.S.C. section 8402, subd. (a)(2), which requires post-transaction third party sellers to receive express informed consent from the consumer for the PlatePass charge.

vii. A "Negative option feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer. (16 C.F.R. § 310.2.)

viii. Defendant ATS has violated, and continues to violate, 15 U.S.C. section 8403, subd. (1), which prohibits ATS from charging consumers for PlatePass—sold in transactions effected on the Internet through a negative option feature—unless ATS clearly and conspicuously discloses all material terms of the transaction before obtaining the consumer's billing information.

ix. Defendant ATS has violated, and continues to violate, 15 U.S.C. section 8403, subd. (2), which prohibits ATS from charging consumers for PlatePass—sold in transactions effected on the Internet through a negative option feature—unless ATS obtains the consumer's express informed consent before charging the consumer's credit or debit card for PlatePass.

e. Defendants have obtained money from consumers—those who have paid PlatePass service fees and an inflated toll charge for crossing the Golden Gate Bridge—by the exercise of undue influence, menace or threat, compulsion or duress, and/or mistake of law and/or fact. As a result, Defendants are in possession of money which in equity belongs to these consumers, and which should be refunded to them.

f. Defendants' business acts and practices, as set forth in this Complaint, are unfair because they offend established public policy; they cause harm to consumers that greatly outweighs any benefits; and/or because they are immoral, unethical, oppressive, unscrupulous and/or substantially injurious to consumers.

g. Defendants' business acts and practices, as set forth in this Complaint, are fraudulent because they are likely to deceive members of the public.

i. These fraudulent business acts and practices include, but are not limited to, Defendants' representations characterizing PlatePass as an optional service, describing the benefits of PlatePass, and explaining the method for avoiding PlatePass.

ii. Defendants have a duty to disclose the fact that Hertz customers have other options for paying the Golden Gate Bridge toll and thereby avoiding the PlatePass service fees because Defendants make partial representations regarding the options for avoiding the PlatePass service fees and actively conceal the fact that Hertz customers have other options.

iii. Defendants' failure to disclose the fact that Hertz customers have other options for paying the Golden Gate Bridge toll and thereby avoiding the PlatePass service fees, and its attendant active concealment and partial representations concerning that fact, is material because a reasonable consumer would deem the existence of the option to avoid the service fees important in determining his or her options with respect to paying the Golden Gate Bridge toll.

iv. Defendants' failure to disclose the fact that Hertz customers have other options for paying the Golden Gate Bridge toll and thereby avoiding the PlatePass service fees, and its attendant active concealment and partial representations concerning that fact, is likely to deceive members of the public.

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## SECOND CAUSE OF ACTION
## VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17500
## AGAINST ALL DEFENDANTS
## (Untrue and/or Misleading Representations)

104. The People incorporate by reference the allegations contained in each paragraph above, as if those allegations were fully set forth in this cause of action.

105. California Business and Professions Code section 17500 *et seq.*, prohibits the dissemination of untrue or misleading statements concerning the performance of services.

106. From March 27, 2013 to the present, Defendants, and each of them, have engaged in and continue to engage in, aided and abetted and continue to aid and abet, and conspired to and continue to conspire to engage in business acts or practices that constitute violations of Business and Professions Code section 17500 *et seq.*, by making or causing to be made untrue or misleading statements with the intent to induce members of the public to purchase Defendants' services, including but not limited to the following:

a. Defendants' statements regarding how Hertz rental car customers who cross the Golden Gate Bridge may opt out of or avoid PlatePass, including but not limited to Defendants' statements on their websites and printed brochures.

b. Defendants' statements regarding the benefits of PlatePass for Hertz rental car customers who cross the Golden Gate Bridge, including but not limited to Defendants' statements on their websites and printed brochures.

107. At the time all such statements were made, Defendants knew, or by the exercise of reasonable care should have known, that the representations were untrue or misleading. Such statements are likely to deceive members of the public.

## PRAYER FOR RELIEF

WHEREFORE, the People respectfully request that the Court enter judgment in favor of the People and against Defendants, jointly and severally, as follows:

1. That the Court enjoin Defendants, their successors, agents, representatives, employees, assigns, and any and all other persons who act in concert or participation with Defendants, by permanently restraining them from performing or proposing to perform or aiding and abetting any unfair competition as defined in Business and Professions Code section 17200 and any false

advertising as defined in Business and Professions Code section 17500, including, but not limited to, the acts and practices alleged in this Complaint;

2. That the Court order Defendants to make restitution, with interest, to consumers all money received or acquired by Defendants by means of any practice that constitutes unfair competition, under the authority of Business and Professions Code sections 17203 and 17535;

3. That the Court assess a civil penalty of $2,500.00 against each Defendant for each violation of Business and Professions Code section 17200, under the authority of Business and Professions Code section 17206;

4. That the Court assess a civil penalty of $2,500.00 against each Defendant for each violation of Business and Professions Code section 17500, under the authority of Business and Professions Code section 17536;

5. That the Court order Defendants to pay the costs of suit, including costs of investigation; and

6. That the Court provide such further and additional relief as the Court deems just, proper and equitable.

Dated: March 1, 2017

DENNIS J. HERRERA
City Attorney
RONALD P. FLYNN
Chief Deputy City Attorney
YVONNE R. MERÉ
Chief of Complex & Affirmative Litigation
MATTHEW D. GOLDBERG
SARA J. EISENBERG
Deputy City Attorneys

By: _____
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