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13 *and the Proposed Class*

14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF SAN DIEGO**

16 STEVE KRAMER, *individually and on*
17 *behalf of all others similarly situated,*

18 Plaintiff,

19 v.

20 AVIS BUDGET GROUP, INC., *a Delaware*
21 *and New Jersey corporation,*

22 Defendant.

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

12/31/2018 at 02:15:25 PM
Clerk of the Superior Court
By Bryant Schmelzel, Deputy Clerk

37-2018-00067024-CU-BT-CTL

Case No. _____

CLASS ACTION COMPLAINT

1. Violation of CAL. CONST. art. I, § 1
2. Violation of California's Rental
Passenger Vehicle Transactions Law, CAL.
CIV. CODE § 1939.01 et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff Steve Kramer (“Plaintiff”), individually and on behalf of all others similarly
2 situated (the “Class,” as defined below), by and through his undersigned counsel, brings this Class
3 Action Complaint against Defendant Avis Budget Group, Inc. (“Defendant” or “Avis”), and
4 respectfully alleges as follows. Plaintiff bases the allegations herein on personal knowledge as to
5 matters related to, and known to, Plaintiff. As to all other matters, Plaintiff bases the allegations
6 herein on information and belief, through investigation of Plaintiff’s counsel. Plaintiff believes
7 substantial evidentiary support exists for the allegations set forth herein, and he seeks a reasonable
8 opportunity for discovery.

9 **NATURE OF THE ACTION**

10 1. This is a proposed class action against Defendant for failing to promulgate or
11 maintain adequate policies and procedures to safeguard the “Private Data” (defined below) of
12 consumers, including Plaintiff and the Class members, who rented vehicles on a short-term basis
13 from Avis Rent a Car, Budget Rent a Car, Zipcar, and Payless Car Rental and who paired their
14 smartphones or mobile devices (collectively, the “Devices”) with the vehicles’ GPS technology
15 and/or automotive infotainment systems¹ (collectively, the “Rental Technology”) during the
16 period from December 31, 2015, to the present.

17 2. When a consumer pairs their Device with the Rental Technology, the Rental
18 Technology has the capability to collect private and sensitive personal information/data on the
19 Device and store it on the Rental Technology.

20 3. The private and sensitive personal information/data subject to collection and
21 storage by the Rental Technology includes, but is not limited to:

- 22 • GPS history of past locations and points of interest;
- 23 • Device name / phone identifier;
- 24 • Personal information (including home address, if available);
- 25 • Contacts and address book;

26 _____
27 ¹ “Infotainment system” refers to hardware and software in a vehicle that provides a combination
28 of entertainment, communications, and information content to the driver or passengers. Most
infotainment systems are now controlled via a touch-sensitive display in the screen of the
dashboard.

- 1 • Calendar entries;
- 2 • Internet search history and web browsing data;
- 3 • Call log or text/data messages if the consumer uses hands-free calling or
- 4 texting;
- 5 • Other personal communications including email and social networking
- 6 communications;
- 7 • Application log-in information, including music streaming log-in (such as
- 8 Spotify or Pandora);
- 9 • Choice of music, radio, and other streamed audio or video content; and/or
- 10 • Wi-Fi identifiers (such as mac address, DNS data, and leases such as
- 11 DHCP)

12 (collectively, the “Private Data”).

13 4. Despite performing other routine maintenance to short-term rental vehicles when
14 consumers return them to Avis (e.g., refueling, vacuuming, and washing), Avis has refused to
15 conduct routine data clearing/deletion of Private Data from the Rental Technology.

16 5. As a result, when a consumer returns a rental vehicle to Defendant at the conclusion
17 of a short-term rental, the returned vehicle is placed back into rental circulation with the
18 consumer’s Private Data accessible to, and available for misuse by, subsequent users of the vehicle.

19 6. Additionally, Defendant has failed to make adequate disclosures to consumers
20 including Plaintiff and the Class members that the Rental Technology featured in its short-term
21 rental vehicles will collect and indefinitely store the Private Data from their Devices.

22 7. Plaintiff now brings this action individually and on behalf of the Class members to
23 stop Defendant’s unlawful practices, seeking injunctive and monetary relief and such additional
24 relief as the Court may deem just and proper.

25 **PARTIES**

26 **Plaintiff Steve Kramer**

27 8. Plaintiff Steve Kramer is a resident of San Diego, California, and he has no
28 intention of changing his residence.

1 9. During the period between December 31, 2015, and the present, Mr. Kramer
2 obtained a short-term rental vehicle from Defendant.

3 10. During the rental period for the vehicle, Mr. Kramer paired his smartphone Device
4 with the vehicle's Rental Technology.

5 11. Because Mr. Kramer paired his Device with the Rental Technology, the Rental
6 Technology collected and stored Mr. Kramer's Private Data.

7 12. On information and belief, Defendant did not delete Mr. Kramer's Private Data
8 from the Rental Technology when Mr. Kramer returned the rental vehicle to Defendant at the
9 conclusion of the rental period.

10 13. On information and belief, Defendant to this day has not yet deleted Mr. Kramer's
11 Private Data from the Rental Technology on the vehicle Mr. Kramer rented from Defendant.

12 **Defendant Avis Budget Group, Inc.**

13 14. Avis Budget Group, Inc., is corporation organized under the laws of Delaware.

14 15. Avis Budget Group, Inc.'s principal place of business is located at 6 Sylvan Way,
15 Parsippany, New Jersey 07054.

16 16. Avis Budget Group, Inc., is the parent company of the car rental companies Avis
17 Rent a Car, Budget Rent a Car, Zipcar, and Payless Car Rental.

18 17. Defendant regularly transacts business in the State of California, including by
19 marketing, distributing, and delivering short-term rental vehicles and related services to
20 consumers, including California residents.

21 **JURISDICTION AND VENUE**

22 **Jurisdiction**

23 18. This Court has personal jurisdiction over Defendant for reasons including but not
24 limited to the following: Plaintiff's claims against Defendant arise out of its conduct within the
25 State of California, including but not limited to renting a short-term rental vehicle to Plaintiff and
26 failing to delete Plaintiff's Private Data from the vehicle's Rental Technology. Furthermore,
27 Defendant purposefully avails itself of the privilege of conducting business activities within the
28 territorial boundaries of the State of California, including by marketing, distributing, and

1 delivering short-term rental vehicles and related services to consumers, including California
2 residents, thus invoking the benefits and protections of the laws of California, and such activities
3 render it foreseeable that Defendant may be haled into court in this jurisdiction. Thus, Defendant
4 has sufficient minimum contacts with the State of California that maintenance of this action in this
5 Court does not offend traditional notions of fair play and substantial justice.

6 **Venue**

7 19. Venue is proper in the County of San Diego, California, as the actions and harms
8 alleged herein occurred, in part, in the County of San Diego.

9 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

10 20. Defendant's rental car companies, Avis Rent a Car, Budget Rent a Car, Zipcar, and
11 Payless Car Rental, are leading companies in the rental car industry, which in the United States
12 alone grossed \$28.63 billion in revenue during 2017.

13 21. Defendant's short-term rental vehicles include Rental Technology (i.e., GPS
14 technology and/or automotive infotainment systems), which is available for use by the consumer.

15 22. Defendant's Rental Technology has the capability to electronically connect, sync,
16 or "pair" with the consumer's Device, which gives the consumer access to various telephone, data,
17 and multimedia functions of the Rental Technology, including voice dialing, text/data messaging,
18 location-based services, social media, and music streaming.

19 23. The pairing process is generally facilitated through USB cables and/or Bluetooth
20 technologies.

21 24. Once paired with the Rental Technology, the consumer's Device connects with the
22 Rental Technology every time it enters the vehicle.

23 25. Once a consumer's Device is paired with the vehicle's Rental Technology, calls
24 can be automatically transferred between the Device and the vehicle seamlessly, downloading or
25 uploading preferences, contacts, calendar data, and other content from the Device.

26 26. Furthermore, once a consumer's Device is paired with the Rental Technology,
27 voice commands can be used to make calls, play music, and operate the Rental Technology in
28 other ways.

1 27. As a result of the pairing between the consumer's Device and the Rental
2 Technology, Private Data available on the consumer's Device is collected by, copied to, and/or
3 transferred to the Rental Technology.

4 28. Following its collection, the Private Data is continuously stored on the Rental
5 Technology unless purged through a manual deletion (often referred to as a "factory reset").

6 29. Defendant has either (a) failed to provide explicit notice/disclosure to consumers,
7 including Plaintiff and the Class members, advising them about the collection and indefinite
8 storage of their Private Data by the Rental Technology in its short-term rental vehicles; or (b)
9 provided consumers, including Plaintiff and the Class members, with inadequate notice/disclosure,
10 including through unclear warnings or buried "small print" terms.

11 30. Furthermore, Defendant has failed to promulgate or otherwise maintain responsible
12 policies and procedures associated with the Rental Technology's collection and storage of Private
13 Data from the Devices of short-term rental vehicle users, including Plaintiff and the Class
14 members.

15 31. Specifically, Defendant's policies and procedures do not include, or previously did
16 not include, mandatory routine data clearing/deletion of Private Data from the Rental Technology
17 upon the consumer returning the short-term rental vehicle at the conclusion of the rental term.

18 32. Defendant's failure to perform such routine maintenance that would protect the
19 consumer's Private Data is inconsistent with Defendant's other policies and procedures providing
20 for routine physical maintenance (e.g., refueling, vacuuming, and washing) upon a consumer's
21 return of the short-term rental vehicle at the conclusion of the rental term.

22 33. Defendant has taken the position that it is solely the consumer's responsibility to
23 ensure removal of their Private Data from the Rental Technology pursuant to the system options
24 available in each vehicle.

25 34. As a result, the short-term rental vehicle is returned into circulation with the
26 consumer's Private Data exposed and available for misuse by subsequent users of the vehicle,
27 including, for example, identity thieves.

28 35. There are substantial privacy risks associated with allowing a consumer's Private

1 Data to remain on the Rental Technology after the consumer has returned the short-term rental
2 vehicle to Defendant at the conclusion of the rental period.

3 36. For example, using just a phone identifier, it is possible to link a rental vehicle
4 user's Private Data to other information held regarding the user such as their social media account.
5 Letter from ANCE et al. to Enterprise Rent-A-Car, Alamo Rent A Car, and National Car Rental
6 (Dec. 6, 2017), *available at* <https://goo.gl/sPWPR>. In Baltimore, a car owner tracked down
7 teenagers who took his car for a joy ride using the phone device names that had been paired with
8 the owners' Jeep's Connect system, together with searching Instagram. *Id.*

9 **CLASS ACTION ALLEGATIONS**

10 37. Pursuant to section 382 of the California Code of Civil Procedure, Plaintiff brings
11 this action on behalf of himself and the following proposed class:

12 **The Class.** (1) All California residents who, during the period from December 31,
13 2015, until the date of class certification, rented a vehicle from Avis Rent a Car,
14 Budget Rent a Car, Zipcar, and Payless Car Rental on a short-term basis and who
15 paired their Devices with the vehicle's Rental Technology, and (2) all residents of
16 states other than California who, during the period from December 31, 2015, until
17 the date of class certification, rented a vehicle within the State of California from
18 Avis Rent a Car, Budget Rent a Car, Zipcar, and Payless Car Rental on a short-term
19 basis and who paired their Devices with the vehicle's Rental Technology.

20 Excluded from the Class are: (a) Defendant, Defendant's board members,
21 executive-level officers, and attorneys, and immediately family members of any of
22 the foregoing persons; (b) governmental entities; (c) the Court, the Court's
23 immediate family, and the Court staff; and (d) any person that timely and properly
24 excludes himself or herself from the Class in accordance with Court-approved
25 procedures.

26 38. Plaintiff reserves the right to alter the Class definition as he deems necessary at any
27 time to the full extent that applicable law allows.

28 39. Certification of Plaintiff's claims for class-wide treatment is appropriate because
Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as
individual Class members would use to prove those elements in individual actions alleging the
same claims.

40. Numerosity. The size of the Class is so large that joinder of all Class members is
impracticable. Due to the nature of Defendant's business, Plaintiff believes there are at least
thousands of Class members geographically dispersed throughout California.

1 41. Well-Defined Community of Interest. As further alleged below, there is a well-
2 defined community of interest with respect to the Class, since there are (1) predominant common
3 questions of law or fact; (2) a Class representative with claims or defenses typical of the Class;
4 and (3) a Class representative who can adequately represent the Class.

5 42. Existence and Predominance of Common Questions of Law and Fact. There are
6 questions of law and fact common to the Class. These questions predominate over any questions
7 affecting only individual Class members.

8 43. Questions of law and fact common to the Class members that predominate over
9 questions that may affect individual Class members include but are not limited to:

- 10 a. whether Defendant adequately disclosed to Plaintiff and the Class members
11 that the Rental Technology would collect and indefinitely store their Private
 Data;
- 12 b. whether Defendant adequately disclosed to Plaintiff and the Class members
13 that Defendant would not delete their Private Data from the Rental
 Technology after they had returned their rental vehicles to Defendant;
- 14 c. whether Defendant injured Plaintiff and the Class members by failing to
15 delete their Private Data from the Rental Technology after Plaintiff and the
 Class members had returned their rental vehicles to Defendant;
- 16 d. whether Plaintiff and the Class members are entitled to any form of
17 monetary relief; and
- 18 e. whether Plaintiff and the Class members are entitled to any form of
19 equitable relief, including but not limited to injunctive relief and equitable
 monetary relief.

20 44. Defendant engaged in a common course of conduct in contravention of the law
21 Plaintiff seeks to enforce individually and on behalf of the Class members. Similar or identical
22 legal violations, business practices, and injuries are involved. Individual questions, if any, pale by
23 comparison, in both quality and quantity, to the numerous common questions that dominate this
24 action. Moreover, the common questions will yield common answers.

25 45. Typicality. Plaintiff's claims are typical of the claims of the Class members because
26 Defendant injured all Class members through the uniform misconduct described herein; all Class
27 members rented vehicles on a short-term basis from Defendant and paired their Devices with the
28 Rental Technology on those vehicles; and Plaintiff seeks the same relief as the Class members.

1 46. Furthermore, there are no defenses available to Defendant that are unique to
2 Plaintiff.

3 47. Adequacy of Representation. Plaintiff is a fair and adequate representative of the
4 Class because Plaintiff's interests do not conflict with the Class members' interests.

5 48. Plaintiff will prosecute this action vigorously and is highly motivated to seek
6 redress against Defendant.

7 49. Furthermore, Plaintiff has selected competent counsel that are experienced in class
8 action and other complex litigation.

9 50. Plaintiff and his counsel are committed to prosecuting this action vigorously on
10 behalf of the Class and have the resources to do so.

11 51. Injunctive or Declaratory Relief. Defendant has acted or refused to act on grounds
12 generally applicable to the Class, thereby making appropriate final injunctive relief or
13 corresponding declaratory relief with respect to the Class as a whole.

14 52. Superiority. The class action mechanism is superior to other available means for
15 the fair and efficient adjudication of this controversy for reasons including but not limited to the
16 following:

17 a. The damages individual Class members suffered are small compared to the
18 burden and expense of individual prosecution of the complex and extensive
litigation needed to address Defendant's conduct.

19 b. Furthermore, it would be virtually impossible for the Class members
20 individually to redress effectively the wrongs done to them. Even if Class
21 members themselves could afford such individual litigation, the court
22 system could not. Individualized litigation would unnecessarily increase the
23 delay and expense to all parties and to the court system and presents a
24 potential for inconsistent or contradictory rulings and judgments. By
contrast, the class action device presents far fewer management difficulties,
allows the hearing of claims which might otherwise go unaddressed because
of the relative expense of bringing individual lawsuits, and provides the
benefits of single adjudication, economies of scale, and comprehensive
supervision by a single court.

25 c. The prosecution of separate actions by the individual members of the Class
26 would create a risk of inconsistent or varying adjudications with respect to
individual Class members, which would establish incompatible standards
of conduct for Defendant.

27 d. The prosecution of separate actions by individual Class members would
28 create a risk of adjudications with respect to them that would, as a practical

1 matter, be dispositive of the interests of other Class members not parties to
2 the adjudications or that would substantively impair or impede their ability
to protect their interests.

3 53. Notice. Plaintiff and Plaintiff’s counsel anticipate that notice to the proposed Class
4 will be effectuated through recognized, Court-approved notice dissemination methods, which may
5 include United States mail, electronic mail, Internet postings, and/or published notice.

6 **CAUSES OF ACTION**

7 **FIRST CAUSE OF ACTION**

8 **Violation of Article I, Section 1, of the California Constitution**

9 **On Behalf of the Class**

10 54. Plaintiff repeats each and every allegation contained in the paragraphs above and
11 incorporates such allegations by reference herein.

12 55. Plaintiff brings this cause of action on behalf of the Class for violation of article I,
13 section 1, of the California Constitution.

14 56. Article I, section 1, of the California Constitution states:

15 All people are by nature free and independent and have inalienable rights. Among
16 these are enjoying and defending life and liberty, acquiring, possessing, and
protecting property, and pursuing and obtaining safety, happiness, and privacy.

17 CAL. CONST. art. I, § 1.

18 57. The right of privacy set forth in article I, section 1, of the California Constitution
19 prevents business interests from stockpiling unnecessary information about California citizens.

20 58. An “informational privacy” interest is an interest in precluding the dissemination
21 or misuse of sensitive and confidential information.

22 59. Informational privacy is a core value furthered by the right of privacy set forth in
23 article I, section 1, of the California Constitution.

24 60. Plaintiff and the Class members have a legally protected informational privacy
25 interest in the Private Data (including personal, confidential, and sensitive information) that the
26 Rental Technology collected and stored when Plaintiff and the Class members paired their Devices
27 with the Rental Technology.

28 61. Plaintiff and the Class members reasonably expected that their Private Data

1 (including personal, confidential, and sensitive information) would be kept private after they had
2 returned their rental vehicles to Defendant.

3 62. In engaging in the conduct set forth herein, Defendant has committed a serious
4 invasion of Plaintiff's and the Class members' privacy interests, including their informational
5 privacy interests. Defendant's conduct at issue, including but not limited to its failure to delete
6 Plaintiff's and the Class members' Private Data from the Rental Technology upon their return of
7 the rental vehicles to Defendant at the conclusion of the rental period, constitutes an egregious
8 breach of the social norms underlying Plaintiff's and the Class members' right to privacy.

9 63. Defendant's Rental Technology gathered Plaintiff's and the Class members'
10 sensitive Private Data, and privacy safeguards for that Private Data are feasible, but Defendant's
11 implementation of those safeguards is slipshod or nonexistent. Defendant has not implemented a
12 policy of deleting consumers' Private Data from the Rental Technology upon the return of their
13 rental vehicles to Defendant at the conclusion of the rental period, even though it easily could do
14 so and it already has in place policies and procedures providing for routine maintenance (e.g.,
15 refueling, vacuuming, and washing) upon a consumer's return of a short-term rental vehicle at the
16 conclusion of the rental term.

17 64. Furthermore, Defendant's business objectives can be readily accomplished by
18 alternative means having little or no impact on privacy interests. Since Defendant routinely
19 maintains rental vehicles (e.g., refueling, vacuuming, and washing), additionally deleting
20 consumers' Private Data by means of a factory reset during routine maintenance would impose
21 little or negligible cost on Defendant.

22 65. By the acts, transactions, and courses of conduct alleged herein, Defendant has
23 violated Plaintiff's and the Class members' inalienable right to privacy.

24 66. As a consequence, Plaintiff and the Class members were personally injured and
25 suffered emotional distress damages. Furthermore, Defendant has been unjustly enriched, in part
26 because it would be against equity and good conscience to allow Defendant to retain the monies it
27 obtained from Plaintiff and the Class members in connection with its violation of their privacy
28 rights as described herein.

1 73. Pursuant to the Rental Passenger Vehicle Transactions Law:

2 A rental company shall not use, access, or obtain any information relating to the
3 renter’s use of the rental vehicle that was obtained using electronic surveillance
4 technology, except in the following circumstances:

5 (1)(A) When the equipment is used by the rental company only for the
6 purpose of locating a stolen, abandoned, or missing rental vehicle after one
7 of the following:

8 (i) The renter or law enforcement has informed the rental company
9 that the vehicle is missing or has been stolen or abandoned . . . [and
10 in certain other identified circumstances] . . . [or]

11 (2) In response to a specific request from law enforcement pursuant to a
12 subpoena or search warrant.

13 CAL. CIV. CODE § 1939.23.

14 74. As detailed above, in violation of section 1939.23 of the Rental Passenger Vehicle
15 Transactions Law, Defendant has obtained information relating to Plaintiff’s and the Class
16 members’ use of its rental vehicles (i.e., Private Data) that was obtained using electronic
17 surveillance technology (i.e., the Rental Technology).

18 75. Pursuant to section 1939.29 of the Rental Passenger Vehicle Transactions Law, “[a]
19 waiver of any of the provisions of [the Rental Passenger Vehicle Transactions Law], except for
20 Sections 1939.21, 1939.35, and 1939.37, shall be void and unenforceable as contrary to public
21 policy.” CAL. CIV. CODE § 1939.29.

22 76. Pursuant to section 1939.29, any terms and conditions or other provisions under
23 which Defendant could be said to have attempted to waive section 1939.23 are void and
24 unenforceable as contrary to public policy.

25 77. As a consequence of Defendant’s violation of section 1939.23, Plaintiff and the
26 Class members were personally injured and suffered emotional distress damages. Furthermore,
27 Defendant has been unjustly enriched, in part because it would be against equity and good
28 conscience to allow Defendant to retain the monies it obtained from Plaintiff and the Class
29 members in connection with its violation of section 1939.23 as described herein.

30 78. Pursuant to section 1939.25 of the Rental Passenger Vehicle Transactions Law:
31 A renter may bring an action against a rental company for the recovery of damages

1 and appropriate equitable relief for a violation of this chapter, except for Sections
2 1939.21, 1939.35, and 1939.37. The prevailing party shall be entitled to recover
reasonable attorney's fees and costs.

3
4 CAL. CIV. CODE § 1939.25.

5 79. Plaintiff, on behalf of the Class members, brings this cause of action pursuant to
6 1939.25, seeking injunctive relief, damages (including but not limited to consequential damages
7 and out-of-pocket costs of identity theft insurance and credit monitoring), equitable monetary
8 relief, and reasonable attorney's fees and costs.

9 80. Therefore, Plaintiff prays for relief as set forth below.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, individually and on behalf of the members of the Class,
12 respectfully requests the Court to enter an Order:

- 13 A. certifying the proposed Class under section 382 of the California Code of Civil
14 Procedure, as set forth above;
- 15 B. declaring that Defendant is financially responsible for notifying the Class members
16 of the pendency of this suit;
- 17 C. declaring that Defendant has committed the violations of law alleged herein;
- 18 D. providing for any and all injunctive relief the Court deems appropriate;
- 19 E. awarding monetary damages, including but not limited to any compensatory,
20 incidental, or consequential damages in an amount that the Court or jury will determine, in
21 accordance with applicable law;
- 22 F. providing for any and all equitable monetary relief the Court deems appropriate;
- 23 G. awarding Plaintiff reasonable costs and expenses of suit, including attorneys' fees;
- 24 H. awarding pre- and post-judgment interest to the extent the law allows; and
- 25 I. providing such further relief as this Court may deem just and proper.

26 **DEMAND FOR JURY TRIAL**

27 Plaintiff hereby demands a trial by jury.
28

1 Date: December 31, 2018

Respectfully submitted,

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REESE LLP

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By: /s/ Michael R. Reese

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