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21 **UNITED STATES DISTRICT COURT**  
22 **SOUTHERN DISTRICT OF CALIFORNIA**

23 JEFFREY GARVIN, an individual, on  
24 behalf of himself and all others similarly  
25 situated,

26 Plaintiff,

27 vs.

28 PAYLESS CAR RENTAL, INC., a  
Nevada Corporation; DOLLAR RENT A  
CAR, INC., an Oklahoma Corporation;  
FOX RENT A CAR, INC., a California  
Corporation; ADVANTAGE OPCO, LLC  
d/b/a ADVANTAGE RENT A CAR, a  
Delaware Corporation, and; Does 1-100

Defendants.

Civil Case No.: '20CV0172 AJB WVG

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Jeffrey Garvin (“Plaintiff”) brings this action, on behalf of himself and  
2 all others similarly situated against PAYLESS CAR RENTAL, INC., a Nevada  
3 Corporation (“Payless”); DOLLAR RENT A CAR, INC., an Oklahoma Corporation  
4 (“Dollar”); FOX RENT A CAR, INC., a California Corporation (“Fox”);  
5 ADVANTAGE OPCO, LLC d/b/a ADVANTAGE RENT A CAR, a Delaware  
6 Corporation (“Advantage”), and; Does 1-100 ( collectively “Defendants”). Plaintiff  
7 alleges the following based upon information and belief, the investigation of counsel,  
8 and personal knowledge as to the allegations pertaining to himself.

9 **I. NATURE OF THE CASE**

10 1. This is an action by Plaintiff on behalf of himself and a putative class,  
11 seeking relief under the California Consumers Legal Remedies Act (“CLRA”) and the  
12 California Unfair Competition Law (“UCL”) for Defendants’ improper assessment of an  
13 illegal tax on car rentals originating at the San Diego International Airport in San Diego,  
14 California.

15 2. Defendants improperly and illegally assess each car rental a \$3.50 fee  
16 which is not authorized by law, purportedly claiming that they are required to assess this  
17 fee by the Port of San Diego. Defendants knew when they began imposing this fee that  
18 it was illegal and improper and in fact several car rental companies, including Defendant  
19 Dollar’s parent company, The Hertz Corporation, challenged this fee as illegal and  
20 improper in a reverse validation action.

21 3. Plaintiff seeks restitution of this illegal fee on behalf of himself and all  
22 others similarly situated as well as injunctive relief prohibiting Defendants from  
23 continuing to collect these fees.

24 **II. JURISDICTION AND VENUE**

25 4. This Court has personal jurisdiction over Defendants because Defendants  
26 conducted and continue to conduct business in the State of California, and because  
27 Defendants have committed the acts and omissions complained of herein in the State of  
28 California.



1 complaint or any subsequent pleading when their identities and capacities have been  
2 ascertained according to proof. On information and belief, each and every DOE  
3 defendant is in some manner responsible for the acts and conduct of the other  
4 Defendants herein, and each DOE was, and is, responsible for the injuries, damages,  
5 and harm incurred by Plaintiff. Each reference in this complaint to “Defendant,”  
6 “Defendants,” or a specifically named Defendant, refers also to those unknown parties  
7 sued under fictitious names.

#### 8 IV. FACTUAL ALLEGATIONS

##### 9 A. The Illegal Tax

10 13. On April 10, 2018, the Board of Port Commissioners of the San Diego  
11 Unified Port District adopted Resolution 2018-065, which purported to re-enact San  
12 Diego Port Ordinance 2030 and imposed a special tax, disguised as a “user fee,” on car  
13 renters. The special tax is a charge of \$3.50 that renters are assessed for each rental car  
14 transaction that takes place on San Diego Port tidelands, which includes San Diego  
15 International Airport and the adjacent Rental Car Center.

16 14. Ordinance 2030 was enacted approximately twenty years ago to fund a  
17 parking structure near the San Diego Convention Center and Airport. Collection of  
18 fees under Ordinance 2030 was suspended over a decade ago.

19 15. Resolution 2018-065 and Ordinance 2030 call this tax a “user fee” to be  
20 collected from renters by rental car companies, for the benefit of the San Diego Port  
21 so that the San Diego Port can use the funds to pay for the construction of a parking  
22 structure adjacent to the planned Chula Vista Bayfront Convention Center on Port  
23 Property in South San Diego County. The tax, however, is not a legal “user fee” but  
24 rather an illegal special tax that has been imposed in violation of Propositions 13 and  
25 218, which require that any special tax be approved by two-thirds of the voters.  
26 Because the tax was not approved by local voters, it is an unconstitutional tax and thus  
27 unlawful and invalid.  
28

1           16. The tax is also unlawful and invalid for violation of the Dormant  
2 Commerce Clause of the United States Constitution because it does not fairly  
3 approximate the use of the facilities for whose benefit they are imposed -- only a tiny  
4 percentage of the rental car customers who pay the fee will benefit from the parking  
5 garage that will be funded and built. Rental car customers who are traveling from out-  
6 of-state bear disproportionate costs in comparison to the negligible level of  
7 “quantifiable services” they receive.

8           17. In summary, the \$3.50 fee is an unlawful and unconstitutional tax to  
9 finance the construction of the proposed Chula Vista parking garage, not a legal “user  
10 fee” for either the use of the proposed Chula Vista parking garage or any other property  
11 of the San Diego Port.

12           18. On June 8, 2018, Enterprise Rent-A-Car Co. of Los Angeles, LLC and the  
13 Hertz Corporation (Defendant Dollar’s parent corporation) filed a Complaint  
14 commencing a reverse validation proceeding against the San Diego Port and seeking  
15 to declare the Resolution unlawful and invalid, including because it imposes an  
16 unconstitutional special tax in violation of Proposition 218 and the Dormant  
17 Commerce Clause of the United States Constitution. That action, *Enterprise Rent-A-*  
18 *Car Co. of Los Angeles, LLC, et al. v. San Diego Unified Port District*, is pending in  
19 San Diego County Superior Court before the Honorable Katherine A. Bacal,  
20 Department C-69, as Case No. 37-2018-00028276-CU-MC-CTL.

21           19. After a bench trial in October 2019, Judge Bacal found that the special tax  
22 was unlawful.

23           **B. Defendants’ Conduct**

24           **1. Defendant Dollar Rent A Car, Inc.**

25           20. Dollar is in the business of renting cars to customers.

26           21. Dollar has a rental location in San Diego at the Car Rental Center located  
27 adjacent the San Diego Airport. A customer can rent vehicles online, by phone, or at  
28 the airport.

22. Upon information and belief, on or about April 10, 2018, Dollar began assessing the \$3.50 fee on all of its rentals originating at the San Diego Airport. Dollar assessed this fee despite knowing that the fee was illegal and improper.

23. Upon information and belief, only recently did Dollar stop assessing the fee on rentals. Despite ending their practice of charging this fee, Dollar has not refunded fees that renters have previously paid nor has it made clear that it will not be reinstating the fee in the future.

## 2. Defendant Payless Car Rental, Inc.

24. Payless is in the business of renting cars to customers.

25. Payless has a rental location in San Diego at the Car Rental Center located adjacent the San Diego Airport. A customer can rent vehicles online, by phone, or at the airport.

26. Upon information and belief, on or about April 10, 2018, Payless began assessing the \$3.50 fee on all of its rentals originating at the San Diego Airport. Payless assessed this fee despite knowing that the fee was illegal and improper.

27. Payless does not disclose to customers what this fee is for, and deceptively calls it a "Port Convention Garage Fee" as shown on the following screenshot.

The screenshot shows the Payless website interface for a car rental quote. The quote details are as follows:

Category	Item	Amount
Location & Date	Base Rate	\$190.00
	for 2 day(s)	
Mileage	Mileage	Unlimited
	Rental Options	\$0.00
Equipment & Services	Equipment & Services	\$0.00
	Protections & Coverages	\$0.00
Discount Codes	Discount Codes	
	Coupon: NA	
Rate Code: 2D	Rate Code: 2D	
	Fees & Taxes	\$68.11
Fees & Taxes	Concession Recovery Fee (11.11%)	21.33
	Customer Facility Charge - 9.00/day	18.00
	Other Fees	1.98
	Port Convention Garage Fee	3.50
Tourism Assessment Fee (3.5%)		

Additional details from the screenshot include: Location: San Diego Ca Apo, SAN; Pick-Up: Sunday, Dec 22, 2019 @ 12:00 PM; Return: Tuesday, Dec 24, 2019 @ 12:00 PM; Car Class: Economy (Hyundai Accent or similar); Your Information: Age: 25+, Residence: US, Perks ID #: None. A note at the bottom states: "IMPORTANT: At rental pickup, you must present the same credit card that you used for online."

1 28. Upon information and belief, Payless is still assessing this fee on all  
 2 rentals originating at the San Diego Airport.

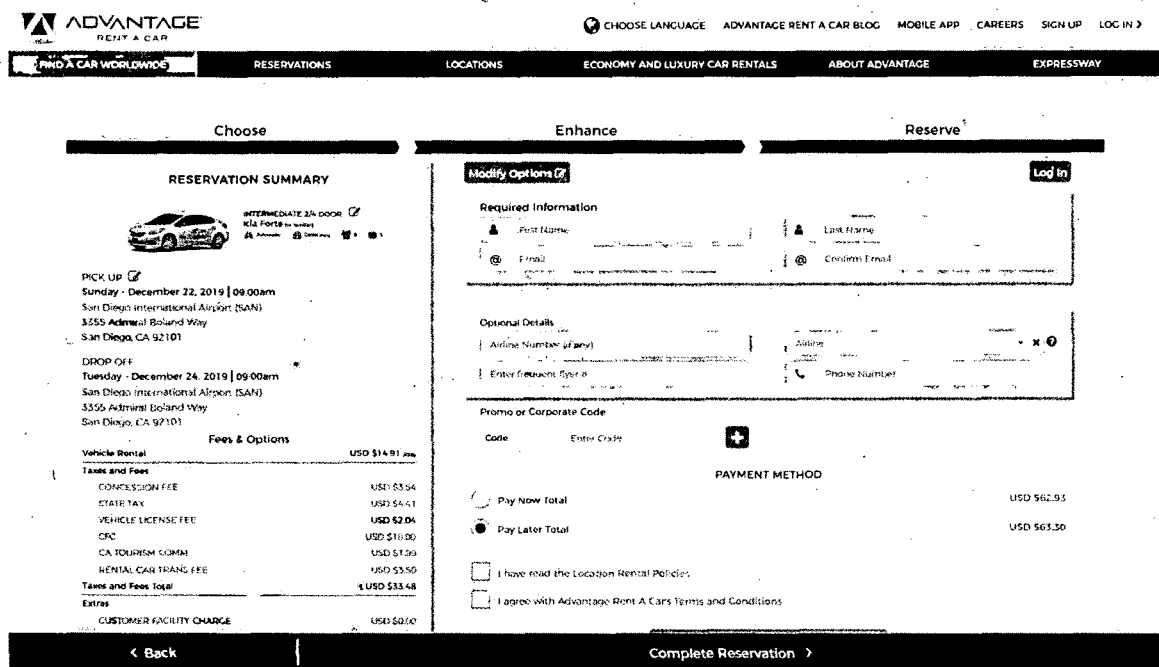
3 **3. Defendant Advantage Rent A Car**

4 29. Advantage is in the business of renting cars to customers.

5 30. Advantage has a rental location in San Diego at the Car Rental Center  
 6 located adjacent the San Diego Airport. A customer can rent vehicles online, by phone,  
 7 or at the airport.

8 31. Upon information and belief, on or about April 10, 2018, Advantage  
 9 began assessing the \$3.50 fee on all of its rentals originating at the San Diego Airport.  
 10 Advantage assessed this fee despite knowing that the fee was illegal and improper.

11 32. Advantage does not disclose to customers what this fee is for, and  
 12 deceptively calls it a "Rental Car Trans Fee" as shown on the following screenshot.



23 33. Upon information and belief, Advantage is still assessing this fee on all  
 24 rentals originating at the San Diego Airport  
 25  
 26  
 27  
 28

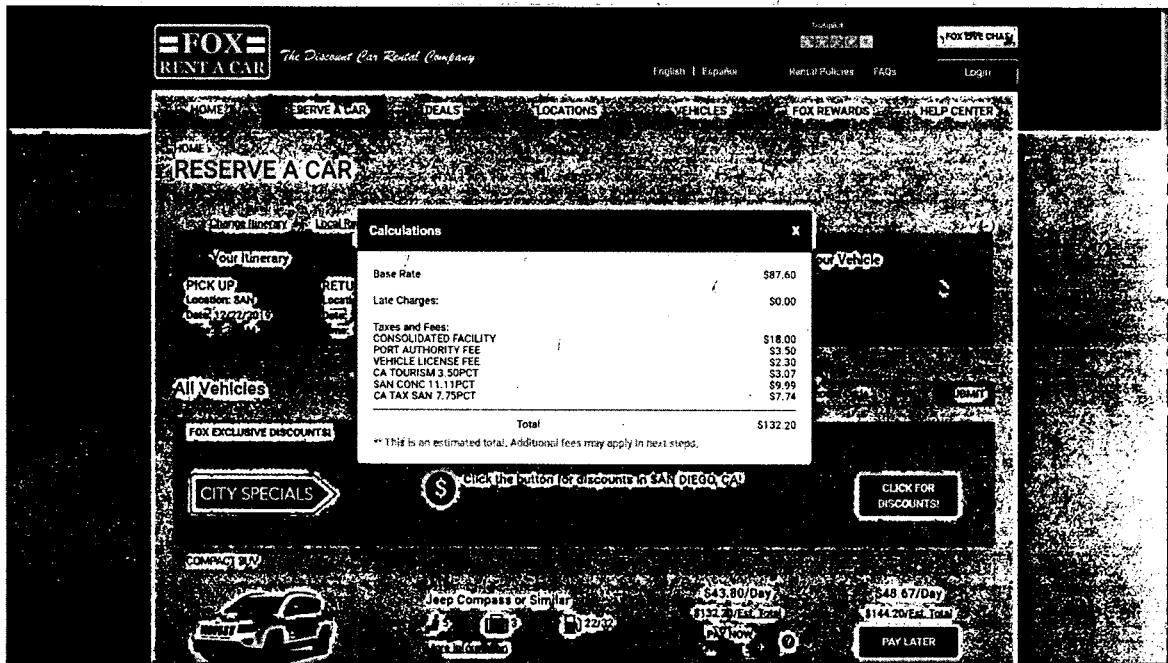
1                   **4. Defendant Fox Rent A Car, Inc.**

2           34. Fox is in the business of renting cars to customers.

3           35. Fox has a rental location in San Diego at the Car Rental Center located  
4 adjacent the San Diego Airport. A customer can rent vehicles online, by phone, or at  
5 the airport.

6           36. Upon information and belief, on or about April 10, 2018, Fox began  
7 assessing the \$3.50 fee on all of its rentals originating at the San Diego Airport. Fox  
8 assessed this fee despite knowing that the fee was illegal and improper.

9           37. Fox does not disclose to customers what this fee is for, and deceptively  
10 calls it a "Port Authority Fee" as shown on the following screenshot.



24           38. Upon information and belief, Fox is still assessing this fee on all rentals  
25 originating at the San Diego Airport

26                   **C. PLAINTIFF'S ALLEGATIONS**

27           39. Plaintiff traveled from New Mexico to San Diego, California, several  
28 times between April 10, 2018 and the present. During those visits, he rented vehicles



1 from various car rental companies at the San Diego Airport facility, including from  
2 Defendants.

3 40. On each occasion that he rented from Defendants, he was assessed and  
4 paid the above-mentioned \$3.50 fee.

5 **D. CLASS ACTION ALLEGATIONS**

6 41. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of  
7 Civil Procedure on behalf of himself and all other similarly situated individuals (the  
8 "Class"), defined as follows:

9 All United States citizens who rented a vehicle from one of the Defendants  
10 in San Diego, California from the period of April 10, 2018 to the present  
11 and who were assessed a \$3.50 fee. Excluded from the Class are any of  
12 Defendants' officers, directors, or employees; officers, directors, or  
13 employees of any entity in which Defendants currently have or have had  
14 a controlling interest; and Defendants' legal representatives, heirs,  
15 successors, and assigns.

16 42. At this time, Plaintiff does not know the exact number of Class members;  
17 however, given the nature of the claims and the number of individuals who rented  
18 vehicles in San Diego Airport during the Class period, Plaintiff believes that the Class  
19 members are so numerous that joinder of all members is impracticable.

20 43. There is a well-defined community of interest in the questions of law and  
21 fact involved in this case. The following questions of law and fact are common to the  
22 Class members and predominate over questions that may affect individual Class  
23 members:

- 24 1. Whether Defendants charged the \$3.50 to all rentals originating at  
25 the San Diego Airport as a policy and practice during the Class  
26 Period;  
27 2. Whether the \$3.50 fee charged by Defendants was in violation of  
28 the law;

- 1           3. Whether Defendants' conduct violated the UCL;
- 2           4. Whether Defendants' conduct violated the CLRA;
- 3           5. Whether Defendants were enriched as a result of the unlawful,
- 4           fraudulent, and unfair conduct alleged in this Complaint such that
- 5           it would be inequitable for them to retain the benefits conferred
- 6           upon them by Plaintiff and the other Class members;
- 7           6. Whether Plaintiff and Class members are entitled to restitution of
- 8           the fees they were assessed, and;
- 9           7. Whether Defendants should be estopped from assessing such a fee
- 10          in the future.

11           44. Plaintiff's claims are typical of those of the Class because Plaintiff, like  
12 all Class members, rented vehicles originating at the San Diego Airport during the  
13 Class period and was assessed the \$3.50 fee on each rental.

14           45. Plaintiff will adequately protect the interests of the Class and has retained  
15 counsel who are experienced in litigating complex class actions. Plaintiff has no  
16 interests that conflict with those of the Class.

17           46. A class action is superior to other available methods for the fair and  
18 efficient adjudication of this controversy.

19           47. The prerequisites to maintaining a class action for injunctive or equitable  
20 relief pursuant to Fed. R. Civ. P. 23(b)(2) are met, as Defendants have acted or refused  
21 to act on grounds that apply generally to the Class, so that final injunctive relief or  
22 corresponding declaratory relief is appropriate with respect to the Class as a whole.

23           48. Defendants' conduct is generally applicable to the Class as a whole and  
24 Plaintiff seeks, inter alia, equitable remedies with respect to the Class as a whole. As  
25 such, Defendants' systematic policies and practices make declaratory relief with  
26 respect to the Class as a whole appropriate.

27  
28

1 49. The requirements of Fed. R. Civ. P. 23(b)(3) are met as common issues  
2 predominate over any individual issues, and treatment of this matter as a class action  
3 is superior to numerous individual actions.

4 50. The litigation of separate actions by Class members would create a risk  
5 of establishing inconsistent rulings and/or incompatible standards of conduct for  
6 Defendants. For example, one court might enjoin Defendants from performing the  
7 challenged acts, whereas another might not. Additionally, individual actions may be  
8 dispositive of the interests of the Class, although certain Class members are not parties  
9 to such actions.

## 10 **COUNT I**

### 11 **(Unfair and Deceptive Acts and Practices in Violation of** 12 **the California Consumers Legal Remedies Act)**

13 51. Plaintiff incorporates by reference each of the allegations contained in the  
14 preceding paragraphs of this Complaint and further alleges as follows.

15 52. This cause of action is brought pursuant to the California Consumers  
16 Legal Remedies Act, Cal. Civ. Code §§ 1750-1785 (the "CLRA").

17 53. Plaintiff and the other Class members are "consumers," as the term is  
18 defined by California Civil Code § 1761(d), because they purchased and/or leased the  
19 car rentals at issue for personal, family, or household purposes.

20 54. Plaintiff and Defendants, and the other Class members and Defendants,  
21 have engaged in "transactions," as that term is defined by California Civil Code  
22 §1761(e).

23 55. The conduct alleged in this complaint constitutes unfair methods of  
24 competition and unfair and deceptive acts and practices for the purpose of the CLRA,  
25 and the conduct was undertaken by Defendants in transactions intended to result in,  
26 and which did result in, the sale or lease of goods to consumers.

27 56. As alleged more fully above, Defendants have violated the CLRA by  
28 improperly and illegally assessing a bogus tax on car rentals.

1 57. As a result of engaging in such conduct, Defendants have violated  
2 California Civil Code § 1770(a)(5) and (a)(14).

3 58. Pursuant to California Civil Code § 1780, Plaintiff seeks appropriate  
4 equitable relief, including an order enjoining Defendants from the unlawful practices  
5 described herein, as well as recovery of attorneys' fees and costs of litigation.

6 59. Plaintiff and the other Class members may be irreparably harmed and/or  
7 denied an effective and complete remedy if such an order is not granted.

8 60. The unfair and deceptive acts and practices of Defendants, as described  
9 above, present a serious threat to Plaintiff and the other Class members.

10 61. On January 24, 2020, Plaintiff sent a letter to Defendants via certified mail  
11 that provided notice of their violation of the CLRA and demanded that within thirty  
12 (30) days from that date, they correct or otherwise rectify the unlawful, unfair, false  
13 and/or deceptive practices complained of herein. The letter also stated that if they  
14 failed or refused to do so, a complaint seeking damages in accordance with the CLRA  
15 would be filed. If Defendants fail to provide the relief demanded within the time  
16 allowed by law, Plaintiff will amend his complaint to seek actual and punitive damages  
17 for violation of the CLRA.

## 18 COUNT II

### 19 (Violation of California's Unfair Competition Law)

20 62. Plaintiff incorporates by reference each of the allegations contained in the  
21 preceding paragraphs of this Complaint and further alleges as follows.

22 63. By committing the acts and practices alleged herein, Defendants have  
23 violated California's Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code §§  
24 17200-17210, as to the Class as a whole, by engaging in unlawful, fraudulent, and  
25 unfair conduct.

26 64. **Unlawful Conduct.** Defendants have violated the UCL's proscription  
27 against engaging in *unlawful* conduct as a result of:  
28

1 (a) violations of the CLRA, Cal. Civ. Code § 1770(a)(5) and (a)(14), as  
2 alleged above; and

3 (b) assessing a tax in violation of the law.

4 65. Defendants have made misrepresentations that they are required to charge  
5 this tax, when in fact they are not.

6 66. Plaintiff and the other Class members have suffered injury in fact and  
7 have lost money or property as a result of Defendants' actions, by being forced to pay  
8 this illegal tax.

9 67. Pursuant to California Business and Professions Code § 17203, Plaintiff  
10 and the other Class members seek an order of this Court that includes, but is not limited  
11 to, an order requiring Defendants to refrain from assessing this unlawful tax.

12 68. **Fraudulent Conduct.** Defendants' acts and practices described above  
13 also violate the UCL's proscription against engaging in *fraudulent* conduct.

14 69. As more fully described above, Defendants knowingly mislead Plaintiff  
15 to believe that they were required to assess the tax, when in fact they were not. Said  
16 acts are fraudulent business practices.

17 70. **Unfair Conduct.** Defendants' acts and practices described above also  
18 violate the UCL's proscription against engaging in *unfair* conduct.

19 71. Plaintiff and the other Class members suffered a substantial injury by  
20 virtue of paying more than they would have paid absent Defendants' unlawful,  
21 fraudulent, and unfair practices.

22 72. There is no benefit to consumers or competition from these practices.

23 73. Plaintiff and the other Class members had no way of reasonably knowing  
24 that the taxes were not authorized by law. Thus, they could not have reasonably  
25 avoided the injury each of them suffered.

26 74. The gravity of the consequences of Defendants' conduct as described  
27 above outweighs any justification, motive, or reason therefore, particularly considering  
28 the available legal alternatives which exist in the marketplace, and such conduct is

1 immoral, unethical, unscrupulous, offends established public policy, or is substantially  
2 injurious to Plaintiff and the other Class members.

3 75. Defendants' violations of the UCL continue to this day.

4 76. Pursuant to California Business and Professions Code § 17203, Plaintiff  
5 and the Class seek an order of this Court that includes, but is not limited to, an order  
6 requiring Defendants to:

- 7 1. Cease assessing this unlawful tax to car renters;
- 8 2. Provide restitution to Plaintiff and the other Class members;
- 9 3. Disgorge all revenues obtained as a result of violations of the UCL;  
10 and
- 11 4. Pay Plaintiff's and the Class' attorney fees and costs.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff demands judgment on behalf of himself and the Class  
14 as follows:

- 15 A. An order certifying the proposed Class; appointing Plaintiff as  
16 representative of the Class; and appointing Plaintiff's undersigned  
17 counsel as Class counsel;
- 18 B. A declaration that Defendants are financially responsible for notifying  
19 Class members of the pendency of this suit;
- 20 C. An award of restitution pursuant to California Business and Professions  
21 Code § 17203 for Class members;
- 22 D. An award of disgorgement pursuant to California Business and  
23 Professions Code § 17203 for Class members;
- 24 E. An order enjoining Defendants' unlawful and deceptive acts and  
25 practices, pursuant to California Business and Professions Code § 17203  
26 and California Civil Code § 1780(a)(2);
- 27 F. Injunctive relief for Class members pursuant to California Civil Code §  
28 1780;

1 G. An order awarding Plaintiff and the other Class members the reasonable  
2 costs and expenses of suit, including their attorneys' fees; and

3 H. Any further relief that the Court may deem appropriate.

4 **JURY TRIAL DEMANDED**

5 Plaintiff demands a trial by jury for all claims so triable.

6 Dated: January 24, 2020

7 Respectfully submitted,

8 **SCHONBRUN SEPLOW HARRIS**  
9 **HOFFMAN & ZELDES, LLP**

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