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25 **UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA**

27 EDWARD SCHWARTZ, ORG
28 HOLDINGS, and ORG PORTFOLIO
MANAGEMENT LLC, individually and
on behalf of all others similarly situated,

Plaintiffs,

v.

THE HERTZ CORPORATION,

Defendant.

Case No.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

1 **NATURE OF THE CASE**

2 1. The Hertz Corporation breaches its car-rental agreements with its Gold Plus
3 Rewards program members and defrauds them by charging excessive administrative fees
4 each time they pass through a Southern California electronic toll booth without paying
5 the toll.

6 2. Hertz’s contracts require Gold Plus members only to “reimburse Hertz for
7 all its related collection and other expenses, including an administrative fee related to the
8 cost of collection or to the cost of providing information about [renters] to a court or
9 governmental agency in connection with any parking or traffic violations.” Hertz’s
10 contracts do *not* allow it to charge Gold Plus members administrative fees exceeding the
11 amount needed to reimburse Hertz for expenses it actually incurs in collecting unpaid
12 tolls.

13 3. Worse still, the cost Hertz actually incurs in collecting unpaid Southern
14 California tolls is only pennies per transaction, far less than the \$30 fee that Hertz charges
15 its Gold Plus members for each unpaid toll.

16 4. Plaintiffs, including Gold Plus member Edward Schwartz, paid Hertz a \$30
17 fee for an unpaid Southern California toll, an amount that grossly exceeded Hertz’s
18 reimbursement for all its related collection and other expenses. To recover the excess
19 portion of this payment, and to enjoin Hertz’s unlawful conduct, Plaintiffs bring this class
20 action on behalf of themselves and similarly situated Gold Plus members (or Gold Plus
21 members’ payors) relating to Gold Plus members’ rentals following their first Gold Plus
22 rental.

23 **JURISDICTION AND VENUE**

24 5. This Court has subject-matter jurisdiction under 28 U.S.C. §1332(d). The
25 amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and this is a
26 class action where Plaintiffs and class members are citizens of states different from Hertz.

27 6. This Court has personal jurisdiction over Hertz because Hertz conducts
28 substantial business in California and in this district.

1 7. Venue is proper in this district under 28 U.S.C. § 1391 because Hertz does
2 business here, resides here, and a substantial part of the events giving rise to Plaintiffs'
3 claims occurred in or emanated from here.

4 **PARTIES**

5 8. Schwartz is an individual residing in Ohio. Schwartz rented from Hertz, and
6 Hertz charged his credit card a \$30 administrative fee related to an unpaid Southern
7 California toll.

8 9. ORG Holdings (“ORG Holdings”) is an Ohio limited liability company with
9 its principal place of business in Beachwood, Ohio. Schwartz and ORG Holdings jointly
10 own, and at all relevant times jointly owned, the credit card account charged by Hertz to
11 pay Schwartz’s \$30 administrative fee.

12 10. ORG Portfolio Management, LLC (“ORG Portfolio”) is an Ohio limited
13 liability company with its principal place of business in Beachwood, Ohio. Schwartz is
14 50% owner of ORG Portfolio.

15 11. Hertz, a subsidiary of Hertz Global Holdings, Inc., is a Delaware corporation
16 with its principal place of business in Naples, Florida. Hertz is the world’s largest airport
17 general-use car-rental company, with more than 2,900 airport locations, including 1,600
18 in the United States. Hertz operates and conducts extensive business in California and the
19 rest of the country. During the class period, Hertz rented cars to the public on its own
20 website, www.Hertz.com, through third-party websites, and over the phone.

21
22 **FACTUAL ALLEGATIONS**

23 **I. ELECTRONIC TOLL COLLECTION**

24 **A. *How Electronic Toll Collection Systems Work***

25 12. Electronic toll collection (“ETC”) allows motorists to automatically pay road
26 tolls without stopping. A small electronic device known as a transponder is registered
27 with an ETC system and is linked to an account corresponding to a vehicle’s license
28 registration. As a vehicle passes through an electronic toll lane, the transponder identifies

1 the vehicle to the ETC system, which records the toll payment and debits the
2 corresponding account.

3 13. As an alternative to cash toll lanes, ETC lanes offer many advantages. They
4 improve traffic flow, reduce drivers' time, reduce congestion and pollution, improve fuel
5 economy, improve highway safety, and dramatically reduce toll transaction costs. These
6 benefits have been widely recognized. For example, a 2007 study by the Center for
7 Transportation Research titled "Toll Collection Technology and Best Practices" found
8 ETC to be the preferred method for highway toll collection. Given ETC's advantages,
9 many toll roads, bridges, and tunnels now include ETC lanes, and a growing number of
10 them have eliminated cash lanes altogether, using ETC as the exclusive toll-collection
11 method.

12 **B. *Hertz's PlatePass ETC Service***

13 14. Hertz nationally offers and promotes on its website, in written literature, and
14 elsewhere an ETC service called PlatePass. PlatePass allows customers to use many ETC
15 toll lanes throughout the United States when driving Hertz rental cars. Hertz rental cars
16 are pre-equipped with PlatePass, which, when activated, automatically pays electronic
17 tolls and charges them to customers' credit cards.

18 15. Hertz touts PlatePass as a unique toll-payment solution, affording
19 convenience to its customers by paying tolls electronically when a customer does not
20 bring a personal transponder into the car. PlatePass is the only means of paying tolls on
21 an exclusive ETC road, unless the customer brings along a personal transponder.

22 16. PlatePass is a division of American Traffic Solutions, Inc. ATS administers
23 ETC services for major toll roads throughout the country and worldwide. Sometime after
24 November 2012, Hertz became ATS's largest domestic car-rental customer.

25 17. When a Hertz customer uses PlatePass to pay a toll, the ETC system
26 recognizes the rental car either by a transponder or by the car's license-plate number.
27 PlatePass then charges the Hertz customer's credit card for the toll.

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1 18. In addition to charging customers for any tolls paid using PlatePass, Hertz
2 assesses a PlatePass flat fee of \$4.95 for each rental day, regardless of how many tolls, if
3 any, are paid, with a cap of \$24.95 per rental.

4 19. Despite PlatePass's expansive coverage, cashless toll roads in Southern
5 California, operated by The Toll Roads of Orange County ("Toll Roads") and the Los
6 Angeles County Metropolitan Transportation Authority, do not accept PlatePass. Nor do
7 these toll roads recognize many of the transponders widely used by traveling motorists
8 nationally, such as EZPass or SunPass.

9 20. Instead, Southern California toll roads exclusively use a local ETC system
10 called FasTrak. FasTrak recognizes only dedicated transponders that are registered in
11 FasTrak's system. As a result, the many Hertz customers from other parts of the country
12 and from around the world who do not subscribe to FasTrak are unaware that Hertz's
13 transponders do not pay tolls when they travel on Southern California's cashless toll
14 roads.

15 21. Hertz does not inform Gold Plus members that PlatePass does not work on
16 Southern California toll roads.

17 22. Nor does Hertz inform Gold Plus members that the only way to avoid toll
18 violations on Southern California toll roads is to register for FasTrak or to go online with
19 the rental car's license number and pay a toll within five days after it was incurred.

20 **II. SCHWARTZ'S GOLD PLUS ENROLLMENT AND RENTAL**

21 **A. *Schwartz's Gold Plus Membership Enrollment***

22 23. Schwartz enrolled in Hertz's Gold Plus program on Hertz's website,
23 www.Hertz.com. He completed an enrollment form that required him to provide personal
24 information, including his driver's license and credit-card information, to identify his
25 vehicle preferences, and to select any desired optional insurance or other ancillary
26 services that Hertz offered.

27 24. After entering this information, he adopted an electronic signature and
28 clicked an "I Agree" button, acknowledging that he had "received and agree[d] to the

1 terms and conditions of [his] enrollment in Hertz Gold Plus Rewards, including the
2 elections appearing on this enrollment form.”

3 **B. *Schwartz’s Rental-Car Reservation***

4 25. Schwartz reserved his car online. He logged onto www.Hertz.com, where he
5 specified car pick-up and return locations and times, and chose from a list of available
6 cars.

7 26. Hertz’s website listed “Rental Qualifications and Requirements,” which
8 enumerated several “Charges” that a Gold Plus member may be required to pay as part of
9 a car rental, including PlatePass charges. Missing from this list was any mention of an
10 administrative fee.

11 27. Schwartz proceeded to a webpage with the heading “Review & Book.” This
12 webpage contained an inconspicuous link to the charges described in the previous
13 paragraph. Again, no mention of administrative fee appeared there.

14 28. To complete his reservation, Schwartz clicked on a “Submit” button, which
15 he was told would confirm that he understood and accepted Hertz’s Rental Qualification
16 and Requirements and Hertz’s Gold Plus Terms and Conditions.

17 **C. *Schwartz’s Rental-Car Pick Up***

18 29. On September 1, 2015, Schwartz, as a Gold Plus member, reserved a car for
19 pick up at Hertz’s Los Angeles International Airport location.

20 30. Schwartz’s proceeded directly to the stall where his rental car was waiting
21 with the keys inside.

22 31. He commenced his rental by taking possession of his car. He drove toward
23 the exit gate, where he joined a queue of cars waiting to leave. When he reached the front
24 of the line, an agent handed him a Rental Record through his car window. With drivers
25 behind him waiting to exit and with rows of metal spikes before him preventing him from
26 driving anywhere but out, Schwartz left the lot.

27 32. Later that day, Schwartz drove through the Catalina View toll plaza on
28 California State Route 73. This toll plaza is fully electronic and recognizes only FasTrak

1 transponders. Because Schwartz had no FasTrak transponder, he could not pay the toll as
2 he passed through it.

3 33. On September 3, 2015, Schwartz returned his rental car to Hertz's Orange
4 County–John Wayne Airport location.

5 **III. SCHWARTZ'S RENTAL CONTRACT**

6 34. As Hertz's Terms and Conditions instruct, only Hertz's Terms and
7 Conditions constitute the rental contract between Hertz and a Gold Plus member who has
8 previously made a Gold Plus member rental. Hertz neither gives these renters a Rental
9 Agreement nor requires them to sign a signature pad to agree to a Rental Agreement's
10 terms.

11 35. Paragraph 13 of Part II.B of the Terms and Conditions provides that Hertz
12 may charge an administrative fee for toll-collection costs:

13 You will be responsible for and pay all parking or traffic
14 violation fees, fines and penalties, all towing, storage and
15 impoundment fees, and all tolls charged to the Car, arising out of
16 use, possession or operation of the Car by You or with Your
17 permission. You agree to pay same and indemnify and hold Hertz
18 harmless if Hertz pays or is required to pay same. *You also agree*
19 *to reimburse Hertz for all its related collection and other*
20 *expenses, including an administrative fee related to the cost of*
collection or to the cost of providing information about You to a
court or governmental agency in connection with any parking or
traffic violations.

21 (Emphasis added.)

22 36. Of the documents specified by the Terms and Conditions as comprising
23 Schwartz's rental agreement, only Hertz's Rental Record—which Hertz gives its Gold
24 Plus members *after* their rentals have commenced and thus is not part of Gold Plus
25 members' contracts—purports to notify Gold Plus members that Southern California toll
26 roads do not accept PlatePass and that Hertz will charge a \$30 administrative fee.

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1 37. Buried in the Rental Record is the following language describing, for the
2 first time, Hertz’s alleged \$30 administrative fee:

3 NOTE: Certain toll roads do not accept cash. If you travel on
4 such a toll road without a personal transponder that can be used
5 on the toll road, you will be required to use PlatePass and be
6 billed automatically as outlined below, or incur toll charges or
7 violations for which you will be responsible. *For toll roads in
Southern California that do not accept PlatePass, you will also
be charged an administrative fee of \$30.*

8 (Emphasis added.)

9 38. As well as being unenforceable, this language is misleading because it
10 suggests a one-time-only charge to renters who travel Southern California toll
11 roads that do not accept PlatePass.

12 39. No one at Hertz asked Schwartz to sign, and he did not sign, the Rental
13 Record he received. Hertz’s Rental Record instead states at the bottom of its last page:
14 “GOLD-SIGNATURE ON FILE.”

15 40. As a Gold Plus member, Schwartz provided Hertz an electronic signature
16 when he enrolled in the Hertz Gold Plus program. But nothing in the Terms and
17 Conditions applied this electronic signature to any Rental Record and neither Schwartz
18 nor the other Plaintiffs agreed to the Rental Record.

19 41. Even if Schwartz’s electronic signature applied in perpetuity to all future
20 Rental Agreements, Hertz’s Terms and Conditions explain that “in the case of a rental
21 agreement, the preprinted general terms and conditions section,” which is where Hertz’s
22 administrative fees appears, are excluded. *Id.* at Part I, ¶ 3. In any event, Hertz’s Rental
23 Agreement does not mention Hertz’s \$30 administrative fee.

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1 **IV. HERTZ’S BREACH OF SCHWARTZ’S RENTAL CONTRACT**

2 **A. *Hertz’s demand for a \$30 administrative fee***

3 42. Several weeks after returning his rental car to Hertz, Schwartz received a
4 “Notice of Administrative Fee for Rental Car Toll Charge” from Hertz. This Notice
5 informed Schwartz that his rental car had incurred an unpaid toll charge, in an
6 unspecified amount, for using California State Route 73 on September 1, 2015.

7 43. The Notice, which is essentially identical to the notices that Hertz sends
8 other customers who do not pay tolls on Southern California roads, first explained that
9 Schwartz had not paid his toll:

10 You recently rented a vehicle from The Hertz Corporation.
11 During the term of your Rental Agreement, one or more toll
12 charges were issued by the Toll Roads Violation Department
13 relating to the rental car in your possession at that time. You are
14 responsible for resolving the toll charge(s) with The Toll Roads
Violation Department and for paying an administrative fee to
Hertz Processing Services.

15 44. The representation in this Notice that Hertz and Schwartz had entered into a
16 “Rental Agreement,” as Hertz’s documents define that term, is not true. Schwartz and
17 Hertz *never* entered into a Rental Agreement for this rental car. Hertz’s Gold Plus
18 member rental process ensured that no Rental Agreement was created.

19 45. Based on a Rental Agreement that never existed, the Notice explained that
20 Hertz had transferred liability for the toll from itself, as the car’s registered owner, to
21 Schwartz:

22 As provided in your Rental Agreement with Hertz, you are
23 responsible for all charges, penalties, and fees related to any toll
24 charge(s) incurred during your rental. The toll charge(s) incurred
25 during your rental was issued in the name of the registered owner
26 of the vehicle, which in this case is Hertz. Hertz Processing
27 Services notifies The Toll Roads Violation Department to
28 replace Hertz’s name with your name as you were the renter
assigned to the vehicle at the time of the toll charge(s) were
issued. This process of substituting your name is known as a

1 “transfer of liability” because the liability for toll charge(s) was
2 transferred to you.

3 46. The Notice continued by describing the simple process that Hertz follows to
4 transfer liability to a customer:

5 The “transfer of liability” process in your case involves the
6 following steps:

- 7 1. Hertz Processing Services receives notice of the
8 unpaid toll charge(s) from The Toll Roads Violation
9 Department.
- 10 2. Hertz Processing Services identifies you as the
11 renter responsible for the toll charge(s).
- 12 3. Hertz Processing Services supplies The Toll Roads
13 Violation Department with a legal document
14 containing information about you in order to
15 transfer liability for the toll charge(s) to you.

16 47. Finally, the Notice explained that Schwartz would “be charged for the [\$30]
17 administrative fee on 9/1/2015” and that “[t]he charge on [his] credit card statement
18 [would] appear as WWW.HERTZRENTALFINE.COM or American Traffic Solutions,
19 Inc.”

20 48. The Notice described no other administrative action that Hertz took to justify
21 its \$30 fee. It added that Hertz would charge Schwartz’s credit card to pay the fee for the
22 transfer of liability unless he paid it voluntarily, again falsely representing that a Rental
23 Agreement existed that required this payment:

24 As provided in your Rental Agreement, you are now liable for an
25 administrative fee *relating to that transfer-of-liability process*.
26 The Rental Agreement you signed specifically authorized this
27 fee. If you take no action, the credit card you used to pay for your
28 rental, ending in [XXXX], will be charged for the administrative
fee on 9/27/2015.

(Emphasis added.)

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1 49. The Notice reiterated that “this administrative fee reflected on this notice is
2 separate from the toll amount due to the Toll Roads Violation Department” and instructed
3 Schwartz to pay the toll charge and any fines directly to The Toll Roads Violation
4 Department.

5 50. For further explanation, the Notice referred Schwartz to
6 WWW.HERTZRENTALFINE.COM, which explains, consistent with Hertz’s Terms and
7 Conditions, that “[a]n administration fee *related to the cost of collection, and/or the cost*
8 *of providing information* about you to a court or governmental agency has also been
9 billed.” (Emphasis added.)

10 51. On October 6, 2015, Hertz charged Schwartz’s American Express credit
11 card to pay the \$30 fee. Schwartz and ORG Holdings are joint holders of that credit card
12 account. OMG Portfolio later paid American Express for this \$30 charge.

13 **B. *Hertz unlawfully charged Schwartz a \$30 administrative fee to a generate***
14 ***profit, not to reimburse itself for transfer of liability.***

15 52. As provided in Hertz’s Terms and Conditions, Schwartz “agree[d] to
16 reimburse Hertz for all its related collection and other expenses, including an
17 administrative fee related to the cost of collection or to the cost of providing information
18 about [him] to a court or governmental agency in connection with any parking or traffic
19 violations.” This language’s plain and unambiguous meaning is that Schwartz was
20 obligated only to reimburse Hertz for costs it incurred related to toll collection, not to
21 contribute to Hertz’s profits.

22 53. In violation of the Terms and Conditions, Hertz’s \$30 administrative fee far
23 exceeded the minimal cost that Hertz incurred in transferring toll liability to Schwartz.

24 54. Instead of limiting its administrative fee to the pennies necessary to
25 reimburse costs that Hertz actually incurred, as the parties had agreed, Hertz charged
26 Schwartz an excessive fee to enhance its profits at his expense. In this manner, Hertz
27 breached its promise to Schwartz that it would only charge him what was required to
28 make Hertz whole, not to secretly pad Hertz’s bottom line.

1 55. Because Schwartz has not yet been able to obtain from Hertz, the Toll Roads,
2 the Los Angeles County Metropolitan Transportation Authority, or ATS documents
3 describing Hertz's arrangement with the Toll Roads and the Los Angeles County
4 Metropolitan Transportation Authority, he alleges Hertz's minimal transfer-of-liability
5 costs on information and belief based on costs incurred by Hertz's subsidiary, Dollar Rent
6 A Car.

7 56. Plaintiffs are informed and believe that Dollar's comparable agreements and
8 transactions with the Florida Turnpike Enterprise ("FTE") and ATS are substantially
9 similar to Hertz's agreements and transactions with the Toll Roads, the Los Angeles
10 County Metropolitan Transportation Authority, and ATS, to the extent ATS is involved in
11 Hertz's transfer-of-liability process with respect to Southern California toll roads.

12 57. The FTE's agreement with Dollar and ATS and other related documents
13 show that the FTE charges ATS only \$0.06 per toll incurred and 8% of the gross monthly
14 tolls incurred for administering bypassed electronic tolls.

15 58. So for example, assuming Dollar rented 1,000 cars in a month and each car
16 incurred four \$1.00 toll charges, the administration cost would be \$560. If Dollar charged
17 its customers \$15 per unpaid toll (only half of what Hertz charges), Dollar would collect
18 \$60,000 from its customers. Thus, Dollar reaps revenue that is 107 times the actual
19 administration charges imposed by the FTE.¹

20 59. That the costs incurred by Hertz to transfer liability for tolls make up only a
21 miniscule amount of the \$30 fee is further evidenced by the fees that Hertz charges
22 customers for using Plate Pass. For this service, which is also administered by ATS,
23 Hertz charges a flat fee of only \$4.95 for each rental day, with a cap of \$24.95 per rental,
24 no matter how many tolls Hertz pays.

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27 ¹ Until November 2011, Dollar's administrative fee was \$25 per toll. Sometime during
28 that year Dollar reduced this fee to \$15 per toll.

1 60. To exact its \$30 administrative fee from Schwartz, Hertz engaged in a
2 pattern of deceptive and misleading conduct. Hertz did not disclose to Schwartz before
3 his rental commenced that (i) Southern California toll highways are fully electronic and
4 have no cash lanes; (ii) PlatePass does not function on these roads; (iii) these highways
5 accept only FasTrak transponders, which would require Schwartz to register with
6 FasTrak and to carry a FasTrak transponder in his rental car, or to register his rental
7 car's plates through the FasTrak app; and (iv) unless he used his own FasTrak
8 transponder or registered his rental car through the FasTrak app, he would unavoidably
9 violate Southern California toll plazas.

10 61. Nor did Hertz explain to Schwartz before his rental commenced that (i) it
11 would charge him a \$30 fee for every toll violation, which far exceeds the amount
12 needed to reimburse Hertz for its related collection and other expenses; and (ii) if he
13 drove one of the FasTrak-only highways, he could avoid Hertz's \$30 per toll violation
14 by promptly contacting the Toll Roads or the Los Angeles County Metropolitan
15 Transportation Authority and paying his toll before Hertz transferred liability to him.

16 62. But Hertz did none of these things to assist customers who were, in most
17 cases, visitors to Southern California and thus unfamiliar with the FasTrak process.
18 Instead, Hertz compounded its deception by promoting PlatePass (and describing that it
19 cost \$4.95 a day, not to exceed \$24.95 for a single rental) without revealing that
20 PlatePass does not work on Southern California toll roads.

21 63. More fundamentally, Hertz affirmatively misrepresented the purpose of its
22 administrative fee by telling customers that it was charging them only to reimburse
23 administrative expenses that it incurs when, in fact, the purpose of Hertz's fee is to
24 generate extra revenue.

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1 68. Plaintiffs do not know the exact size of the class because this information is
2 in Hertz's exclusive control. But based on the nature of the commerce involved, Plaintiffs
3 believe the class members number in the thousands and that class members are dispersed
4 throughout the U.S., including California. Therefore, joinder of all class members would
5 be impracticable.

6 69. Plaintiffs' claims are typical of other class members' claims because
7 Plaintiffs and all class members paid Hertz's \$30 administrative fee.

8 70. Common legal or factual questions predominate, including but not limited
9 to:

- 10 a. Whether Hertz entered into contracts with Plaintiffs and class
11 members;
- 12 b. Whether these contracts contained uniform terms and
13 conditions, including language that Hertz would charge
14 Plaintiffs and class members reimbursement for all of Hertz's
15 related collection and other expenses, including an
16 administrative fee related to the cost of collection or providing
17 information about renters to a court or governmental agency in
18 connection with any parking or traffic violations;
- 19 c. Whether these contracts did not contain language that Hertz
20 would charge Plaintiffs and class members a \$30 administrative
21 fee for toll roads in Southern California that do not accept
22 PlatePass;
- 23 d. Whether Hertz breached its contracts with Plaintiffs and class
24 members by charging \$30 administrative fees that were
25 described nowhere in Hertz's rental contract with them, rather
26 than charging them reimbursement for all of Hertz's related
27 collection and other expenses, including an administrative fee
28 related to the cost of collection or to the cost of providing

1 information about renters to a court or governmental agency in
2 connection with any parking or traffic violations;

3 e. Whether it was false and misleading for Hertz to charge
4 Plaintiffs and class members \$30 administrative fees that were
5 described nowhere in Hertz's rental contract with them, rather
6 than charging them only reimbursement for Hertz's related
7 collection and other expenses;

8 f. Whether Plaintiff and class members justifiably relied on
9 Hertz's misrepresentations regarding the true nature and
10 purpose of its \$30 administrative fee, which fee was not
11 mentioned anywhere in Hertz's contract or other documentation
12 and did not constitute Hertz's actual costs relating to the
13 transfer-of-liability process;

14 g. Whether Hertz's uniform representation or statement that its
15 \$30 administrative fees were to reimburse it for all related
16 collection and other expenses, including an administrative fee
17 related to the cost of collection or to the cost of providing
18 information about renters to a court or governmental agency in
19 connection with any parking or traffic violations, was false;

20 h. Whether Hertz's contractual statement that it would only charge
21 Plaintiffs and class members reimbursement for Hertz's related
22 collection and other expenses rather than the \$30 administrative
23 fees it actually charged constituted an affirmative
24 misrepresentation in violation of the California consumer-
25 protection laws;

26 i. Whether Hertz's uniform failure to charge Plaintiffs and class
27 members reimbursement for all Hertz's related collection and
28 other expenses rather than the \$30 administrative fees it

1 actually charged constituted an intentional omission in violation
2 of the California consumer-protection laws;

3 j. Whether Hertz's uniform practice of charging Plaintiffs and
4 class members administrative fees of \$30 rather than
5 reimbursement for Hertz's related collection and other expenses
6 constituted an unconscionable commercial practice in violation
7 of the California consumer-protection laws;

8 k. Whether Hertz hid its \$30 administrative fee from Plaintiffs and
9 class members;

10 l. Whether Plaintiffs or class members authorized Hertz to charge
11 them \$30 administrative fees when all Hertz was contractually
12 permitted to charge them was reimbursement for all of Hertz's
13 related collection and other expenses;

14 m. Whether Hertz's collection of fees under a false pretense
15 violated Hertz's obligation of good faith and fair dealing to
16 Plaintiffs and class members;

17 n. Whether Hertz intentionally and substantially interfered with
18 the Plaintiffs' and class members' ownership of their debit card
19 and credit card funds by wrongfully taking possession of these
20 funds without permission for its undisclosed and inflated
21 administrative fee;

22 o. Whether Hertz's conduct injured Plaintiffs and class members;

23 p. Whether Plaintiffs and class members are entitled to the legal
24 remedy of damages for injuries they suffered as a result of
25 Hertz's conduct;

26 q. Whether Plaintiffs and class members are entitled to restitution
27 for payments that exceeded reimbursement for Hertz's related
28 collection and other expenses;

- 1 r. The proper measure and appropriate formula for determining
- 2 damages suffered by Plaintiffs and class members;
- 3 s. The proper measure and appropriate formula for determining
- 4 the amount of restitution to which Plaintiffs and class members
- 5 are entitled; and
- 6 t. Whether as a result of Hertz's wrongdoing, Plaintiffs and class
- 7 members are entitled to declaratory and injunctive relief.

8 71. Plaintiffs will fairly and adequately represent and protect class members'
9 interests and have no interests that conflict with or are antagonistic to class members'
10 interests. Moreover, Plaintiffs' attorneys are experienced and competent in complex
11 class-action litigation.

12 72. Class certification is the superior procedural method for fairly and efficiently
13 adjudicating Plaintiffs' claims because:

- 14 a. Common questions of law or fact predominate over any individual
- 15 questions that exist within the class;
- 16 b. Each class member's damage claim is too small to make individual
- 17 litigation an economically viable possibility, and few class members
- 18 likely have any interest in individually controlling the prosecution of
- 19 separate actions;
- 20 c. Class treatment is required for optimal deterrence and compensation
- 21 and for determining the court-awarded reasonable legal fees and
- 22 expenses;
- 23 d. Despite the relatively small size of each class member's claim, the
- 24 aggregate volume of their claims—coupled with the economies of
- 25 scale inherent in litigating similar claims on a common basis—will
- 26 enable class counsel to litigate this case on a cost-effective basis; and

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1 e. Plaintiffs anticipate no unusual difficulties in this class action's
2 management in that all legal and factual questions are common to the
3 class.

4 73. Class certification is appropriate under Federal Rule 23(b)(2) because Hertz
5 has acted on grounds generally applicable to Plaintiffs and class members, all of whom
6 are at imminent risk of irreparable harm by Hertz having charged, and continuing to
7 charge, its \$30 administrative fee and all of whom are entitled, as a result, to an
8 injunction banning Hertz from continuing this behavior, as well as a declaration that
9 establishes their rights and Hertz's duties with respect to its \$30 administration fee.

10 **COUNT I**

11 **Breach of Contract**

12 74. Plaintiffs reallege the preceding paragraphs as if fully set forth in this Count.

13 75. By reserving a rental vehicle, renting that vehicle from Hertz, and paying
14 Hertz money for that vehicle rental, Plaintiffs contracted with Hertz.

15 76. Hertz's contract and other documentation with Plaintiffs are standardized,
16 and Hertz uses this contract and documentation for all car rentals by class members.

17 77. Hertz's contract and other documentation never explained or disclosed that
18 Hertz would charge Plaintiffs a \$30 administrative fee for toll violations incurred on
19 Southern California toll roads.

20 78. Instead, Hertz's Terms and Conditions described Plaintiffs' agreement to
21 "*reimburse* Hertz for all its related collection and other expenses, including an
22 administrative fee *related to* the cost of collection or to the cost of providing information
23 about [them] to a court or governmental agency in connection with any parking or traffic
24 violations." (Emphasis added)

25 79. Plaintiffs fully performed and satisfied their obligations under the contract
26 that Hertz formed with them through Hertz's reservation-and-rental process.

27 80. By charging Plaintiffs a \$30 fee that far exceeds the amount necessary to
28 reimburse Hertz for its collection costs and other expenses related to providing

1 information about Plaintiffs to a court or governmental agency in connection with
2 Schwartz's traffic violation, and because this \$30 fee was not mentioned anywhere in
3 Hertz's contract or other documentation with Plaintiffs, Hertz breached its contract with
4 Plaintiffs.

5 81. Plaintiffs have suffered damages as a direct and proximate cause of Hertz's
6 breach of contract.

7 **COUNT II**

8 **Breach of Implied Covenant of Good Faith and Fair Dealing**

9 82. Plaintiffs reallege the preceding paragraphs as if fully set forth in this Count.

10 83. There was a valid contract between Hertz and Plaintiffs that resulted from
11 Hertz's reservation-and-rental process and permitted Hertz to charge them reimbursement
12 for all of Hertz's related collection and other expenses, including an administrative fee
13 related to the cost of collection or to the cost of providing information about renters to a
14 court or governmental agency in connection with any parking or traffic violations.

15 84. Plaintiffs fully performed and satisfied their obligations under that contract.

16 85. Hertz breached this implied covenant and unfairly interfered with Plaintiffs'
17 right to receive the benefits of the contract by charging Plaintiffs a \$30 fee that far
18 exceeds the amount necessary to reimburse Hertz for its collection costs and other
19 expenses related to providing information about Plaintiffs to a court or governmental
20 agency in connection with Schwartz's traffic violation and because this \$30 fee was not
21 mentioned anywhere in Hertz's contract or other documentation with Plaintiffs.

22 86. Hertz's imposition of fictitious and inflated charges violates the covenant of
23 good faith and fair dealing contained in its contract with Plaintiffs.

24 87. Hertz acted in bad faith and breached the covenant by overcharging
25 Plaintiffs and by failing to return overpaid amounts.

26 88. Plaintiffs have suffered damages as a direct and proximate cause of Hertz's
27 breach of the implied covenant of good faith and fair dealing.

28 ///

COUNT III

Unlawful Business Practices Under California Business & Professions Code § 17200, et seq.

89. Plaintiffs reallege the preceding paragraphs as if fully set forth in this Count.

90. California Business and Professions Code Section 17200, et seq. (“UCL”) provides that it is illegal to engage in any “unlawful, unfair, or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising,” and to engage in certain acts that are prohibited in the Business and Professions Code.

91. Hertz violated the “unlawful” prong of the UCL by not disclosing (an omission) and by misrepresenting (an affirmative act) the true nature and purpose of its administrative fee associated with Southern California toll violations. In particular, Hertz acted unlawfully by failing to disclose that it would charge Plaintiffs a \$30 fee that far exceeded the amount required for reimbursement for all its related collection costs and other expenses or its costs related to providing information about Plaintiffs to a court or governmental agency in connection with any parking or traffic violations. Hertz also acted unlawfully by failing to include or choosing to exclude this \$30 fee in its contract or other documentation with Plaintiffs.

92. Hertz falsely represented that this \$30 fee was the actual amount needed to defray its actual administrative costs relating to the transfer-of-liability process, which is “Hertz’s process for “notif[y]ing] The Toll Roads Violation Department to replace Hertz’s name with [Schwartz’s] name.” Hertz then collected this \$30 fee by charging Schwartz and ORG Holding’s credit card.

93. Plaintiffs justifiably relied on Hertz’s misrepresentations regarding the true nature and purpose of its \$30 administrative fee, which fee was not mentioned anywhere in Hertz’s contract or other documentation and did not constitute Hertz’s actual costs relating to the transfer-of-liability process.

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1 94. Hertz’s illegal and deceptive conduct described above was “unlawful” in
2 that it breached Hertz’s contract with Plaintiffs and it violated the CLRA, Cal. Civ. Code
3 § 1750 et seq.

4 95. Hertz’s conduct caused substantial injury to Plaintiffs and class members.
5 Under California Business and Professions Code § 17203, Plaintiffs seek an order
6 enjoining Hertz from engaging in the unlawful practices and acts identified here.
7 Plaintiffs also seek under § 17203 equitable monetary relief to preclude Hertz from
8 retaining the money it improperly obtained as a result of its illegal practices and acts.

9 96. Plaintiffs also seek attorneys’ fees and costs under Cal. Code Civ. Proc. §
10 1021.5.

11
12 **COUNT IV**
13 **Unfair Business Practices Under California Business &**
14 **Professions Code § 17200, et seq.**

15 97. Plaintiffs reallege the preceding paragraphs as if fully set forth in this Count.

16 98. Hertz’s acts and practices as described here constitute unfair business acts
17 and practices in violation of the UCL.

18 99. Hertz violated the “unfair” prong of the UCL by not disclosing (an
19 omission) and misrepresenting (an affirmative act) the true nature and purpose of its \$30
20 administrative fee that was not mentioned anywhere in Hertz’s contract or other
21 documentation with Plaintiffs. This fee far exceeded the amount necessary to reimburse
22 Hertz for all its related collection and other expenses and was not related to Hertz’s cost
23 of collection or its cost of providing information about Plaintiffs to a court of
24 governmental agency in connection any parking or traffic violations.

25 100. Instead, Hertz represented that the \$30 fees it charged Plaintiffs and class
26 members were its actual administrative costs relating to the transfer-of-liability process,”
27 which is Hertz’s process for “notif[y]ing The Toll Roads Violation Department to replace
28 Hertz’s name with [Schwartz’s] name,” before collecting its \$30 administrative fee by
charging the Schwartz and ORG Holding’s credit card.

1 109. Plaintiffs did not consent to Hertz taking possession of these funds for that
2 purpose.

3 110. Plaintiffs were harmed by their loss of these funds, and Hertz's conduct was
4 a substantial factor in causing this harm.

5
6 **PRAYER FOR RELIEF**

7 On behalf of themselves and the class, Plaintiffs request the following relief:

- 8 a. An order declaring that this action is properly maintainable as a
9 class action, certifying Plaintiffs as class representatives, and
10 designating Plaintiffs' counsel as lead counsel for the class;
- 11 b. An order awarding damages to Plaintiffs and class members for
12 Hertz's breach of contract;
- 13 c. An order awarding damages to Plaintiffs and class members for
14 Hertz's breach of the duty of good faith and fair dealing;
- 15 d. An order awarding Plaintiff and class members compensatory
16 damages, treble damages, attorneys' fees, and costs of suit for
17 Hertz's consumer fraud;
- 18 e. An order enjoining Hertz from continuing to charge customers
19 administrative fees for its transfer-of-liability process unless
20 Hertz properly discloses these charges;
- 21 f. An order awarding damages to Plaintiffs and class members for
22 Hertz's wrongful conversion;
- 23 g. An order awarding Plaintiffs pre- and post-judgment interest;
- 24 h. An order awarding the costs of suit; and
- 25 i. An order providing such other and further relief as this Court
26 may deem just and proper.

27 ///

28 ///

JURY TRIAL DEMAND

Plaintiffs demand a trial by jury.

Dated: October 17, 2016

Respectfully submitted,

/s/Mike Arias

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Attorneys for Plaintiffs and the class

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Against Hertz Alleges Breach of Warranty](#)
