

1 Plaintiffs seek damages and restitution, pursuant to N.R.S. § 482.31575 and Nevada common
2 law, arising from Defendants' unfair and unlawful practices.

3 **II.**

4 **JURISDICTION AND VENUE**

5 2. This Court has jurisdiction of this matter pursuant to diversity of citizenship, 28
6 U.S.C. § 1332(d)(2), in that this is a class action in which the amount in controversy exceeds \$5
7 million and Defendants are citizens of states other than states in which three named plaintiffs and
8 many Class Members are citizens.

9 3. Defendants regularly conduct business in this District, and the acts and
10 transactions at issue occurred in this District. Venue is proper in this District pursuant to 28
11 U.S.C. § 1391(a).

12 **III.**

13 **THE PARTIES**

14 4. The Plaintiffs are persons who have rented cars at airports in the State of Nevada
15 and have been quoted and charged airport concession recovery fees prohibited by Nevada law.
16 They are as follows:

17 a. Plaintiff Janet Sobel is a natural person and resident of the State of
18 California. She rented a car at the Las Vegas airport through Defendant The Hertz Corporation
19 ("Hertz") during the Hertz Class Period defined below, and was quoted and charged a separate
20 airport concession recovery fee in violation of Nevada law.

21 b. Plaintiff Daniel Dugan, Ph D., is a natural person and resident of the State
22 of Nevada residing in Washoe County and primarily conducting business in Washoe County. He
23 has rented cars at the Reno and Las Vegas airports for both business and personal purposes
24 through various rental car firms, including Defendant Hertz, during the Hertz Class Period
25 defined below, and was quoted and charged a separate airport concession recovery fee in
26 violation of Nevada law.

27 c. Plaintiff Lydia Lee is a natural person and resident of the State of Oklahoma. She
28 rented a car at the Las Vegas airport through Defendant Enterprise during the Enterprise class

1 period defined below, and was quoted and charged a separate airport concession recovery fee in
2 violation of Nevada law.

3 d. Plaintiff Mark Singer is a natural person and resident of the Commonwealth of
4 Pennsylvania. He rented a car at the Las Vegas airport through Defendant Vanguard, during the
5 Vanguard Class Period, and was quoted and charged a separate airport concession recovery fee
6 in violation of Nevada law.

7 5. Defendant The Hertz Corporation (“Hertz”) is a Delaware corporation with its
8 principal place of business at 225 Brae Boulevard, Park Ridge, New Jersey. Hertz is registered
9 to do business and does business in Nevada. Hertz directly or indirectly owns and controls the
10 operations of Simply Wheelz LLC, d/b/a Advantage Rent-A-Car (“Advantage”).

11 6. Defendant Enterprise is a Delaware Limited Liability Company with its principal
12 place of business at 8290 South Arville Road, Las Vegas, Nevada. It is a citizen of Delaware
13 and Nevada.

14 7. Defendant Vanguard is a Delaware Limited Liability Company with its principal
15 place of business at 600 Corporate Park Drive, St. Louis, Missouri. It is a citizen of Delaware
16 and Missouri. It regularly does business in the State of Nevada as Alamo Rent A Car and
17 National Car Rental.

18 8. Vanguard and Enterprise have been corporate affiliates since August 2007, when
19 an affiliate of Enterprise acquired Vanguard.

20 **IV.**

21 **COMMON FACTUAL ALLEGATIONS**

22 9. The short-term rental car business is a highly competitive industry with domestic
23 revenues in excess of ten billion dollars annually. Approximately 80% of industry revenues
24 come from car rentals at airport locations. Defendants are among the major rental car companies
25 in the country and rent vehicles, directly and/or indirectly, at numerous airport locations,
26 including the Reno-Tahoe International Airport and Las Vegas McCarran International Airport
27 as well as other Nevada airports.

1 **A. The Nature of Airport Concession Fees and Concession Recovery Fees**

2 10. In return for the right to operate at lucrative airport locations, rental car companies
3 are required to pay fees to the airports, which are commonly referred to as concession fees.
4 Rental car companies whose branches are not located at the airport generally do not pay such
5 fees, though they may be required to pay “access fees” to airports to the extent they pick up
6 customers at the airport. At the Reno-Tahoe and McCarran airports, Defendants are required to
7 pay 10% of their gross revenues to the airports as concession fees.

8 11. At most airport locations across the Country, Defendants pass through airport
9 concession fees to its customers as surcharges. Since the mid-to-late 1990s, Defendants have
10 “unbundled” these surcharges from their base rental rates in an attempt to compete more
11 effectively and maximize their profits. Defendants thus quote and charge a base rental rate and,
12 in addition, a separate airport concession recovery fee. When Defendants impose such
13 surcharges on their customers, it is merely a means to bill separately for a part of their overhead,
14 a practice that tends to mislead most customers about the true rental rate.

15 12. Defendants adopted such surcharges in order to be able to advertise and quote
16 lower rates. Defendants structure their charges in this fashion in order to maximize their
17 revenues and profits. By advertising lower base rates and leading car renters to believe that the
18 “airport concession recovery fee” is a charge imposed by the airport, rather than by them,
19 Defendants are able to charge a materially higher total rate than they could otherwise charge.

20 13. In fact, however, concession fees are imposed on the rental car firms by the
21 airport authorities; concession recovery fees are distinct charges that were created by the rental
22 car firms and which those firms impose on renters in order to maximize their revenues while
23 maintaining artificially low base rates. The difference between the two charges is demonstrated
24 by the fact that the Reno-Tahoe airport charges Hertz and other rental car companies a 10%
25 concession fee; but Hertz charged plaintiff Dugan an 11.54% concession recovery fee on a recent
26 rental at the Reno-Tahoe airport.

27 **B. The NAAG Task Force Report**

28 14. In 1988, the National Association of Attorneys General (“NAAG”) formed a task

1 force (the “NAAG Task Force”) to study car rental advertising and related practices. The NAAG
2 Task Force was formed in response to an announcement by The Hertz Corporation in late 1987
3 that it intended to introduce a new advertising campaign that would promote seemingly “lower”
4 airport rental fees by subtracting the seven to twelve percent charged by airports as concession
5 fees from the advertised rate. Hertz acknowledged, however, that it would then add this amount
6 back into the contract price as a surcharge (i.e., the “concession recovery fee” which was charged
7 to the Plaintiffs herein and is at issue in this litigation). When several states threatened litigation,
8 Hertz abandoned its advertising campaign; but a number of State Attorneys General formed an
9 ad hoc group to look more broadly into rental car advertising and charges. That group led to the
10 formation of the NAAG Task Force in March 1988.

11 15. In June 1988, the NAAG Task Force issued a preliminary report which concluded
12 that “the most critical problem with the car rental industry was that, in an effort to compete, they
13 had through various deceptive, false, misleading and unfair advertising and business practices
14 created lead prices that were substantially less than the actual prices consumers pay for rental
15 vehicles.” In part, the rental companies did this by subtracting certain items such as “airport
16 fees” from the advertised price, but then adding the charges back on as separate mandatory
17 surcharges. The Task Force drew three broad conclusions in its preliminary report, including
18 that “mandatory charges must be included in the price advertised as the base rental rate”
19 Comments were then solicited and hearings held, as well as private meetings with industry
20 personnel, prior to adoption of the final Report and Guidelines in March 1989.

21 16. Defendant Hertz commented on the NAAG Draft Guidelines, in pertinent part, as
22 follows:

23 We are particularly gratified that the Task Force has rejected the litany of
24 complaints presented by the cabal of car rental companies that engage in
25 unsavory, anti-consumer tactics. For too long these companies have been
springing traps of additional charges on unsuspecting renters and have used the
various advertising media to do so. In particular, Hertz strongly endorses:

- 26 1. The required inclusion of all mandatory charges in the advertised price –
27 wherever advertised.

28 * * * * *

1 These are important steps forward in the process of bringing industry
2 standards to acceptable levels of fair competition and consumer protection.

3 17. The Task Force guidelines were ultimately approved by NAAG in or about early
4 1999. Those Guidelines were drafted and adopted to, inter alia, “eliminate the unbundling of
5 mandatory charges from advertised car rental rates.” Guideline 2.5 addresses Mandatory
6 Additional Charges and states as follows: “Any surcharge or fee that consumers must generally
7 pay at any location in order to obtain or operate a rental vehicle must be included in the total
8 advertised price of the rental.” The Report states, in pertinent part, as follows:

9 As stated in the Preliminary Report, the Task Force is extremely concerned
10 about the growing practice of “unbundling” or subtracting certain mandatory
11 charges from the advertised price for the purpose of making the cost of the
12 rental appear less than it actually is. Recently, a rental company with offices
13 on-site at airports announced that it would reduce the base price in its
14 advertisements but would add a mandatory charge, equivalent to the amount it
15 paid to the airport for its on-site location (i.e., its concession fee), to the price
16 charged to consumers. After meeting with several attorneys’ general offices,
17 the company abandoned its plan.

18 Task Force Report at p. 11 (Comment to Guideline 2.5). In short, the Task Force unambiguously
19 concluded that the unbundling of mandatory charges, such as concession recovery fees, from the
20 base rate was improper.

21 **C. Airport “Access Fees”**

22 18. The Task Force Report noted that there was a growing trend by airports to impose
23 “access fees” on off-airport rental car companies that picked customers up at the airport. The
24 Report noted that such airport *access fees* charged to customers of off-airport rental companies
25 might warrant different treatment from concession recovery fees, commenting as follows:
26 “When airports charging an access fee to off-airport auto rental companies only assess that fee if
27 the consumer utilizes the auto rental company’s van, it can be argued that this is an optional fee
28 and not a mandatory fee.” *Id.* In other words, because some of the customers of off-airport
rental car companies are local residents or others who are not obligated to pay any airport related
fees or charges, it is unfair and potentially misleading to require those off-airport firms to bundle
such airport fees into their base rates.

1 19. In early 1989, Clark County adopted Ordinance 1131, which imposed such an
2 access fee directly on car renters (as distinct from the concession fee that the airport imposed on
3 the rental firms) who arrived at the airport and were picked up by off-airport car rental firms.
4 The Ordinance stated in pertinent part as follows:

5 Effective April 1, 1989, ground transportation companies and hotels or
6 motels providing or operating courtesy vehicles on any airport property *and*
7 *not otherwise governed by [a] concession or lease agreement . . .* [i.e.,
8 companies that were not on the airport] shall pay the following rates, charges
9 and fees at the Airport:

10

11 (e) Rental car ground transportation companies or operators *shall collect*
12 *and pay an Airport access fee* of three dollars (\$3.00) for each contract written
13 for vehicle rentals to customers picked up at the Airport and transported from
14 Airport Property.

15 Ordinance 1131 at pp. 2-3 (March 7, 1989) (emphasis added).

16 **D. The Adoption of N.R.S. § 482.31575**

17 20. At or about the time of the NAAG Task Force Report, a number of states enacted
18 statutes regulating rental car advertising and charges, including imposing the requirement that all
19 mandatory charges be bundled into the daily rate.

20 21. In 1989, the Nevada Legislature enacted such a statute -- Assembly Bill 612,
21 codified at Section 482.31575 of the Nevada Revised Statutes. It provides in pertinent part as
22 follows:

23 A short-term lessor shall advertise, quote and charge a rate for leasing a passenger
24 car that includes the entire amount except the taxes, any fees paid to airports and
25 any charges for mileage, that a short-term lessee must pay to lease the car for the
26 period to which the rate applies.

27 22. As originally proposed, AB 612 would have required all rental car charges except
28 for taxes and mileage charges (which are inherently variable) to be bundled into the base rate.
The original version of Section 15 provided, in pertinent part, as follows:

 A short-term lessor shall advertise, quote and charge a rate for leasing a passenger
car that includes the entire amount except the taxes and a mileage charge, if any,
that a short-term lessee must pay to lease the car for the period to which the rate
applies

1 23. The legislative history of N.R.S. Section 482.31575 makes clear that the addition
2 of the exception for “any fees paid to airports” was only intended to permit off-airport firms to
3 separately charge renters the \$3 “access fee” that the Clark County Airport Authority had
4 recently imposed by ordinance on such renters. That exception to the bundling requirement was
5 not intended to allow rental firms to impose their own surcharges on renters, even if those
6 surcharges were related to airport fees. Indeed, at the time the statute was adopted and for six
7 years thereafter, neither Defendant Hertz nor its on-airport competitors charged “concession
8 recovery fees” to persons who rented cars at airports in Nevada.

10 24. Notably, the Clark County Ordinance required the off-airport rental companies to
11 collect the access fee from the customer. By contrast, until 1996, the Concession Agreement
12 between McCarran and Defendants expressly precluded Defendants from passing through an
13 unbundled surcharge to recoup the concession fee it was required to pay to the airport. That
14 Agreement stated in pertinent part as follows: “Concessionaire will not be allowed to list
15 concession fees payable to County as a separate item on its customer’s rental contracts or
16 invoices.” 1994 Operating Agreement at § 1.6.1.5. That provision remained in effect until late
17 1995, when the rental car firms successfully lobbied the Airport Authority to drop that provision
18 of the Concession Agreement.

19 **E. Defendant Hertz’s 1995 Lobbying Efforts**

20 25. By early 1995, Hertz and other on-airport rental car firms were facing increased
21 competition from smaller off-airport companies. Hertz, among others lobbied the Nevada
22 legislature to adopt SB 396, which would have required off-airport rental car firms to bundle
23 airport “access fees” (which by then were a larger amount) into their quoted and charged rates.

24 26. In the course of lobbying for SB 396, Hertz admitted its understanding that
25 existing law precluded the on-airport companies from charging an unbundled concession
26 recovery fee. In that regard, Hertz’s lobbyist, Scott Craigie, submitted an Exhibit to the
27 Legislature which described Nevada law as follows: “On airport companies are placed at a
28

1 serious disadvantage: . . . They must roll their [airport] fees into their advertised rate -- their
2 competitors don't.”

3 27. SB 396 was vigorously opposed by the smaller, off-airport rental car companies
4 and was not adopted by the legislature.

5 **F. Defendants' Unbundling of Their Concession Recovery Fees**

6 28. Following the defeat of SB 396, Defendant Hertz and others changed tack and
7 took the position that existing law allowed them to charge an unbundled “concession recovery
8 fee” to persons who rented cars from it at Nevada airports.

9 29. Hertz and other on-airport firms argued to McCarran and Reno-Tahoe airport
10 officials that N.R.S. 482.31575 allowed them to separately charge for “fees paid to airports” and
11 that their concession recovery fees fit within that statutory language. McCarran airport
12 authorities apparently concluded that the statute was ambiguous, and agreed in late 1995 to
13 waive the clause in its concession agreements that precluded on-airport companies from
14 surcharging consumers with such a fee. Hertz then lobbied Reno-Tahoe airport officials, who
15 subsequently waived the comparable clause in that airport's rental car concession agreements.

16 30. Beginning prior to the relevant class periods, Defendants began charging an
17 unbundled concession recovery fee in connection with rentals at their McCarran and Reno-Tahoe
18 airport locations. They have quoted and charged consumers such “fees” since that time.

19 31. Certain amendments to N.R.S. Section 482.31575 became effective on October 1,
20 2009. Accordingly, the Class Period ends on September 30, 2009.

21 **V.**

22 **CLASS ACTION ALLEGATIONS**

23 32. Plaintiffs bring this class action under Rule 23(b)(3) of the Federal Rules of Civil
24 Procedure on behalf of all renters who were charged one or more Airport Concession Recovery
25 Fees by:

- 26 a. Hertz for car rentals from Hertz at the Reno-Tahoe International Airport or at the
27 Las Vegas McCarran International Airport from October 13, 2003 through
28 September 30, 2009, including renters who were charged one or more Airport

- 1 Concession Recovery Fee(s) by Advantage for car rentals at the Reno-Tahoe
2 International Airport from July 1, 2009 through September 30, 2009; or
3 b. Enterprise for car rentals from Enterprise Rent-A-Car at the Reno-Tahoe
4 International Airport or at the Las Vegas McCarran International Airport from
5 June 3, 2004 through September 30, 2009; or
6 c. Vanguard for car rentals from Vanguard, doing business as Alamo at the Reno-
7 Tahoe International Airport or at the Las Vegas McCarran International Airport
8 from June 3, 2007 through September 30, 2009; or
9
10 d. Vanguard for car rentals from Vanguard, doing business as National at the Reno-
11 Tahoe International Airport or at the Las Vegas McCarran International Airport
12 from June 3, 2007 through September 30, 2009.

13
14 33. Excluded from the Class are Defendants, any person, firm, trust, corporation,
15 officer, director or other individual or entity in which Defendants have a controlling interest or
16 which is related to or affiliated with Defendants, and the legal representatives, heirs, successors-
17 in-interest or assigns of any such excluded party. Also excluded from the Class are Plaintiffs'
18 counsel and all judicial officers responsible for any decisions in this matter.

19 34. The Class is so numerous that joinder of all members is impracticable. Plaintiffs
20 estimate that there are more than one hundred thousand class members.

21 35. Plaintiffs will fairly and adequately protect the interests of the members of the
22 Class. Plaintiffs have no interests which are contrary to or in conflict with those of the Class
23 members they seek to represent. Plaintiffs have retained competent counsel, experienced in
24 complex class action litigation, to further ensure such protection, and they intend to prosecute
25 this action vigorously.

26 36. Plaintiffs' claims are typical of the claims of the other members of the Class as
27 their claims and damages arise from and were caused by the same unlawful course of conduct.

28

1 D. Awarding Plaintiffs and members of the Class the costs of this suit, including
2 reasonable attorneys' fees, experts' fees and other disbursements; and such other and further
3 relief as may be just and proper.

4 Dated: November 5, 2010.

5 ROBERTSON & BENEVENTO
6 50 West Liberty Street, Suite 600
7 Reno, Nevada 89501
8 (775) 329-5600

9 By: /S/ G. David Robertson
10 G. David Robertson, Esq.
11 Attorneys for Plaintiff

12 OF COUNSEL:

13 David B. Zlotnick, Esq., CA SBN 195607
14 LAW OFFICES OF DAVID B. ZLOTNICK
15 625 Broadway, Suite 635
16 San Diego, CA 92101
17 TEL: (619) 232-0331
18 FAX: (619) 232-4019

19 Susan S. Thomas, Esq.
20 BERGER & MONTAGUE, P.C.
21 1622 Locust Street
22 Philadelphia, PA 19103
23 TEL: (215) 875-3000
24 FAX: (215) 875-4636

25 COUNSEL FOR PLAINTIFFS AND THE CLASS
26
27
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