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9 Attorneys for Plaintiffs,  
10 Consumer Advocacy Group, Inc

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 COUNTY OF LOS ANGELES – UNLIMITED

13 CONSUMER ADVOCACY GROUP, INC.,  
14 in the public interest,

15 Plaintiff,

16 v.

17 AVIS RENT A CAR SYSTEM, LLC, a  
18 Delaware corporation; BUDGET RENT A  
19 CAR SYSTEM, INC., a Delaware  
20 corporation; AVIS BUDGET GROUP, INC.,  
21 a Delaware corporation; THRIFTY RENT-A-  
22 CAR SYSTEMS, INC., an Oklahoma  
23 corporation; TRAC TEAM, INC.; an  
24 Oklahoma corporation; DOLLAR THRIFTY  
25 AUTOMOTIVE GROUP, INC., an  
26 Oklahoma corporation; DOLLAR RENT A  
27 CAR, INC., an Oklahoma corporation;  
28 HERTZ RENT A CAR, a business entity  
form unknown; HERTZ GLOBAL  
HOLDINGS, INC., a Delaware corporation;  
and DOES 1-50;

Defendants.

CASE NO.

**BC 429131**

COMPLAINT FOR PENALTY,  
INJUNCTION, AND RESTITUTION

Violation of Proposition 65, the Safe  
Drinking Water and Toxic Enforcement  
Act of 1986 (Cal. Health & Safety Code, §  
25249.5, *et seq.*)

ACTION IS AN UNLIMITED CIVIL  
CASE (exceeds \$25,000)

**CONFORMED COPY**  
OF ORIGINAL FILED  
Los Angeles Superior Court

**DEC 3 1 2009**

John A. Clarke, Executive Officer/Clerk

*M. Garcia*  
BY MARY GARCIA, Deputy

**COPY**

1 Plaintiff Consumer Advocacy Group, Inc. alleges a cause of action against defendants  
2 Avis Rent A Car System, LLC; Budget Rent A Car System, Inc.; Avis Budget Group, Inc.;  
3 Thrifty Rent-A-Car Systems, Inc.; TRAC Team, Inc.; Dollar Thrifty Automotive Group, Inc.;  
4 Dollar Rent A Car, Inc.; Hertz Rent A Car; Hertz Global Holdings, Inc.; and Does 1-50 as  
5 follows:

6 **THE PARTIES**

- 7 1. Plaintiff Consumer Advocacy Group, Inc. ("Plaintiff" OR "CAG") is a non-profit  
8 corporation qualified to do business in the State of California. CAG is a person within  
9 the meaning of Cal. Health and Safety Code section 25249.11, subdivision (a). CAG,  
10 acting as a private attorney general, brings this action in the public interest as defined  
11 under Cal. Health and Safety Code section 25249.7, subdivision (d).
- 12 2. Defendant Avis Rent A Car, LLC ("Avis") is a Delaware corporation, qualified to do  
13 business and doing business in the State of California at all relevant times herein.
- 14 3. Defendant Budget Rent A Car System, Inc. ("Budget") is a Delaware corporation,  
15 qualified to do business and doing business in the State of California at all relevant times  
16 herein.
- 17 4. Defendant Avis Budget Group, Inc. ("ABG") is a Delaware corporation, qualified to do  
18 business and doing business in the State of California at all relevant times herein.
- 19 5. Defendant Thrifty Rent-A-Car Systems, Inc. ("Thrifty") is an Oklahoma corporation,  
20 qualified to do business and doing business in the State of California at all relevant times  
21 herein.
- 22 6. Defendant TRAC Team, Inc. ("TRAC") is an Oklahoma corporation, qualified to do  
23 business and doing business in the State of California at all relevant times herein.
- 24 7. Defendant Dollar Thrifty Automotive Group, Inc. ("DTAG") is an Oklahoma  
25 corporation, qualified to do business and doing business in the State of California at all  
26 relevant times herein.
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- 1 8. Defendant Dollar Rent A Car, Inc. ("Dollar") is an Oklahoma corporation, qualified to do  
2 business and doing business in the State of California at all relevant times herein.
- 3 9. Defendant Hertz Rent A Car ("Hertz") is a business entity, form unknown, qualified to do  
4 business and doing business in the State of California at all relevant times herein.
- 5 10. Defendant Hertz Global Holdings, Inc. ("HGH") is a Delaware corporation, qualified to  
6 do business and doing business in the State of California at all relevant times herein.
- 7 11. Plaintiff is presently unaware of the true names and capacities of defendants Does 1-50,  
8 and therefore sues these defendants by such fictitious names. Plaintiff will amend this  
9 Complaint to allege their true names and capacities when ascertained. Plaintiff is  
10 informed, believes, and thereon alleges that each fictitiously named defendant is  
11 responsible in some manner for the occurrences herein alleged and the damages caused  
12 thereby.
- 13 12. At all times mentioned herein, the term "Defendants" includes Avis Rent A Car System,  
14 LLC; Budget Rent A Car System, Inc.; Avis Budget Group, Inc.; Thrifty Rent-A-Car  
15 Systems, Inc.; TRAC Team, Inc.; Dollar Thrifty Automotive Group, Inc.; Dollar Rent A  
16 Car, Inc.; Hertz Rent A Car; Hertz Global Holdings, Inc.; and Does 1-50.
- 17 13. Plaintiff is informed, believes, and thereon alleges that Defendants at all times mentioned  
18 herein, have conducted business within the State of California.
- 19 14. At all times relevant to this action, each of the Defendants, including Does 1-50, was an  
20 agent, servant, or employee of each of the other Defendants. In conducting the activities  
21 alleged in this Complaint, each of the Defendants was acting within the course and scope  
22 of this agency, service, or employment, and was acting with the consent, permission, and  
23 authorization of each of the other Defendants. All actions of each of the Defendants  
24 alleged in this Complaint were ratified and approved by every other Defendant or their  
25 officers or managing agents. Alternatively, each of the Defendants aided, conspired with  
26 and/or facilitated the alleged wrongful conduct of each of the other Defendants.

1 15. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each of the  
2 Defendants was a person doing business within the meaning of Cal. Health and Safety  
3 Code section 25249.11, subdivision (b), and that each of the Defendants had ten (10) or  
4 more employees.

### 5 JURISDICTION

6 16. The Court has jurisdiction over this lawsuit pursuant to California Constitution Article  
7 VI, Section 10, which grants the Superior Court original jurisdiction in all causes except  
8 those given by statute to other trial courts. This Court has jurisdiction over this action  
9 pursuant to Cal. Health and Safety Code section 25249.7, which allows enforcement of  
10 violations of Proposition 65 in any Court of competent jurisdiction.

11 17. This Court has jurisdiction over Defendants named herein because Defendants either  
12 reside or are located in this State or are foreign corporations authorized to do business in  
13 California, are registered with the California Secretary of State, or who do sufficient  
14 business in California, have sufficient minimum contacts with California, or otherwise  
15 intentionally avail themselves of the markets within California through their manufacture,  
16 distribution, promotion, marketing, or sale of their products within California to render  
17 the exercise of jurisdiction by the California courts permissible under traditional notions  
18 of fair play and substantial justice.

19 18. Venue is proper in the County of Los Angeles because one or more of the instances of  
20 wrongful conduct occurred, and continues to occur, in the County of Los Angeles and/or  
21 because Defendants conducted, and continue to conduct, business in the County of Los  
22 Angeles with respect to the conduct that is the subject of this action.

### 23 BACKGROUND AND PRELIMINARY FACTS

24 19. In 1986, California voters approved an initiative to address growing concerns about  
25 exposure to toxic chemicals and declared their right “[t]o be informed about exposures to  
26 chemicals that cause cancer, birth defects, or other reproductive harm.” Ballot Pamp.,  
27 Proposed Law, Gen. Elect. (Nov. 4, 1986) at p.3. The initiative, The Safe Drinking  
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1 Water and Toxic Enforcement Act of 1986, codified at Cal. Health and Safety Code  
2 sections 25249.5, *et seq.* ("Proposition 65"), helps protect California's drinking water  
3 sources from contamination, allows consumers to make informed choices about the  
4 products they buy, and enables persons to protect themselves from toxic chemicals as  
5 they see fit.

6 20. Proposition 65 requires the Governor of California to publish a list of chemicals known to  
7 the state to cause cancer, birth defects, or other reproductive harm. *Cal. Health & Safety*  
8 *Code* § 25249.8. The list, which the Governor updates at least once a year, contains over  
9 700 chemicals and chemical families. Proposition 65 imposes warning requirements and  
10 other controls that apply to Proposition 65-listed chemicals.

11 21. All businesses with ten or more employees that operate or sell products in California  
12 must comply with Proposition 65, including those that operate consumer services. Under  
13 Proposition 65, businesses are: (1) prohibited from knowingly discharging Proposition  
14 65-listed chemicals into sources of drinking water (*Cal. Health & Safety Code* §  
15 25249.5), and (2) required to provide "clear and reasonable" warnings before exposing a  
16 person, knowingly and intentionally, to a Proposition 65-listed chemical (*Cal. Health &*  
17 *Safety Code* § 25249.6).

18 22. Proposition 65 provides that any person "violating or threatening to violate" the statute  
19 may be enjoined in any court of competent jurisdiction. *Cal. Health & Safety Code* §  
20 25249.7. "Threaten to violate" means "to create a condition in which there is a  
21 substantial probability that a violation will occur." *Cal. Health & Safety Code* §  
22 25249.11(e). Defendants are also liable for civil penalties of up to \$2,500.00 per day per  
23 violation, recoverable in a civil action. *Cal. Health & Safety Code* § 25249.7(b).

24 23. Through research and investigation, Plaintiff identified a practice of Defendants (owners,  
25 operators, and managers of rental car services) of exposing, knowingly and intentionally,  
26 persons in California to the Proposition 65-listed chemicals contained in Second-Hand  
27 Tobacco Smoke and Environmental Tobacco Smoke without first providing clear and  
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1 reasonable warnings of such to the exposed persons prior to exposure in violation of  
 2 Proposition 65.

3 24. Plaintiff is informed, believes, and thereon alleges that Second-Hand Tobacco Smoke and  
 4 Environmental Tobacco Smoke contain Tobacco Smoke, a chemical known to the State  
 5 of California to cause Cancer and Reproductive Toxicity. *Cal. Code Regs. tit. 27, §*  
 6 *27001(b), (c).*

7 25. Plaintiff is informed, believes, and thereon alleges that Second-Hand Tobacco Smoke and  
 8 Environmental Tobacco Smoke contain the following other chemicals known to the State  
 9 of California to cause cancer or reproductive toxicity ("Constituent Chemicals"):

Carbon disulfide	Arsenic (inorganic arsenic compounds)	Dibenz[a,h]anthracene	N-Nitrosodiethylamine
1, 1 -Dimethylhydrazine (UDMH)	Benzo[a]anthracene	Dibenz[a,j]acridine	N-Nitrosodi-n-butylamine
1,3-Butadiene	Benzene	Dibenzo[a,e]pyrene	N-Nitrosomethylethylamine
1-Naphthylamine	Benzo[a]pyrene	Dibenzo[a,h]pyrene	N-Nitrosomorpholine
2-Naphthylamine	Benzo[b]fluoranthene	Dibenzo[a,i]pyrene	N-Nitrososonicotine
2-Nitropropane	Benzo[j]fluoranthene	Dibenzo[a,l]pyrene	N-Nitrosopiperidine
4-Aminobiphenyl (4-amino-diphenyl)	Benzo[k]fluoranthene	Dichlorodiphenyltrichloroethane (DDT)	N-Nitrosopyrrolidine
7H-Dibenzo[c,g]carbazole	Cadmium	Formaldehyde (gas)	Ortho-Anisidine
Acetaldehyde	Captan	Hydrazine	Ortho-Toluidine
Acetamide	Chromium (hexavalent compounds)	Lead and lead compounds	Urethane (Ethyl carbamate)
Acrylonitrile	Chrysene	Nickel and certain nickel compounds	Carbon monoxide
Aniline	Dibenz[a,h]acridine	N-Nitrosodiethanolamine	Nicotine
Urethane	Lead	Toluene	

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 22 26. Pursuant to Cal. Health and Safety Code sections 25249.9 and 25249.10, twenty (20)  
 23 months after addition of Tobacco Smoke and each of the Constituent Chemicals to the list  
 24 of chemicals known to the State to cause cancer (*Cal. Code Regs. tit. 27 § 27001(b)*) or  
 25 reproductive toxicity (*Cal. Code Regs. tit. 27 § 27001(c)*), Tobacco Smoke and each of  
 26 the Constituent Chemicals became fully subject to Proposition 65 warning requirements  
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 28

1 and discharge prohibitions. Tobacco Smoke and each of the Constituent Chemicals are  
2 now fully subject to Proposition 65 warning requirements and discharge prohibitions.

3 **SATISFACTION OF PRIOR NOTICE**

4 27. On or about December 31, 2008, Plaintiff gave notice of alleged violations of Cal. Health  
5 and Safety Code section 25249.6 subject to a private action to Avis Rent A Car System,  
6 LLC, identified in the notice as "Avis Rent A Car System, LLC," Avis Budget Group,  
7 Inc., identified in the notice as "Avis Budget Group, Inc.," and to the California Attorney  
8 General, County District Attorneys, and City Attorneys for each city containing a  
9 population of at least 750,000 people in whose jurisdictions the violations allegedly  
10 occurred, concerning exposures to Tobacco Smoke and the Constituent Chemicals as  
11 alleged herein.

12 28. On or about December 31, 2008, Plaintiff gave notice of alleged violations of Cal. Health  
13 and Safety Code section 25249.6 subject to a private action to Budget Rent A Car  
14 System, Inc., identified in the notice as "Budget Rent A Car System, LLC," Avis Budget  
15 Group, Inc., identified in the notice as "Avis Budget Group, Inc.," and to the California  
16 Attorney General, County District Attorneys, and City Attorneys for each city containing  
17 a population of at least 750,000 people in whose jurisdictions the violations allegedly  
18 occurred. concerning exposures to Tobacco Smoke and the Constituent Chemicals as  
19 alleged herein.

20 29. On or about December 31, 2008, Plaintiff gave notice of alleged violations of Cal. Health  
21 and Safety Code section 25249.6 subject to a private action to Thrifty Rent-A-Car  
22 Systems, Inc., identified in the notice as "Thrifty Rent-a-Car Systems, Inc.," TRAC  
23 Team, Inc., identified in the notice as "Trac Team, Inc.," Dollar Thrifty Automotive  
24 Group, Inc., identified in the notice as "Dollar Thrifty Automotive Group, Inc.," and to  
25 the California Attorney General, County District Attorneys, and City Attorneys for each  
26 city containing a population of at least 750,000 people in whose jurisdictions the  
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1 violations allegedly occurred, concerning exposures to Tobacco Smoke and the  
2 Constituent Chemicals as alleged herein.

3 30. On or about December 31, 2008, Plaintiff gave notice of alleged violations of Cal. Health  
4 and Safety Code section 25249.6 subject to a private action to Dollar Rent A Car, LLC,  
5 identified in the notice as "Dollar Rent a Car, Inc.," Dollar Thrifty Automotive Group,  
6 Inc., identified in the notice as "Dollar Thrifty Automotive Group, Inc.," and to the  
7 California Attorney General, County District Attorneys, and City Attorneys for each city  
8 containing a population of at least 750,000 people in whose jurisdictions the violations  
9 allegedly occurred, concerning exposures to Tobacco Smoke and the Constituent  
10 Chemicals as alleged herein.

11 31. On or about December 31, 2008, Plaintiff gave notice of alleged violations of Cal. Health  
12 and Safety Code section 25249.6 subject to a private action to Hertz Rent A Car,  
13 identified in the notice as "Hertz Rent A Car," Hertz Global Holdings, Inc., identified in  
14 the notice as "Hertz Global Holdings, Inc.," and to the California Attorney General,  
15 County District Attorneys, and City Attorneys for each city containing a population of at  
16 least 750,000 people in whose jurisdictions the violations allegedly occurred, concerning  
17 exposures to Tobacco Smoke and the Constituent Chemicals as alleged herein.

18 32. Before sending the above-referenced notices of alleged violations, Plaintiff investigated  
19 the Locations involved, Second-Hand Tobacco Smoke and Environmental Tobacco  
20 Smoke, the likelihood that persons would suffer significant exposures to Tobacco Smoke  
21 and the Constituent Chemicals as alleged herein, and the corporate identity of each of the  
22 Defendants.

23 33. Plaintiff's notices of alleged violations each included a Certificate of Merit executed by  
24 the attorney for the noticing party, CAG. The Certificate of Merit stated that the attorney  
25 for Plaintiff who executed the certificate had consulted with at least one person with  
26 relevant and appropriate expertise who reviewed data regarding the exposure to Tobacco  
27 Smoke and the Constituent Chemicals, respectively, which are the subject Proposition  
28



1 65-listed chemicals of this action. Based on that information, the attorney for Plaintiff  
2 who executed the Certificate of Merit believed there was a reasonable and meritorious  
3 case for this private action. The attorney for Plaintiff attached to the Certificate of Merit  
4 served on the Attorney General the confidential factual information sufficient to establish  
5 the basis of the Certificates of Merit.

6 34. Plaintiff's notices of alleged violation each also included a Certificate of Service and a  
7 document entitled "The Safe Drinking Water & Toxic Enforcement Act of 1986  
8 (Proposition 65) A Summary." *Cal. Health & Safety Code* § 25249.7(d).

9 35. Plaintiff is commencing this action more than sixty (60) days from the date that Plaintiff  
10 gave notice of the alleged violations to Defendants and to the public prosecutors  
11 referenced in Paragraphs 27-31.

12 36. Plaintiff is informed, believes, and thereon alleges that neither the Attorney General, nor  
13 any applicable district attorney or city attorney has commenced and is diligently  
14 prosecuting an action against the Defendants.

15  
16 **FIRST CAUSE OF ACTION**

17 **(By Consumer Advocacy Group, Inc. and against Avis Rent A Car System, LLC; Budget**  
18 **Rent A Car System, Inc.; Avis Budget Group, Inc.; Thrifty Rent-A-Car Systems, Inc.;**  
19 **TRAC Team, Inc.; Dollar Thrifty Automotive Group, Inc.; Dollar Rent A Car, Inc.; Hertz**  
20 **Rent A Car; Hertz Global Holdings, Inc.; and Does 1-50 For Violation Of Proposition 65,**  
21 **The Safe Drinking Water And Toxic Enforcement Act Of 1986 (*Cal. Health & Safety Code***  
22 **§ 25249.6))**

23 **Environmental Exposures to Second-Hand Tobacco Smoke And Environmental Tobacco**  
24 **Smoke**

25 37. Plaintiff repeats and incorporates by reference paragraphs 1 through 36 of this complaint  
26 as though fully set forth herein.

27 38. Plaintiff's allegations concern Environmental Exposures. An "[e]nvironmental exposure"  
28 is an exposure which may foreseeably occur as the result of contact with an  
environmental medium, including, but not limited to, ambient air, indoor air, drinking

1 water, standing water, running water, soil, vegetation, or manmade or natural substances,  
2 either through inhalation, ingestion, skin contact or otherwise. Environmental exposures  
3 include all exposures which are not consumer products exposures, or occupational  
4 exposure.” *Cal. Code Regs. tit. 27, § 25602(c)*. Defendants failed to provide clear and  
5 reasonable Proposition 65-compliant warnings to exposed persons prior to the knowing  
6 and intentional exposures to Tobacco Smoke and the Constituent Chemicals as described  
7 herein, and thereby violated Proposition 65.

8 39. Defendants are rental car companies operating in California. At all relevant times  
9 mentioned herein, Defendants allowed, and continue to allow, persons to smoke  
10 cigarettes and other tobacco products in vehicles owned, controlled, maintained, leased,  
11 and rented by Defendants, thereby facilitating the production of an environment in which  
12 Second-Hand Tobacco Smoke and Environmental Tobacco Smoke existed. Defendants,  
13 thus, allowed its customers (those in the vehicle during the smoking of the cigarettes and  
14 other tobacco products, as well as other customers subsequently renting vehicles after  
15 they were smoked in) to inhale the ambient air in the vehicles, which contained the  
16 Tobacco Smoke and Constituent Chemicals in concentrated levels, without first  
17 providing Proposition 65-compliant warnings to such exposed persons prior to the time of  
18 the exposures.

19 40. The locations of exposure were inside each vehicle rented from certain California rental  
20 car locations owned, operated, and/or managed by Defendants’ in which Defendants  
21 permitted and/or facilitated the smoking of cigarettes and other tobacco products  
22 (“Locations of Exposure”).

23 41. Each of the Defendants maintains exclusive control over at least one of the Locations of  
24 Exposure, as these areas constitute property each of the Defendants owns. The amount of  
25 control over the Locations of Exposure possessed by each of the Defendants is sufficient  
26 to prohibit or allow smoking or to post Proposition 65-compliant warnings and to control  
27 the quality of ambient air within the Locations of Exposure. Furthermore, Plaintiff  
28

1 believes Defendants maintain and possesses sufficient control over each of the Locations  
2 of Exposure relevant to them and identified within their respective Notice (as referenced  
3 in Paragraphs 27-31) to prohibit or allow smoking or to require posting of Proposition 65-  
4 compliant warnings and to control the quality of the ambient air within the Locations of  
5 Exposure, despite the operation or control of any Locations of Exposure by another  
6 entity.

7 42. The routes of exposure to Tobacco Smoke and the Constituent Chemicals were and are  
8 inhalation, dermal contact, and skin absorption when Second-Hand Smoke and  
9 Environmental Tobacco Smoke condensates accumulate on various surfaces, including  
10 but not limited to upholstery, dashboard, armrest, and fabric. When affected persons  
11 breathed in the ambient air containing Second-Hand Smoke and Environmental Tobacco  
12 they were exposed to Tobacco Smoke and its Constituent Chemicals *via* their mouths,  
13 throats, bronchi, esophagi, and lungs. Exposure of Tobacco Smoke and the Constituent  
14 Chemicals generates risks of cancer and reproductive toxicity to the exposed persons.

15 43. Plaintiff is informed, believes, and thereon alleges between December 31, 2005 and the  
16 present, each of the Defendants knowingly and intentionally exposed persons in  
17 California to Tobacco Smoke and its Constituent Chemicals, without first providing any  
18 type of clear and reasonable warning of such to the exposed persons before the time of  
19 exposure, as described above. These exposures occurred beyond the real property owned  
20 or controlled by Defendants, but inside Defendants' cars rented to the public. Defendants  
21 thereby violated Proposition 65.

22 44. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
23 Proposition 65 as to Second-Hand Tobacco Smoke and Environmental Tobacco Smoke  
24 have been ongoing and continuous to the date of the signing of this complaint, so that a  
25 separate and distinct violation of Proposition 65 occurred each and every time a person  
26 was exposed to Tobacco Smoke and the Constituent Chemicals as described herein.

1 45. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
2 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
3 violations alleged herein will continue to occur in the future.

4 46. Based on the allegations herein, Defendants are liable for civil penalties of up to  
5 \$2,500.00 per day per individual exposure to Tobacco Smoke and its Constituent  
6 Chemicals, pursuant to Health and Safety Code section 25249.7(b).

7 47. In the absence of equitable relief, California consumers, the general public, and others  
8 will continue to be involuntarily exposed to Tobacco Smoke and its Constituent  
9 Chemicals, creating a substantial risk of irreparable harm. Thus, by committing the acts  
10 alleged herein, Defendants have caused irreparable harm for which there is no plain,  
11 speedy, or adequate remedy at law.

12 48. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to  
13 filing this Complaint.

14 **SECOND CAUSE OF ACTION**

15 **(By Consumer Advocacy Group, Inc. and against Avis Rent A Car System, LLC; Budget**  
16 **Rent A Car System, Inc.; Avis Budget Group, Inc.; Thrifty Rent-A-Car Systems, Inc.;**  
17 **TRAC Team, Inc.; Dollar Thrifty Automotive Group, Inc.; Dollar Rent A Car, Inc.; Hertz**  
18 **Rent A Car; Hertz Global Holdings, Inc.; and Does 1-50 For Violation Of Proposition 65,**  
19 **The Safe Drinking Water And Toxic Enforcement Act Of 1986 (Cal. Health & Safety Code**  
20 **§ 25249.6))**

21 **Occupational Exposures to Second-Hand Tobacco Smoke and Environmental Tobacco**  
22 **Smoke**

23 49. Plaintiff repeats and incorporates by reference paragraphs 1 through 48 of this complaint  
24 as though fully set forth herein.

25 50. Plaintiff's allegations concern Occupational Exposures, which "means an exposure to  
26 any employee in his or her employer's workplace." *Cal. Code Regs. tit. 27, § 25602(f).*  
27 Exposures of Tobacco Smoke and its Constituent Chemicals to Defendants' employees  
28 occurred through the course of their employment in their employers' workplaces.

1 51. Defendants are rental car companies operating in California. At all relevant times herein,  
2 Defendants allowed, and continue to allow, persons to smoke cigarettes and other tobacco  
3 products in vehicles owned, controlled, maintained, leased, and rented by Defendants,  
4 thereby facilitating the production of an environment in which Second-Hand Tobacco  
5 Smoke and Environmental Tobacco Smoke existed. Defendants then caused its  
6 employees to be exposed Tobacco Smoke and the Constituent Chemicals of the Second-  
7 Hand Smoke and Environmental Tobacco Smoke left in the vehicles without first  
8 providing clear and reasonable warnings in compliance with Proposition 65 prior to such  
9 exposures. Defendants' employees were exposed to Tobacco Smoke and the Constituent  
10 Chemicals as they inhaled the ambient air containing the Tobacco Smoke and Constituent  
11 Chemicals in the process of cleaning, vacuuming, aerating, and otherwise preparing the  
12 Defendants' rental vehicles for subsequent customers. Defendants were and are  
13 employers, and the rental vehicles were and are the property of Defendants, thus  
14 Defendants have caused Occupational Exposures at all relevant times herein.

15 52. The locations of exposure were inside each vehicle rented from certain California rental  
16 car locations owned, operated, and/or managed by Defendants' in which Defendants  
17 permitted and/or facilitated the smoking of cigarettes and other tobacco products  
18 ("Locations of Exposure").

19 53. Each of the Defendants maintains exclusive control over at least one of the Locations of  
20 Exposure, as these areas constitute property each of the Defendants owns. The amount of  
21 control over the Locations of Exposure possessed by each of the Defendants is sufficient  
22 to prohibit or allow smoking or to post Proposition 65-compliant warnings and to control  
23 the quality of ambient air within the Locations of Exposure. Furthermore, Plaintiff  
24 believes Defendants maintain and possesses sufficient control over each of the Locations  
25 of Exposure relevant to them and identified within their respective Notice (as referenced  
26 in Paragraphs 27-31) to prohibit or allow smoking or to require posting of Proposition 65-  
27 compliant warnings and to control the quality of the ambient air within the Locations of  
28

1 Exposure, despite the operation or control of any Locations of Exposure by another  
2 entity.

3 54. The routes of exposure to Tobacco Smoke and the Constituent Chemicals were and are  
4 inhalation, dermal contact, and skin absorption when Second-Hand Smoke and  
5 Environmental Tobacco Smoke condensates accumulate on various surfaces, including  
6 but not limited to upholstery, dashboard, armrest, and fabric. When affected persons,  
7 including Defendants' employees, breathed in the ambient air containing Second-Hand  
8 Smoke and Environmental Tobacco they were exposed to Tobacco Smoke and its  
9 Constituent Chemicals *via* their mouths, throats, bronchi, esophagi, and lungs. Exposure  
10 of Tobacco Smoke and the Constituent Chemicals generates risks of cancer and  
11 reproductive toxicity to the exposed persons.

12 55. Plaintiff is informed, believes, and thereon alleges between December 31, 2005 and the  
13 present, each of the Defendants knowingly and intentionally exposed persons in  
14 California to Tobacco Smoke and its Constituent Chemicals, without first providing any  
15 type of clear and reasonable warning of such to the exposed persons before the time of  
16 exposure, as described above. Defendants thereby violated Proposition 65.

17 56. Plaintiff is informed, believes, and thereon alleges that each of Defendants' violations of  
18 Proposition 65 as to Second-Hand Tobacco Smoke and Environmental Tobacco Smoke  
19 have been ongoing and continuous to the date of the signing of this complaint, so that a  
20 separate and distinct violation of Proposition 65 occurred each and every time a person,  
21 including Defendants' employees, was exposed to Tobacco Smoke and the Constituent  
22 Chemicals as described herein.

23 57. Plaintiff is informed, believes, and thereon alleges that each violation of Proposition 65  
24 mentioned herein is ever continuing. Plaintiff further alleges and believes that the  
25 violations alleged herein will continue to occur in the future.  
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1 58. Based on the allegations herein, Defendants are liable for civil penalties of up to  
2 \$2,500.00 per day per individual exposure to Tobacco Smoke and its Constituent  
3 Chemicals, pursuant to Health and Safety Code section 25249.7(b).

4 59. In the absence of equitable relief, California consumers, the general public, and others  
5 will continue to be involuntarily exposed to Tobacco Smoke and its Constituent  
6 Chemicals, creating a substantial risk of irreparable harm. Thus, by committing the acts  
7 alleged herein, Defendants have caused irreparable harm for which there is no plain,  
8 speedy, or adequate remedy at law.

9 60. Plaintiff has engaged in good faith efforts to resolve the claim alleged herein prior to  
10 filing this Complaint.

11 **PRAYER FOR RELIEF**

12 Plaintiff demands against each of the Defendants as follows:

- 13 1. A permanent injunction mandating Proposition 65 compliant warnings;  
14 2. Penalties pursuant to Cal. Health and Safety Code section 25249.7, subdivision (b);  
15 3. Costs of suit;  
16 4. Reasonable attorney fees and costs; and  
17 5. Any further relief that the court may deem just and equitable.

18  
19 Dated: December 30, 2009

YEROUSHALMI & ASSOCIATES

20  
21 BY: 

22 Reuben Yeroushalmi  
23 Attorneys for Plaintiff,  
24 Consumer Advocacy Group, Inc.  
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