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15 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF SAN MATEO
17

18 THE PEOPLE OF THE STATE OF CALIFORNIA,
19 Plaintiff,
20 v.
21 ACCELERON CORPORATION, ANDREW WONG,
and BETTY Y. WONG,
22 Defendants.
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CASE NO.:

**COMPLAINT FOR
INJUNCTION, CIVIL
PENALTIES, AND OTHER
RELIEF**

Date: November 9, 2004

1 Plaintiff, the People of the State of California, by Bill Lockyer, Attorney General of the
2 State of California, and James P. Fox, District Attorney of the County of San Mateo, allege the
3 following on information and belief:

4 **PARTIES**

5 1. Defendant Acceleron Corporation (“Acceleron”) is a California corporation with
6 its principal place of business at 734 East San Bruno Ave., San Bruno, California. Defendant
7 Acceleron Corporation is the owner of the Payless rental car franchise with offices in San Bruno,
8 California and Oakland, California. Acceleron is a franchisee of defendant Payless Car Rental
9 System, Inc. (“Payless Corporate”).

10 2. Defendant Andrew Wong is an individual. Mr. Wong is the president and
11 treasurer of Acceleron and, as such, controlled, managed, and directed the activities of defendant
12 Acceleron.

13 3. Defendant Betty Y. Wong is an individual. Ms. Wong is the vice-president and
14 secretary of Acceleron and, as such, controlled, managed, and directed the activities of defendant
15 Acceleron.

16 4. All references in this Complaint to any of the defendants also include all of them,
17 unless otherwise specified. Whenever reference is made in this Complaint to any act of
18 defendants, such allegation means that each defendant acted individually and jointly with the
19 other defendants.

20 5. At all relevant times, each defendant committed the act(s), caused others to
21 commit the act(s), or permitted others to commit the act(s) alleged in this Complaint.

22 6. Any allegation about any acts of any corporate or other business defendant shall
23 mean that the corporation or other business did the acts alleged through its officers, directors,
24 employees, agents and/or representatives while they were acting within the actual or ostensible
25 scope of their authority.

26 7. The violations of law alleged in this Complaint occurred, in relevant part, in the
27 Counties of San Mateo and Alameda as well as elsewhere in California.

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2 **BACKGROUND**

3 8. Defendants Acceleron, Andrew Wong and Betty Wong (collectively
4 “Defendants”) are engaged in the business of renting cars to the public. Acceleron operates two
5 Payless offices, one located at 734 San Bruno Avenue East in San Bruno, California, the other at
6 500 Hegenberger Rd. in Oakland, California.

7 9. Beginning in 2003, Defendants installed global positioning system (GPS) tracking
8 devices in certain of their vehicles offered for rental, and instituted a policy according to which
9 renters who traversed certain geographical borders – specifically, who left the area comprising
10 California and two specific cities in Nevada – were surcharged a \$1 penalty per mile traveled for
11 the entirety of the rental period.

12 10. At the time the GPS tracking devices were first installed, renters were not notified
13 at the time of reservation about the presence of GPS tracking devices in their cars. At a later
14 date, Defendants changed their practice so that renters who at the time of reservation inquired
15 specifically about GPS tracking devices – but only those renters – were informed that the devices
16 might be present.

17 11. At all relevant times, only those renters who at the time of reservation inquired
18 specifically about geographical restrictions were informed of the restrictions.

19 12. At no time have renters been informed at the time of reservation that the penalty
20 for violating Defendants’ geographical restriction policy would amount to \$1 per mile traveled
21 for the entirety of the rental period, not just the miles driven in alleged violation of the policy.

22 13. Between July 2003 and the spring of 2004, Defendants regularly assessed the \$1
23 per mile traveled surcharge penalty, in some cases levying on renters a surcharge in excess of
24 \$3000.

25 14. Throughout the period at issue, Defendants’ rental contracts contained a box
26 requiring a renter to acknowledge that the renter had been notified that Defendants’ vehicles
27 could not be taken out of California and two specific cities in Nevada. At the counter, however,
28 Defendants’ employees often failed to alert renters to these restrictions, in at least one instance

1 marking the acknowledgment box only *after* a renter who had driven across state lines had
2 returned the car, and in another instance giving the renter – who was later surcharged an out-of-
3 state driving penalty – directions to a destination in Oregon.

4 15. At the time the GPS tracking devices were first installed, renters were not notified
5 at the rental counter about the presence of GPS tracking devices in their cars. At a later date,
6 Defendants changed their practice to add a passage, in the middle of a paragraph in an addendum
7 regarding optional insurance products, that stated that certain of Defendants’ vehicles might
8 contain a GPS device.

9 16. Throughout the period at issue, Defendants sold their customers Renter’s Liability
10 Protection (RLP) coverage, assertedly to cover damage done by the renter to third parties and
11 their vehicles. For much of the period at issue, Defendants’ customers were regularly informed
12 by Defendants’ employees that unless a renter could present written proof of his or her own
13 liability insurance, the renter must purchase RLP in order to rent a car from Defendants. On at
14 least some occasions, renters’ requests to have their insurance companies fax proof of insurance
15 to Defendants were denied.

16 17. Beginning at some point in the period at issue and continuing until the present,
17 the stated policy of Payless Corporate has been that in California Payless does not rent cars to
18 renters who cannot show written proof of liability insurance at the rental counter. This policy
19 has been disclosed at the time of reservation only to renters who inquire specifically about
20 liability coverage. This policy has never been disclosed at the counter by Defendants; indeed, it
21 has been Defendants’ practice to rent cars to renters who cannot show written proof of liability
22 insurance at the rental counter as long as they purchase RLP.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**
25 **(UNLAWFUL BUSINESS ACTS OR PRACTICES)**

26 18. The People reallege and incorporate by reference paragraphs 1 through 17 of this
27 Complaint.

28 19. Defendants have engaged in unfair competition as defined by California Business

1 and Professions Code section 17200 by engaging in the following acts or practices:

2 a. By making untrue or misleading statements or omissions to consumers in
3 violation of Business and Professions Code section 17500, as set forth in paragraph 21, which is
4 incorporated here by reference;

5 b. By charging renters \$1 per mile traveled for the entire rental period for
6 driving beyond the asserted geographical restriction, in violation of Civil Code section 1671,
7 which forbids the assessment of liquidated damages penalties;

8 c. By failing adequately to notify renters of the presence of a GPS device in
9 their rental vehicles, in violation of Business and Professions Code section 17500 and article I,
10 section 1 of the California Constitution, which secures to all Californians the right to privacy;

11 d. By representing or implying that consumers were required to purchase
12 RLP coverage unless they could produce physical proof of their own liability coverage, in
13 violation of section 1936(n) of the Civil Code, which forbids a rental company from charging
14 any fee (beyond those enumerated in that provision) that must be paid by the renter as a
15 condition of renting the vehicle, and further specifies that a rental company must make the
16 purchase of any insurance or similar product optional.

17 e. By frustrating consumers' attempts to provide proof of liability coverage;

18 f. By offering for rental vehicles that failed to conform to equipment-related
19 requirements of the Vehicle Code, in violation of various provisions of Division 12 of that Code;

20 g. By compelling renters, when the class of vehicle a renter had reserved was
21 unavailable, to accept an "upgrade" to a more expensive vehicle and charging a higher rate than
22 the rate stated in the original rental reservation;

23 h. By compelling consumers, when no suitable vehicle was available for a
24 consumer with a reservation, to seek a suitable rental from another company and then failing to
25 pay the consumer the price difference between the rate stated in the reservation and the rate
26 actually paid to the other company;

27 i. By failing to give adequate notice (1) that "local renters" receive only 150
28 free miles per day rather than the unlimited mileage promised in Defendants' advertisements and

1 other statements and (2) of who qualifies as a “local renter” – in violation of Civil Code section
2 1936(n)(4) as well as Business and Professions Code section 17500; and

3 j. By assessing renters for visible vehicle damage months after those renters
4 returned the vehicles, when at the time the renters returned the vehicles Defendants made no
5 mention of any damage having been done.

6 **SECOND CAUSE OF ACTION**
7 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17500**
8 **(UNTRUE OR MISLEADING ADVERTISING)**

9 20. The People reallege and incorporate by reference paragraphs 1 through 19 of this
10 Complaint.

11 21. Defendants have violated section 17500 of the Business and Professions Code by
12 making untrue or misleading statements and omissions to consumers with an intent to induce
13 them to enter into rental car contracts, as follows:

14 a. By failing properly to inform renters before the rental period how the
15 geographic restriction surcharge would be calculated (i.e. \$1 per mile traveled for the entire
16 rental period), or that GPS devices would be used to monitor renters’ movements;

17 b. By failing properly to disclose to renters that the purchase of RLP was
18 optional; and

19 c. By failing properly to inform “local renters” that Defendants’ stated and
20 advertised offer of unlimited mileage was not available to them.

21 22. At the time that Defendants made the above statements or omissions, they knew
22 or should have known that these statements or omissions were untrue or misleading.

23
24 WHEREFORE, Plaintiff prays for judgment as follows:

25 1. Pursuant to Business and Professions Code sections 17203 and 17535, that all
26 Defendants, their agents, employees, officers, representatives, successors, partners, assigns, and
27 all persons acting in concert or participating with them, be permanently enjoined from violating
28 Business and Professions Code sections 17200 and 17500, including but not limited to the

1 violations alleged in this Complaint;

2 2. Pursuant to Business and Professions Code sections 17206 and 17536, that the
3 Court assess a civil penalty against each Defendant for each violation of Business and
4 Professions Code section 17200 or 17500 alleged in the Complaint, as proved at trial;

5 3. That the People recover their costs of suit; and

6 4. That the Court grant such other and further relief as it may deem just and proper.

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Dated: November 9, 2004

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10 JAMES P. FOX
District Attorney, San Mateo County
11 CHUCK FINNEY
Deputy District Attorney

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13 By _____
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By _____
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Attorneys for the Plaintiff
People of the State of California

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