

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

SUSAN DOHERTY and DWIGHT SIMONSON,  
individually and on behalf of all others similarly  
situated,

Plaintiffs,

v.

THE HERTZ CORPORATION,  
AMERICAN TRAFFIC SOLUTIONS, INC.,  
and PLATEPASS LLC

Defendants.

Civil Action No. 1:10-cv-00359-NLH-KMW

**SETTLEMENT AGREEMENT**

THIS SETTLEMENT AGREEMENT (the "Agreement" or "Settlement Agreement") is entered into as of this 29th day of May, 2013, by and between plaintiffs Dwight Simonson and Susan Doherty (together "Plaintiffs"), Cohen, Placitella & Roth, P.C., Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L., and Emanuel & Dunn, PLLC (the Cohen, Farmer, and Emanuel firms, along with counsel of record from those firms, together "Class Counsel"), American Traffic Solutions, Inc. and PlatePass LLC (collectively "ATS"), and The Hertz Corporation ("Hertz") (Hertz and ATS together herein referred to as "Defendants"). All of the parties identified above are collectively referred to as the "Parties."

WHEREAS, on December 10, 2009, Plaintiff Susan Doherty filed a lawsuit against Defendants in the Burlington County, New Jersey Superior Court that Defendants later removed to the United States District Court for the District of New Jersey (the "Court"), styled as *Susan Doherty v. The Hertz Corporation, American Traffic Solutions, Inc. and PlatePass LLC*, Case No. 1:10-CV-00359 ("Doherty Action");

WHEREAS, on March 26, 2010, Plaintiff Dwight Simonson filed a lawsuit in the same Court against Defendants styled *Dwight Simonson v. The Hertz Corporation, American Traffic Solutions, Inc. and PlatePass LLC*, Case No. 1:10-CV-01585 (“Simonson Action”);

WHEREAS, the Simonson and Doherty Actions alleged similar claims against Defendants regarding the “PlatePass®” electronic toll payment system (“PlatePass”) available for use by Hertz rental-car customers in many locations throughout the United States;

WHEREAS, on July 14, 2011, the Court entered an order consolidating the Simonson and Doherty Actions for all purposes into docket number Civil No. 1:10-cv-00359-NLH-KMW (the “Consolidated Action” or “Action”);

WHEREAS, on July 27, 2011, Plaintiffs filed a consolidated amended complaint (“Complaint”) in the Consolidated Action combining all claims against Defendants regarding PlatePass;

WHEREAS, in the Complaint, Plaintiffs alleged, among other things, that Defendants failed adequately to disclose service fees and certain toll-related charges associated with Hertz customers’ use of PlatePass; violated the New Jersey Consumer Fraud Act; breached the Hertz rental contract; wrongly converted Plaintiffs’ monies; caused unjust enrichment in Defendants’ favor; and engaged in a civil conspiracy;

WHEREAS, Defendants have unequivocally denied, and continue to deny, each and every claim filed in the Complaint and all charges of wrongdoing or liability asserted against them arising out of any conduct, statements, acts or omissions alleged, or that could have been alleged, in the Consolidated Action and believe that the claims asserted against them are without merit;

WHEREAS, since the filing of the Doherty and Simonson Actions, Plaintiffs and Defendants have investigated, advanced, and defended their respective positions vigorously. Each side has taken numerous depositions of parties and fact witnesses. Each side has conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the Complaint; has conducted significant discovery, including: (a) Defendants and Plaintiffs serving and responding to each side's numerous document requests, written interrogatories, and requests for admission; (b) Defendants' production and Plaintiffs' receipt and review of approximately 40,000 documents constituting at least six gigabytes of data; (c) Plaintiffs' receipt and analysis of Defendants' PlatePass-transactional databases, and receipt and review of query responses from ATS's PlatePass database; (d) the taking and defending of numerous depositions by both Defendants and Plaintiffs at locations throughout the country, including the depositions of Hertz and ATS corporate designees, 10 depositions of other Hertz and ATS fact witnesses, and the depositions of Plaintiffs Susan Doherty and Dwight Simonson; has engaged in extensive, hard-fought settlement negotiations under the auspices and guidance of an eminent mediator, the Hon. Joel Rosen, U.S. Mag. J. (Retired) ("Mediator"); and has reached this Agreement fully at arms' length;

WHEREAS, Plaintiffs and Class Counsel have independently examined the benefits to be obtained under the terms of this Agreement; have considered the risks associated with the continued prosecution of the Action and the likelihood of success on the merits of the Action; and believe that, after considering all the circumstances, the proposed settlement set forth in this Agreement is fair, reasonable, adequate, and in the best interests of the Plaintiffs and the Class;

WHEREAS, Defendants consider it desirable, fair, and reasonable that this Action be resolved upon the terms and conditions set forth in this Agreement in order to avoid the expense,

risk, uncertainty, and interference with ongoing business operations inherent in any litigation, and to put to rest and to obtain their peace, forever, from all claims that will be barred by the releases described herein.

**NOW, THEREFORE**, subject to the Court's approval as required herein, and in consideration of the mutual promises set forth below, the Parties agree as follows:

### **ARTICLE 1 – DEFINITIONS**

As used in this Settlement Agreement and the related documents attached hereto as exhibits, and in addition to the terms already defined in this Agreement, the following terms shall have the meanings set forth below. Whenever the context so requires, the masculine gender includes the feminine gender, and the singular includes the plural and vice versa.

1.1 “Aggregate Fees and Costs” means the total of any and all awards to Class Counsel of attorneys’ fees and costs related to work undertaken in this Action.

1.2 “Claimant” means a Class Member who has submitted a Claim Form.

1.3 “Claim Form” means the form by which Class Members seek benefits under this Settlement Agreement, substantially in the form as attached as Exhibit A, but which may be modified as necessary to comply with any Court order.

1.4 “Claims Period” means the period beginning on the date the Settlement Administrator mails the Summary Notice and ending 120 days later. If the last day of the Claims Period falls on a holiday or weekend, then the last day of the Claims Period shall be extended to the next occurring business day.

1.5 “Class” means all natural persons in the United States who: (a) rented a car from Hertz with the first day of the rental between July 1, 2006 and March 31, 2010; (b) used PlatePass during that rental; and (c) paid PlatePass-Related Charges incurred during that rental,

but not including those who file a Request for Exclusion, governmental entities, Defendants, their parents, subsidiaries, affiliates, directors, officers, attorneys, and members of their immediate families, and the Court and persons within the third degree of relationship to the Court.

1.6 “Class Counsel” means:  
Christopher M. Placitella  
Michael Coren  
Cohen Placitella & Roth, P.C.  
2001 Market Street  
Philadelphia, PA 19103  
cplacitella@cprlaw.com  
mcoren@cprlaw.com

Steven Jaffe  
Mark Fistos  
Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, P.L.  
425 North Andrews Avenue  
Fort Lauderdale, FL 33301  
steve@pathtojustice.com  
mark@pathtojustice.com

Stephen A. Dunn  
Emanuel & Dunn, PLLC  
130 South Salisbury St.  
P.O. Box 426  
Raleigh, NC 27602  
sdunn@EmmanuelAndDunn.com

1.7 “Class Member” means any Person who is a member of the Class. Class Membership shall be determined without reference to whether the person renting a vehicle from Hertz was doing so in connection with a business or organizational purpose, and/or whether the Person was reimbursed for rental costs and associated fees by any third party.

1.8 “Class Period” means July 1, 2006 through March 31, 2010.

1.9 “Class-Related Released Parties” means Defendants and each of their past, present, or future officers, directors, shareholders, owners, affiliates, parents, managers,

employees, representatives, agents, principals, consultants, contractors, vendors, insurers, accountants and auditors, attorneys, partners, subsidiaries, members, administrators, legatees, executors, heirs, estates, predecessors, successors, or assigns, and any other Person with which any of them is affiliated or for which any of them is responsible at law, in equity, or otherwise.

1.10 “Class-Related Releasing Parties” means all Class Members and each of their past, present, or future administrators, legatees, executors, attorneys, heirs, estates, personal representatives, successors, or assigns, and any other Person with which any of them is affiliated or for which any of them is responsible at law, in equity, or otherwise.

1.11 “Class Released Claims” means all claims (including without limitation, claims for attorneys’ fees and costs), causes of action, actions, or suits, by or on behalf of any Class Member, whether arising by statute, law or in equity, under the law of any jurisdiction, which were or could have been asserted in the Action, whether liquidated or unliquidated, known or unknown, in law, equity, arbitration, or otherwise, whether or not concealed or hidden, that in any way relate to, in whole or in part, or arise out of, any of the allegations, defenses, claims, motions and/or theories raised in or that could have been raised in the Action relating to PlatePass-Related Charges, but, without limiting the generality of the foregoing, Class Released Claims shall not be construed to release, bar, or extinguish any claims, rights, or actions that any Class-Related Releasing Party may have against PlatePass LLC, ATS, and/or Avis Budget Group that do not involve or relate to Hertz rental transactions or PlatePass-Related Charges incurred during Hertz rental transactions, including the Soper/Avis-Budget Claims (as defined below).

1.12 “Class Representatives” means Plaintiffs Dwight Simonson and Susan Doherty.

1.13 “Common Fund” means the fund described in Article 2 below.

1.14 “Defendants’ Counsel” means:

Ross B. Bricker  
John F. Ward Jr.  
JENNER & BLOCK LLP  
353 N. Clark St.  
Chicago, Illinois 60654-3456  
312 222-9350  
rbricker@jenner.com  
jward@jenner.com

Michael Vassalotti  
BROWN & CONNERY, LLP  
360 Haddon Avenue  
P.O. Box 539  
Westmont, NJ 08108  
mvassalotti@brownconnery.com

*Attorneys for The Hertz Corporation*

Scott H. Moskol  
Robert D. Friedman  
Benjamin C. Caldwell  
BURNS & LEVINSON, LLP  
125 Summer Street  
Boston, MA 02110  
smoskol@burnslev.com  
rfriedman@burnslev.com  
bcaldwell@burnslev.com

*Attorneys for American Traffic Solutions, Inc. and PlatePass LLC*

1.15 “Effective Date” means the first date by which all of the following events shall have occurred: (a) the Court has entered the Preliminary Approval Order; (b) the Court has entered the Final Approval Order and Judgment; and (c) the Final Approval Order and Judgment has become Final.

1.16 “Fee and Cost Application” means that written motion or application by which Class Counsel requests that the Court award reasonable attorneys’ fees, costs and/or class representative service awards relating to this Action.

1.17 “Final” means that the Final Approval Order and Judgment has been entered on the docket in the Action, and all of the following shall have occurred: (i) the expiration of the time to file a motion to alter or amend the Final Approval Order and Judgment under Federal Rule of Civil Procedure 59(e) without any such motion having been filed or, if such a motion is filed, the entry of an order denying such motion; and (ii) the time in which to appeal the Final Approval Order and Judgment has passed without any appeal having been taken or, if an appeal is taken, immediately after (a) the date of the final dismissal of any appeal or the final dismissal of any proceeding on *certiorari*, or (b) the date of affirmance of the Final Approval Order and Judgment on appeal and the expiration of time for any further judicial review whether by appeal, reconsideration, or petition for a writ of *certiorari* and, if *certiorari* is granted, the date of final affirmance of the Final Approval Order and Judgment following review pursuant to the grant.

1.18 “Final Approval Hearing” means the hearing scheduled by the Court to take place after the of entry of the Preliminary Approval Order at which the Court shall be asked to: (a) determine whether to grant final approval of this Settlement Agreement and to certify the Class; (b) consider any timely objections to this Settlement Agreement and all responses thereto; and (c) rule on the Fee and Cost Application.

1.19 “Final Approval Order and Judgment” means the order, substantially in the form of Exhibit B attached hereto, in which the Court grants final approval of this Settlement Agreement, certifies the Class, authorizes the entry of a final judgment and dismissal of the Action with prejudice, and rules on the Fee and Cost Application.

1.20 “Notice” means the long form of class notice annexed hereto as Exhibit C.

1.21 “Person” means any natural person, including his or her agents and representatives.



1.22 “PlatePass-Related Charges” means PlatePass-Related Service Fees (f/k/a administrative fees) and, if any, PlatePass-Related Toll Differential incurred by a Hertz car-rental customer in connection with that customer’s use of PlatePass during the car-rental period.

1.23 “PlatePass-Related Service Fees” means the service fee incurred by a Hertz rental customer in connection with that customer’s use of PlatePass. It was formerly referred to at times as an “administrative fee.”

1.24 “PlatePass-Related Toll Differential” means, with respect to a Hertz rental customer who has used PlatePass, the difference, if any, between the amount charged to that customer for a toll or tolls incurred during a rental and the amount paid by ATS to a toll authority for the customer’s incurred toll or tolls during that rental.

1.25 “Preliminary Approval Order” means the order, substantially in the form of Exhibit D attached hereto, in which the Court, among other things, grants its preliminary approval to this Settlement Agreement; authorizes dissemination of Notice to the Class; and schedules the Final Approval Hearing.

1.26 “Publication Notice” means the notice, substantially in the form of Exhibit E attached hereto that will be published on one weekday (Monday – Thursday) during the Claims Period in the USA Today.

1.27 “Request for Exclusion” (a/k/a “Opt-out”) means a valid request for exclusion from a Class Member. To be valid, a request for exclusion must (a) be personally submitted and signed by the individual Class Member; (b) be submitted to the Settlement Administrator and received by a date not later than 21 days before the Final Approval Hearing; (c) contain the submitter’s name and address; (d) express that he or she does not want to be a Class Member;

and (e) otherwise comply with the instructions set forth in the Notice. So-called “mass” or “class” opt-outs shall not be allowed.

1.28 “Settlement Administrator” means a third party employed to oversee notice to Class Members, claims submission, and the administration of the settlement, to be selected and retained by Defendants, with notice to Class Counsel.

1.29 The “Soper/Avis-Budget Claims” means those claims asserted against ATS in the putative class Florida State Court action captioned *James Soper v. American Traffic Solutions, Inc.*, Case No. 10-37689 (17<sup>th</sup> Judicial Circuit Broward County, FL) (“Soper/Avis-Budget Action”) that are Avis/Budget car rentals related, and specifically excludes any Hertz-related car rental claims asserted in this case.

1.30 “Summary Notice” means a summary version of the Notice, to be used in the post-card mailings to Class Members, in the form attached hereto as Exhibit F.

## **ARTICLE 2-CLASS RELIEF**

Defendants agree to provide the benefits contained in this Article 2 to those Class Members who timely submit valid claims, subject to the procedures set forth in this Agreement.

### **2.1 Common Fund**

2.1.1 *Establishment of Common Fund.* Not less than 30 (thirty) days prior to the Final Approval Hearing, one or both Defendants shall establish a Common Fund to be owned by one or both Defendants in the amount of eleven million four thousand dollars (“\$11,004,000”). The Common Fund will be held in a segregated, interest-bearing account, separate from the business and operating accounts of any Defendant, at a financial institution of their choice.

2.1.2 *Purpose and Use.* The Common Fund will be established for the sole purpose of satisfying Defendants’ obligations to pay Class Member claims pursuant to this

Settlement Agreement and as described below. Class Members must look solely to this Common Fund for settlement and satisfaction of all claims and only to the extent expressly provided in this Agreement. As described below, the Settlement Administrator will be authorized to write checks against the Fund solely to pay Claimants pursuant to the terms of this Agreement.

## 2.2 Claim Form Process

One or more of the Defendants will provide the Settlement Administrator with the available PlatePass-transaction data and customer identity information to make it possible for the Settlement Administrator to create, to the extent possible, pre-populated Claim Forms containing identity information and PlatePass-Related Charges information specific to each Claimant. An exemplar of the Claim Form is shown in Exhibit A. The Parties agree that the size, format, and/or layout of the Claim Form may be modified by mutual agreement of the Parties without the need for Court approval, provided that any such modifications are consistent with the general intent of this Settlement Agreement.

As a general matter, where completeness of Defendants' PlatePass-transaction data allows it, the claim process will work as follows:

- (i) All Class Members will be mailed a copy of the Summary Notice advising them of the Action, the pending Settlement Agreement, the Final Approval Hearing and their rights to appear and participate in the settlement, exclude themselves, or object to the Settlement Agreement. In addition, the Summary Notice will invite Class Members to visit a specific settlement website created by the Settlement Administrator to complete the claim process and obtain more information. The Summary Notice shall also include a toll-free number for Class Members' use to

obtain additional information from the Settlement Administrator and/or a paper Claim Form if they do not want to file their claim on-line.

- (ii) When a Class Member visits the settlement website, the Class Member will be asked to input his or her name or some other type of simple identifier information that appears on the Summary Notice (*e.g.*, a code number unique to that Class Member that is printed on the notice).
- (iii) Once the Class Member inputs the identifier information, the settlement website will automatically display an electronic version of the Claim Form that is pre-populated with PlatePass-Related Charges information specific to the Class Member.
- (iv) Each Claim Form will be specifically tailored to show the Class Member's name and address as it appears in Defendants' PlatePass-transaction databases that will correspond to the unique identifier code or number noted above.
- (v) Each Claim Form will also be specifically tailored to show the dollar amount of all PlatePass-Related Charges paid by the Class Member during the Class Period, where there is sufficient data in Defendants' PlatePass-transaction databases to make that possible.
- (vi) Further, where the PlatePass-transaction databases are sufficiently complete, each Claim Form will be specifically tailored to show the dollar-amount refund of PlatePass-Related Charges that the Class Member is entitled to.

The Parties agree that, where Defendants' PlatePass-transaction databases do not contain sufficient information to enable the Settlement Administrator to pre-populate the Claim Form

with specific PlatePass-Related Charges information, in whole or in part, for any given Class Member, that Class Member shall be entitled to submit to the Settlement Administrator records or other documentary proof to show past PlatePass use or payment of PlatePass-Related Charges on Hertz rentals during the Class Period. The Parties agree that the Settlement Administrator, under those circumstances, may liberally consider the Class Member's submission of such information in making a determination as to whether the Class Member's claim is valid and the amount of refund that is due. Persons who believe they are or may be Class Members eligible to make a claim under the Settlement Agreement may download a Claim Form from the settlement website or request that they be mailed a Claim Form.

### 2.3 **Class Member Eligibility**

To be eligible to receive payment from the Common Fund, a Class Member must:

- (i) *Timely Complete and Submit the Claim Form.* Class Members who desire to make a claim for payment from the Common Fund must complete a Claim Form on-line or complete a paper Claim Form (downloaded from the settlement website or received by mail) and return it in time for it to be actually delivered to the Settlement Administrator on or before the last day of the Claims Period. The process for accessing the Claims Form electronically (*i.e.*, via the settlement website) is described above.
- (ii) *Truthfully Assent to Statements of Belief.* In addition, to be eligible for relief under this Settlement Agreement, a Class Member must indicate on the Claim Form his or her truthful assent to the following statements, both with respect to his or her first use of PlatePass and, separately, any subsequent use or uses of

PlatePass during the Claims Period, which assent, however, may be given in the aggregate in situations where there are multiple subsequent uses:

(A) “I did not separately rent a PlatePass transponder from Hertz pursuant to a written, signed agreement separate and apart from the Hertz rental agreement I entered into to obtain the rental car;”

(B) “I paid the PlatePass-Related Charges stated on this form;” and

(C) “I was not aware of the service fees (f/k/a administrative fees) and toll differential associated with the PlatePass service prior to paying those charges.”

#### 2.4 **Reimbursement for Class Members**

2.4.1 *Reimbursement Formula.* Each Class Member who submits a timely claim, reviewed and approved by the Settlement Administrator as described below, will receive a partial refund of PlatePass-Related Charges, drawn from the Common Fund. For each Class Member, the refund amount shall be calculated according to the formula set forth below in this section and shall be: (a) in the amount as shown on the pre-populated Claim Form for the Class Member; or (b) in an amount greater than shown on the Class Member’s pre-populated Claim Form if the Class Member produces sufficient proof of payment of additional PlatePass-Related Charges not included on the pre-populated Claim Form and in a form and manner accepted and approved by the Settlement Administrator. In any circumstance where Defendants possess no records showing PlatePass-Related Charges for a particular Class Member, that Class Member shall be entitled to a refund only to the extent he or she produces proof of payment of PlatePass-Related Charges in a form and manner accepted and approved by the Settlement Administrator, and as addressed in Section 2.4.2 below. In all cases, the refund amounts will be calculated as follows:

- (i) With respect to a Class Member's first use of PlatePass while renting a vehicle from Hertz during the Class Period, the Class Member shall be entitled to receive a sixty-seven percent (67%) refund of PlatePass-Related Charges paid by that Class Member, and
- (ii) With respect to any (and all) subsequent uses of PlatePass while renting a vehicle from Hertz by the Class Member during the Class Period, the Class Member shall be entitled to receive a thirty-eight percent (38%) refund of PlatePass-Related Charges paid by the Class Member.

2.4.2 *Defendants' PlatePass-Transaction Database Records Shall Be Presumed Accurate.* The Parties agree that, where Defendants' PlatePass-transaction database records are available and complete, those records are presumed to be correct and accurate, and shall be treated as such by the Settlement Administrator in the making and compilation of refund determinations for each Class Member. If those records do not reveal the dollar amount of PlatePass-Related Charges *paid* by a particular Class Member, the Settlement Administrator shall use Defendants' transaction data showing the amount *billed* to the Class Member – and base the refund calculation on that billing data. If, with respect to any Class Member, Defendants do not possess sufficient information in their PlatePass-transaction databases to know what that Class Member was charged or paid in PlatePass-Related Charges, that Class Member will be entitled to provide to the Settlement Administrator records or other documentary proof of past PlatePass use. The Parties agree that the Settlement Administrator, under those circumstances, will consider the Class Member's submission of such information in making a determination as to whether the Class Member's claim is valid.

2.4.3 *Liability to Others for Refund Payments.* Class Members shall be solely responsible and liable for any requirement or agreement to which they may be subject to reimburse an employer or any other person or entity regarding any refund received under this Agreement. Neither the Parties to this Settlement Agreement nor the Settlement Administrator shall have any responsibility or liability to any person or entity regarding refund payments received by a Class Member.

## 2.5 **Review**

2.5.1 *Settlement Administrator Review and Verification.* All submitted Claim Forms are subject to review and assessment by the Settlement Administrator. Defendants will provide to the Settlement Administrator any additional information reasonably requested (and that Defendants possess) to assist the Settlement Administrator to determine if a claim is valid. The Settlement Administrator will review all claims and, after exhausting any procedure adopted by the Settlement Administrator and agreed to by the Parties with respect to defective claims, will provide his Initial Determinations as to which claims are valid and which claims are invalid. The Settlement Administrator will complete that process no later than 28 days after the end of the Claims Period.

### 2.5.2 *Class Member Challenged Refund Amounts.*

(a) Timing. If any Class Member disputes a refund amount, the Class Member must do so during the Claims Period. If the Class Member disputes a refund during the Claims Period, a resolution of the dispute may extend beyond the Claims Period.

(b) Cure Period. Should the Settlement Administrator notify a Class Member that his or her claim is defective in any way, that Class Member shall have 21 days from notification to cure any defect in his or her claim. To the greatest extent possible, the Settlement



Administrator will provide the notice of the defect to the Class Member no later than 7 days after the Class Member's claim is received.

(c) Burdens. If a Class Member challenges the proposed reimbursement amount and asserts that a larger amount is correct, he or she must submit documentary proof to support that the larger amount is correct. If such documentary proof is submitted, the burden will be on Defendants to disprove that Class Member's demand for additional reimbursement.

2.5.3 *Record Keeping*. The Settlement Administrator will maintain accurate records and information on those Class Members who: submit claims; are paid refunds; and dispute their refund amounts. Defendants and Class Counsel shall have prompt access to those records upon request.

2.5.4 *Settlement Administrator's Initial Determination*. The Settlement Administrator will provide Defendants' Counsel and Class Counsel his Initial Determinations as to those claims that are valid and invalid, and the amount of any reimbursement that he believes should be paid to the Claimants. The Settlement Administrator's Initial Determinations shall become final 14 days after providing them to Defendants' Counsel and Class Counsel, or sooner, upon hearing jointly from Defendants' Counsel and Class Counsel that there are no objections to the Initial Determinations.

2.5.5 *Dispute Resolution Process*. Within 7 days after the date on which the Settlement Administrator provides its Initial Determinations noted above, Defendants' Counsel and Class Counsel must meet (in person or by phone) in attempt to resolve any differences or objections either may have regarding one or more of the Settlement Administrator's claim-validity determinations. If Counsel are able to resolve those differences, Counsel shall within 7 days after the meet and confer conference jointly submit their resolution to the Settlement

Administrator who shall adjust his Initial Determinations to reflect Counsel's agreement. Should Counsel not be able to resolve their disagreement at the meet-and-confer conference noted above, either Counsel may submit an objection to the Neutral, defined below, regarding one or more of the claim-validity determinations. The objecting Counsel's submission to the Neutral must be in writing with a copy to the opposing Counsel. Opposing Counsel shall have 7 days to respond in writing. Within 7 days of receiving opposing Counsel's response, the Neutral shall rule on the objection or objections, and the Neutral's decision shall be final. After receipt of the Neutral's determination, the Settlement Administrator shall adjust his determinations, as necessary, and provide Class Counsel and Defendants' Counsel his "Final Determinations" as to which claims are valid and which are invalid. At that point, the Settlement Administrator's decisions on refund amounts due to Class Members shall be final, and the Parties agree to accept all such decisions as final.

2.5.6 *Neutral Selection.* To the extent a Neutral is required, the parties shall jointly agree to the selection of a lay-person Neutral. If no decision on a Neutral can be made within 2 days, the Settlement Administrator shall select the lay-person Neutral. The Neutral's fees shall be split equally by Defendants and Class Counsel (and, in the case of Class Counsel, those costs shall not be included in Aggregate Fees and Costs).

## 2.6 **Distribution of Payments to Class Members**

2.6.1 Within 14 days after the later of the Effective Date or the conclusion of the claims process described above, the Settlement Administrator will mail refund checks to all Claimants who have submitted valid and approved claims. The Settlement Administrator will draw those checks on the account holding the Common Fund.

2.6.2 After the close of the Claims Period and upon confirmation from the Settlement Administrator as to the aggregate dollar amount of valid and approved claims received, Defendants' obligation to maintain the Common Fund will be limited to the aggregate dollar amount of the valid and approved claims, plus 5% of that total and, as necessary, an additional amount to pay any taxes that the Settlement Administrator may determine will be due with respect to income earned by the Common Fund. At that time, Defendants may remove from the Common Fund, and retain, all amounts over and above the aggregate dollar amount of approved claims, plus 5% and any tax-related reserve determined to be necessary by the Settlement Administrator, as described above. No additional monies need remain in the Common Fund after that point. Upon the Effective Date, and after all Claimants have been paid, Defendants shall terminate the Common Fund. Upon termination, Defendants shall recover any funds remaining in the Common Fund.

#### **2.7 Business Practice Modifications**

Defendants agree and acknowledge that the filing of the Action by Class Counsel led to changes and modifications being made to Hertz's rental agreement in 2010.

#### **2.8 Taxes**

All taxes (including any estimated taxes, interest or penalties) arising with respect to the income earned by the Common Fund, if any, including any taxes or tax detriments with respect to any income earned by the Common Fund for any period during which the Common Fund does not qualify as a "qualified settlement fund" for federal or state income tax purposes, shall be the responsibility of and borne by the Common Fund, and not the Class-Related Released Parties.

## **ARTICLE 3 - NOTICE AND REQUESTS FOR EXCLUSION**

### **3.1 Mail Notice**

Within 30 days of the Court's entry of the Preliminary Approval Order, the Settlement Administrator shall mail the Summary Notice to the address of the Class Members reflected in Defendants' PlatePass-transaction databases. The cost of preparing and disseminating the Summary Notice shall be paid by Defendants. Class Members may request that the Settlement Administrator mail him or her a copy of the Notice.

### **3.2 Last Known Address**

Before mailing the Summary Notice as provided above, the Settlement Administrator will use the National Change of Address Databank maintained by the United States Postal Service to update the mailing addresses of Class Members who appear in Defendants' PlatePass-transaction databases. For any Summary Notice mailing that is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the Summary Notice to that address. For any Summary Notice mailing that is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall conduct a name and address search using a professional location provider, such as Experian or LexisNexis, to determine whether a current address is available, and if so, forward the Summary Notice to the current address obtained through such a search. In the event that any Summary Notice is returned as undeliverable a second time, no further mailing shall be required by the Parties or the Settlement Administrator.

### **3.3 Notice by Internet Posting**

The Notice shall be posted on a website maintained by the Settlement Administrator specific to this Action. The costs of establishing and maintaining the website on which the Notice is posted shall be paid by Defendants as part of settlement administration costs.

### **3.4 Notice by Publication**

The Publication Notice shall be published on one weekday (Monday – Thursday) in the USA Today during the Claims Period in a manner that allows for the Publication Notice to be shown in full and, in no event, using less than one-eighth of a page.

### **3.5 Declarations of Compliance**

The Settlement Administrator shall prepare a declaration attesting to compliance with the mailing, address updating, and publication requirements set forth above. Such declaration shall be provided to Class Counsel and Defendants' Counsel and filed with the Court no later than 14 days prior to the Final Approval Hearing.

### **3.6 Best Notice Practicable**

The Parties agree, and the proposed Preliminary Approval Order shall state, that compliance with the procedures described in this Article is the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Class of the pendency of the Action, certification of the Class, the terms of the Settlement Agreement, and the Final Approval Hearing, and shall satisfy the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

### **3.7 Report on Requests for Exclusion**

Not later than 14 days before the Final Approval Hearing, the Settlement Administrator shall prepare and deliver to Class Counsel, who shall file it with the Court, and Defendants'

Counsel a report stating the total number of individuals who have submitted timely and valid Requests for Exclusion from the Class. Such individuals will not be entitled to receive any relief under this Settlement Agreement or to object to the Settlement Agreement.

### **3.8 Format of Class Notice**

The Parties agree that the size, format and/or layout of the Summary Notice and Notice may be modified by mutual agreement of the Parties without the need for Court approval, provided that any such modifications are consistent with the general intent of this Settlement Agreement.

## **ARTICLE 4 - COURT APPROVAL OF SETTLEMENT**

### **4.1 Preliminary Approval**

As soon as practicable after the execution of this Settlement Agreement, Class Counsel shall apply for entry of the Preliminary Approval Order, in the form of Exhibit D attached hereto. The Preliminary Approval Order shall include provisions, among other things: (a) preliminarily approving this Settlement Agreement and finding this Agreement sufficiently fair, reasonable, and adequate to allow Notice to be disseminated to the Class; (b) conditionally certifying the Class under Federal Rule of Civil Procedure 23(b)(3) for settlement purposes only; (c) appointing Plaintiffs to represent the Class; (d) establishing Class Counsel to represent the Class; (e) approving the form, content, and manner of the Notice; (f) setting forth the time periods and deadlines for Notice, opt-outs, objections, and any other information necessary to effectuate the settlement of the Action; (g) establishing the requirements for the form of an objection and Request for Exclusion; (h) setting a schedule for proceedings with respect to final approval of this Settlement Agreement; (i) providing that, pending entry of a Final Approval Order and Judgment, no Class Member (either directly, in a representative capacity, or in any other

capacity) or their counsel shall commence or prosecute any action against Defendants asserting any of the Class Released Claims; (j) enjoining the Class Members from bringing claims in any other forum that are intended to be released by this Settlement Agreement; and (k) staying the Action, other than such proceedings as are related to this Settlement Agreement.

#### **4.2 Objections to Settlement**

Any Class Member wishing to object to or to oppose the approval of this Settlement Agreement and/or the Fee and Cost Application shall file a written objection (with a statement of reasons) with the Court and serve it on the Settlement Administrator and all Parties at least 21 days before the date of the Final Approval Hearing. The written Objection must (a) state the name and address of the objector, and objector's counsel if any; (b) attach documents sufficient to establish the objector's membership in the Class; (c) submit the factual and legal basis of each objection; (d) provide the names and addresses of any and all witnesses in support of the objection; and (e) state whether the objector intends to appear at the Final Approval Hearing in person or through counsel. Class Representatives will file with the Court their brief in support of final settlement approval, and in response to any objections at least 7 days before the date of the Final Approval Hearing. Defendants may also file a brief in support of the final settlement approval, and in response to any objections, if they wish.

#### **4.3 Final Approval Hearing**

The Parties shall request that the Court conduct a Final Approval Hearing to be held on or about 100 days after the Settlement Administrator mails the Summary Notice to the Class Members in order to: (a) determine whether to grant final approval of the certification of the Class; (b) determine whether to grant final approval to this Settlement Agreement; (c) consider any timely objections to this Settlement Agreement; (d) rule on the Fee and Cost Application;

and (e) rule on applications for class representative service awards. The date for the Final Approval Hearing may be continued, but not advanced, without further notice to the Class. At the Final Approval Hearing, the Parties shall ask the Court to give final approval to this Settlement Agreement. If the Court grants final approval to this Agreement, then the Parties shall ask the Court to enter a Final Approval Order and Judgment, substantially similar to the form of Exhibit B attached hereto, which among other things approves this Settlement, finally certifies the Class, authorizes entry of a final judgment, dismisses the Action with prejudice, and enters a final injunction against claims released by this Agreement.

#### 4.4 **Disapproval, Termination, or Nullification of Settlement**

4.4.1 *Both Parties' Right to Terminate.* Each Party shall have the right to terminate this Settlement Agreement if either (i) the Court denies preliminary approval or final approval to this Settlement Agreement (or grants approval through a form of order that is not substantially similar to the forms of Exhibits B and D attached hereto – except as to any Court-imposed changes to any provision relating to Aggregate Fees and Costs, which shall not provide any basis for termination for any Party provided the Aggregate Fees and Costs awarded by the Court do not exceed the amount specified in Section 5.4.1 and services fees awarded by the Court do not exceed the amount specified in Section 5.5) or (ii) the Final Approval Order and Judgment does not become Final by reason of a higher court reversing final approval by the Court, and the Court thereafter declining to enter a further order or orders approving settlement on the terms set forth herein. If a Party elects to terminate this Settlement Agreement under this paragraph, that Party must provide written notice to the other Parties' counsel, by hand delivery, courier service, or mail, within 20 days of the occurrence of the condition permitting termination.



4.4.2 *Defendants' Exclusive Right to Terminate.* Defendants shall have the right to terminate this Settlement Agreement if, prior to the date of the Final Approval Order and Judgment, more than 10% of Class Members have submitted Requests for Exclusion.

4.4.3 If this Settlement Agreement is terminated pursuant to its terms, then: (i) this Settlement Agreement shall be rendered void; (ii) this Settlement Agreement and all negotiations and proceedings relating thereto shall be of no force or effect, and without prejudice to the rights of the Parties; (iii) any order modifying the definition of the Class will be voided; (iv) any order certifying the Class will be voided; (v) all Parties shall be deemed to have reverted to their respective status in the Action as of the date and time immediately preceding the execution of this Settlement Agreement and, except as otherwise expressly provided, the Parties shall stand in the same position and shall proceed in all respects as if this Settlement Agreement and any related orders had never been executed, entered into, or filed; (vi) Defendants shall be entitled to withdraw all moneys from the Common Fund and shall have no further obligations with respect to the Common Fund; (vii) the Parties shall not seek to recover from one another any costs incurred in connection with this Settlement Agreement; and (viii) the Parties will jointly request a scheduling conference with the Court.

## **ARTICLE 5 - ADMINISTRATIVE EXPENSES, ATTORNEYS' FEES, AND COSTS**

### **5.1 Costs of Notice**

All costs of providing the notice as provided herein, including the costs of identifying Class Members and the costs of printing, mailing and/or publishing all forms of notice in accordance with this Agreement, shall be paid for by Defendants. In the event that this Settlement Agreement is terminated pursuant to its terms, Defendants shall bear any costs of providing notice already incurred.

## 5.2 Settlement Administrator

The Parties agree that Defendants will retain at their sole expense a Settlement Administrator to oversee notice to the Class; to oversee claims submission, review, and determination; and to otherwise perform the function of administering the Settlement Agreement. Defendants will pay all costs of administering the Settlement Agreement. The Parties further agree that the Settlement Administrator will be selected and retained by Defendants, with notice to Class Counsel. Defendants' retention of, and any agreement with, the Settlement Administrator will not be inconsistent with any of the terms of this Settlement Agreement. The Settlement Administrator's selection will be subject to the approval of the Court as set forth in and made part of the Preliminary Approval Order.

Class Counsel may consult with the Settlement Administrator to ensure that the Settlement Administrator is properly discharging the duties of Settlement Administrator under this Agreement. The Settlement Administrator, among other things, must assist with various administrative tasks, including, without limitation,

- a. Formatting the Notice and Summary Notice;
- b. Mailing or arranging for the mailing of the Summary Notice;
- c. Establishing and maintaining the settlement website;
- d. Publishing (i) the Publication Notice on one weekday (Monday – Thursday) in the USA Today during the Claims Period in a manner that allows for the Publication Notice to be shown in full and, in no event, using less than one-eighth of a page and (ii) the Notice on the settlement website;

- e. Handling returned mail not delivered and making any additional mailings required under the terms of the Settlement Agreement;
- f. Responding, as necessary, to inquiries from Class Members, potential Class Members, and Claimants telephonically, via the Internet, and US mail;
- g. Maintaining accurate records and information on those Class Members who: submit claims; are paid refunds; and dispute their refund amounts;
- h. Updating addresses of putative Class Members;
- i. Preparing an affidavit and submitting it to the Court before the Final Approval Hearing that identifies the number of persons who timely submitted Requests for Exclusion from the settlement—the Opt-Out List—and details the Class notice program that the Settlement Administrator implemented under this Agreement;
- j. Promptly responding to Class Counsel’s or Defense Counsel’s requests for information and providing them information and documents, and communicating with Class Counsel and Defense Counsel regarding the same;
- k. Processing Claim Forms submitted electronically and by mail;
- l. Evaluating Claim Forms submitted by prospective Claimants to determine their eligibility for refund payments from the Common Fund as provided for in this Agreement;
- m. Making and accounting for payments to Claimants from the Common Fund;
- n. Collecting and organizing Class Member-related data provided under this Agreement by one or more of the Defendants;

- o. As necessary, preparing and filing tax returns and related forms and paying from the Common Fund any taxes due for income earned by the Common Fund; and
- p. Completing any other task necessary and proper to effectuate the payment of Claimants and administering this Settlement Agreement.

### 5.3 **Costs of Administering Settlement**

All costs of administering this Settlement Agreement, including all fees of the Settlement Administrator and the costs of reviewing and processing Claims, and generating and mailing any checks to be issued as part of this Settlement Agreement, shall be paid by Defendants. In the event that this Settlement Agreement is terminated pursuant to its terms, Defendants shall bear any costs of administering this Settlement Agreement already incurred.

### 5.4 **Attorneys' Fees and Costs**

5.4.1 *Application and Amount.* Class Counsel may submit a Fee and Cost Application, to be heard at the Final Approval Hearing, seeking an award of reasonable attorneys' fees and the reimbursement of costs. The Fee and Cost Application shall be filed with the Court 14 days prior to the date on which objections to the Settlement Agreement are due, with a copy posted on the settlement website. Class Counsel agree to seek, and Defendants will not oppose, undermine, or solicit others to do so, a request for an award of fees in an amount no greater than three million, twenty-six thousand, one hundred dollars (\$3,026,100) and a separate award of actual costs incurred in the Action up to one hundred thousand dollars (\$100,000). In no event will any award of attorneys' fees and costs diminish or reduce in any way the amount of relief available to the Class as set forth herein.

5.4.2 *Payment.* The Parties agree that Defendants shall pay to Class Counsel the Aggregate Fees and Costs authorized by the Court no later than 7 days after the Effective

Date. Should the Effective Date have not occurred as of 35 days after the Final Approval Order and Judgment, then Defendants at that point shall deposit the Aggregate Fees and Costs into an interest-bearing account where it shall remain until no later than 7 days after the Effective Date, whereupon Defendants shall pay to Class Counsel the Aggregate Fees and Costs plus accumulated interest, if any, on that amount. Class Counsel shall provide Defendants with the wire instructions for tendering payment. To the extent that the Court awards Aggregate Fees and Costs in an amount less than Defendants deposited in the account as described in this paragraph and after Defendants pay to Class Counsel the awarded Aggregate Fees and Costs, plus accumulated interest on the awarded amount, if any, Defendants shall be entitled to withdraw and retain all remaining moneys from the account.

5.4.3 *Allocation of Fee Amount.* Subject to Court approval, Class Counsel shall be solely responsible for allocating the Aggregate Fees and Costs among Class Counsel.

5.4.4 *Separate Negotiations.* The Parties agree and represent that they did not negotiate the attorneys' fees, costs, or service awards until after full agreement was reached as to all other material terms of the proposed Settlement Agreement, including, but not limited to, any terms relating to the agreed relief to the Class. The Parties acknowledge and agree that the terms of this Agreement are not conditioned upon any minimum attorneys' fees, costs, or service awards.

5.4.5 *Separate Payment.* Neither the Aggregate Fees and Costs nor any service awards to Plaintiffs will be paid from, or in any way reduce, the Common Fund or any refund made under the Settlement Agreement to any Claimant.

### **5.5 Class Representative Service Awards**

Class Representatives, or Class Counsel on their behalf, may make an application to be heard at the Final Approval Hearing for a reasonable service award to be paid by Defendants in an amount not to exceed five thousand dollars (\$5,000) for each Class Representative.

Defendants will not oppose or undermine an application at or below that amount or solicit others to do so. Not later than 7 days after the Effective Date, Defendants will pay the service awards as approved by the Court through remittance to Class Counsel. Should the Effective Date have not occurred as of 35 days after the Final Approval Order and Judgment, then Defendants at that point shall deposit the service awards into an interest-bearing account where they shall remain until no later than 7 days after the Effective Date, whereupon Defendants shall pay to Class Counsel the service awards plus accumulated interest, if any, on that amount. The payments may be added to the wire transfer to Class Counsel referred to in Section 5.4.2. This payment shall be compensation and consideration for the Class Representative's efforts as the representatives in the Action. To the extent that the Court awards service awards in an amount less than Defendants deposited in the account as described in this paragraph and after Defendants pay to Class Counsel the awarded service awards, plus accumulated interest on the awarded amounts, if any, Defendants shall be entitled to withdraw and retain all remaining moneys from the account.

## **ARTICLE 6 - RELEASES UPON EFFECTIVE DATE**

### **6.1 Binding and Exclusive Nature of Settlement Agreement**

On the Effective Date, the Parties and each and every Class Member shall be bound by this Settlement Agreement and shall have recourse exclusively to the benefits, rights, and remedies provided hereunder. No other action, demand, suit or other claim may be pursued

against Defendants or the Class-Related Released Parties with respect to the Class Released Claims.

## **6.2 Releases**

On the Effective Date, the Class-Related Releasing Parties shall by operation of this Settlement Agreement fully, finally, and forever release, relinquish and discharge the Class-Related Released Parties from any and all of the Class Released Claims.

## **6.3 Stay and Dismissal of the Action**

The Parties agree to request that the Court, in connection with Preliminary Approval, (a) issue an immediate stay of the Action other than such proceedings as are related to the Settlement Agreement, and (b) an order enjoining Plaintiffs, all Class Members, and anyone who acts or purports to act on their behalf, from instituting, continuing, commencing or prosecuting any action against any of the Defendants which asserts claims that are to be settled in this Settlement Agreement, including, without limiting the generality of the foregoing, claims in the Soper/Avis-Budget Action relating to Hertz rental transactions.

## **6.4 Waiver of Unknown Claims**

On the Effective Date, Defendants and the Class-Related Releasing Parties shall be deemed to have, and by operation of this Settlement Agreement shall have, with respect to the subject matter of the Class Released Claims, expressly waived the benefits of any statutory provisions or common law rules that provide, in sum or substance, that a general release does not extend to claims which the party does not know or suspect to exist in its favor at the time of executing the release, which if known by it, would have materially affected its settlement with any other party. In particular, but without limitation, Defendants and the Class-Related Releasing Parties waive the provisions of California Civil Code § 1542 (or any like or similar

statute or common law doctrine), and do so understanding the significance of that waiver.

Section 1542 provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Neither this paragraph nor any other provision of this Settlement Agreement shall be construed to effectuate a general release of claims. The releases provided for in this Settlement Agreement are limited to the Class Released Claims, as defined above. Plaintiffs acknowledge, and the Class Members shall be deemed by operation of the Final Approval Order and Judgment to have acknowledged, that the foregoing waiver was separately bargained for and a key element of the Settlement Agreement of which this release is a part.

#### **6.5 Assumption of Risk**

In entering into this Settlement Agreement, each of the Parties assumes the risk of any mistake of fact or law. If either Party should later discover that any fact upon which the Party relied in entering this Settlement Agreement is not true, or that the Party's understanding of the facts or law was incorrect, the Party shall not be entitled to modify, reform, or set aside this Settlement Agreement, in whole or in part, by reason thereof.

### **ARTICLE 7 – NO ADMISSION**

Neither the acceptance by Defendants of the terms of this Settlement Agreement nor any of the related negotiations or proceedings constitutes an admission by Defendants with respect to the merits of the claims alleged in the Action; the validity of any claims that could have been asserted by any of the Class Members in the Action, including but not limited to the Class



Released Claims; the liability of Defendants in the Action; or as to the validity, legality, or fairness of PlatePass. Defendants specifically deny any liability or wrongdoing of any kind associated with the claims alleged in the Action. Neither the acceptance by the Class Representatives of the terms of this Settlement Agreement nor any of the related negotiations or proceedings constitutes an admission by the Class Representatives with respect to the merits of the claims or defenses in the Action.

## **ARTICLE 8 - MISCELLANEOUS PROVISIONS**

### **8.1 CAFA Public Official Notification**

Not later than 10 days after this Settlement Agreement is filed with the Court, Defendants shall at their expense send or cause to be sent to the Attorney General of the United States and the attorneys general of each State notice of the Settlement Agreement pursuant to 28 U.S.C. § 1715(b). This notice may indicate that an estimate of the number of customers currently residing in each State is confidential and can only be disclosed pursuant to an appropriate and mutually agreeable confidentiality agreement.

### **8.2 Confirmatory Discovery**

The Parties acknowledge that substantial discovery into all relevant matters has previously taken place in the Action. Notwithstanding that fact, Defendants agree to allow Class Counsel to undertake reasonable confirmatory discovery related to the PlatePass transaction data and related information that underlies this Agreement.

### **8.3 Public Statement**

The Parties agree that Class Counsel's public statements about this Settlement Agreement shall exclusively adhere to the text of the agreed public statement attached hereto as Exhibit G, and that Class Counsel shall: (1) cause that public statement to be released to the public news

wire at or about the time that the Summary Notice is mailed by the Settlement Administrator, as described herein, and (2) that Class Counsel may post that public statement on their law firm websites – and that both actions are intended to serve as additional notice efforts meant to alert Class Members about the Settlement Agreement.

#### **8.4 No Assignment**

Each Party represents, covenants, and warrants that he or it has not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber any portion of any liability, claim, demand, cause of action, or rights that he or it herein releases.

#### **8.5 Binding on Assigns**

This Settlement Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, executors, successors, and assigns.

#### **8.6 Captions**

Titles or captions contained herein are inserted as a matter of convenience and reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

#### **8.7 Class Member Signatures**

It is agreed that, because the Class Members are so numerous, it is impractical to have each Class Member execute this Settlement Agreement. The notices provided for in this Settlement Agreement will advise all Class Members and/or their representatives of the binding nature of the releases and of the remainder of this Settlement Agreement, and in the absence of a valid and timely Request for Exclusion, such notices shall have the same force and effect as if each Class Member executed this Settlement Agreement.

#### **8.8 Construction**

The Parties agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive arms'-length negotiations between the Parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which any Party, or his or its counsel, participated in the drafting of this Settlement Agreement, or any part thereof.

#### **8.9 Counterparts**

This Settlement Agreement and any amendments hereto may be executed in one or more counterparts, and any Party may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original, and such counterparts taken together shall constitute but one and the same instrument. A facsimile or PDF signature shall be deemed an original for all purposes.

#### **8.10 Governing Law**

Construction and interpretation of the Settlement Agreement shall be determined in accordance with the laws of New Jersey, without regard to the choice-of-law principles thereof.

#### **8.11 Computation of Time**

Unless a court rule, order, statute, or other governing legal provision requires otherwise, if a deadline provided for in this Agreement falls on a weekend or a government holiday, the deadline shall be continued to the next business day.

#### **8.12 Integration Clause**

This Settlement Agreement, including the Exhibits referred to herein, which form an integral part hereof, contains the entire understanding of the Parties with respect to the subject matter contained herein. There are no promises, representations, warranties, covenants, or

undertakings governing the subject matter of this Settlement Agreement other than those expressly set forth in this Settlement Agreement. This Settlement Agreement supersedes all prior agreements and understandings among the Parties with respect to the settlement of the Action. This Settlement Agreement may not be changed, altered or modified, except in a writing signed by the Parties and approved by the Court, and may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties.

#### **8.13 Jurisdiction**

The Court shall retain jurisdiction, after entry of the Final Approval Order and Judgment, with respect to enforcement of the terms of this Settlement Agreement, and all Parties and Class Members submit to the exclusive jurisdiction of the Court with respect to the enforcement of this Agreement and any dispute with respect thereto, including with respect to disputes about allocation of fees among Class Counsel.

#### **8.14 Parties' Authority**

The signatories hereto represent that they are fully authorized to enter into this Settlement Agreement and bind the Parties to the terms and conditions hereof.

#### **8.15 Receipt of Advice of Counsel**

The Parties acknowledge, agree, and specifically warrant to each other that they have read this Settlement Agreement, have received legal advice with respect to the advisability of entering into this Agreement, and fully understand its legal effect.

#### **8.16 Waiver of Compliance**

Any failure of any Party to comply with any obligation, covenant, agreement, or condition herein may be expressly waived only in writing, to the extent permitted under applicable law, by the Party or Parties entitled to the benefit of such obligation, covenant,

agreement, or condition. A waiver of or failure to insist upon compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.



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Steven R. Jaffe, Esquire  
Mark Fistos, Esquire  
Farmer, Jaffe, Weissing,  
Edwards, Fistos & Lehrman, P.L.  
425 North Andrews Avenue, Suite 2  
Fort Lauderdale, Florida 33301

*Attorneys for Plaintiffs and Class*

---

Christopher Placitella, Esquire  
Michael Coren, Esquire  
Cohen, Placitella & Roth, PC  
Two Commerce Square  
2001 Market Street, Suite 2900  
Philadelphia, PA 19103

*Attorneys for Plaintiffs and Class*

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Stephen A. Dunn, Esquire  
Emanuel & Dunn, PLLC  
Post Office Box 426  
Raleigh, North Carolina 27602

*Attorneys for Plaintiffs and Class*

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**The Hertz Corporation**

By: J. Jeffrey Zimmerman  
Executive Vice President, General Counsel  
& Secretary

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**American Traffic Solutions, Inc. and  
PlatePass, LLC**

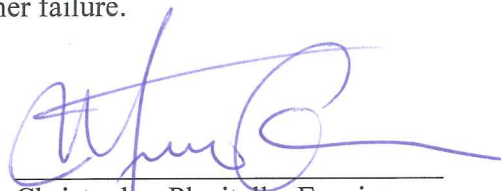
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Farmer, Jaffe, Weissing,  
Edwards, Fistos & Lehrman, P.L.  
425 North Andrews Avenue, Suite 2  
Fort Lauderdale, Florida 33301

*Attorneys for Plaintiffs and Class*



---

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Cohen, Placitella & Roth, PC  
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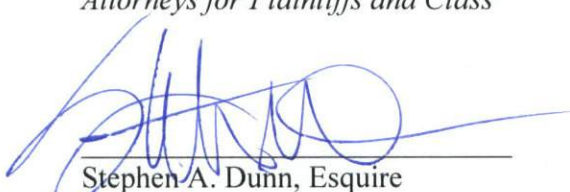
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