IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN MATEO

| | |
|---|---|
| THE PEOPLE OF THE STATE OF CALIFORNIA,<br><br>Plaintiff,<br><br>v.<br><br>ACCELERON CORPORATION, ANDREW WONG, and BETTY Y. WONG,<br><br>Defendants. | CASE NO.:<br><br>**[PROPOSED] JUDGMENT**<br><br>Date Action Filed: Nov. 9, 2004 |

Plaintiff, the People of the State of California through Bill Lockyer, Attorney General, and James P. Fox, District Attorney of the County of San Mateo, and Defendants Acceleron Corporation, Andrew Wong and Betty Y. Wong, appearing through their attorney Mark R. Mittelman, having stipulated to the entry of this Judgment without the taking of proof or trial; this Judgment not constituting evidence of or an admission regarding any issue alleged in the Complaint; the Court having considered the Stipulation to Entry of Judgment executed by the parties and filed herewith; and good cause appearing,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that:

JURISDICTION AND VENUE

1. This Court has jurisdiction of the subject matter of this action and of the parties. Venue as to all matters between the parties relating to this action is proper in this Court.

INJUNCTION

2. The injunctive provisions of this judgment apply to Defendants Acceleron Corporation, Andrew Wong, and Betty Y. Wong, their agents, employees, officers, representatives, successors, partners, assigns, and all persons acting in concert or participating with any of them, all of whom are referred to collectively as "Defendants." The term "Defendants" does not include former employees or partners in ventures unrelated to the business of renting cars.

3. All injunctive relief under this Judgment, including all relief described in paragraphs 4 and 5, is ordered pursuant to the court's equitable powers, including those remedial powers authorized by Business and Professions Code sections 17203 and 17535. (All references to statutes are to the version in effect on the date of entry of this Judgment except where otherwise specified.)

4. Defendants are enjoined and restrained as follows:

A. With respect to **Global Positioning System (GPS) Devices** and **Geographical Restrictions**, Defendants are immediately and permanently enjoined and restrained from:

1. Obtaining, accessing or using any information relating to a renter's use of a

vehicle when that information was secured using GPS or other electronic surveillance technology in any manner except as follows:

a. When the equipment is used by Defendants only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

i. The renter or law enforcement has informed Defendants that the vehicle has been stolen or abandoned or is missing;

ii. The rental vehicle has not been returned within a week after the contracted return date plus any extension of that return date; or

iii. Defendants have discovered that the rental vehicle has been stolen or abandoned and, if the vehicle has been stolen, Defendants have reported the vehicle stolen to law enforcement by filing a stolen vehicle report. (The last part of the previous sentence shall not apply if law enforcement, per paragraph 1.A.i. above, has already informed Defendants that the vehicle has been stolen or abandoned or is missing.)

b. In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

c. As otherwise set forth in the version of section 1936(o)(3)-(6) of the Civil Code that goes into effect on January 1, 2005.

2. Using GPS or other electronic surveillance technology to track a renter in order to impose surcharges, fines or penalties relating to the renter's use of the vehicle.

3. Failing to keep records (in a manner at least as complete as that set forth in the version of section 1936(o)(1)(B) of the Civil Code that goes into effect on January 1, 2005) of each time they use GPS or other electronic surveillance technology to contact a vehicle for <u>three years</u> from the time of such contact, or failing to make these records available to the offices of the

Attorney General and District Attorney within seven days after receipt of a request for inspection. Such a request for inspection shall be made to defendant Andrew Wong or his designated successor by certified mail with return receipt requested or another method offering equivalent assurance of direct communication with Andrew Wong or his designated successor.

4. Failing to ensure, if Defendants use GPS or other electronic surveillance technology, that renters are clearly and conspicuously informed, at every stage of the rental process other than telephone conversations – in advertisements, during the reservation process, and at the rental counter – that GPS or similar devices may be present in Defendants' cars, and of the ways in which those devices may be used. In a telephone conversation, Defendants must inform a renter about the presence of the devices if the renter raises the issue. If Defendants lack decisionmaking authority over a particular stage or portion of a stage of the rental process, then, with respect to that stage or portion of a stage, they shall make reasonable best efforts to ensure that renters are clearly and conspicuously informed.

5. Failing to make available, to any renter who requests one, a vehicle that does not contain a functioning GPS or other electronic surveillance device.

6. Failing to ensure, if Defendants place geographical restrictions on where renters may drive Defendants' vehicles, that renters are clearly and conspicuously informed, at every stage of the rental process – in advertisements, during the reservation process, and at the rental counter – that there are geographical restrictions on where a driver may take Defendants' vehicle, and of what those restrictions are. If Defendants lack decisionmaking authority over a particular stage or portion of a stage of the rental process, then, with respect to that stage or portion of a stage, they shall make reasonable best efforts to ensure that renters are clearly and conspicuously informed.

B. With respect to **Renter's Liability Protection (RLP)**, Defendants are immediately and permanently enjoined and restrained from:

1. Requiring renters to purchase RLP, or any other insurance or similar product, as a condition of rental, in violation of sections 1936(k)(1), (n)(1) and (n)(2) of the Civil Code or as follows:

a. If a stated policy of Payless Rental Car Systems, Inc. ("Payless Corporate") (which applies to Acceleron's locations) or Acceleron Corp. provides that the company does not rent in California to persons who cannot provide written proof of primary liability insurance of their own, then Defendants may not sell RLP

(1) except to those renters who present written proof of their own such coverage but wish nonetheless to purchase the coverage from Defendants (for example, to make their own insurance secondary to that purchased through Defendants) and (2) unless Defendants ensure that renters are clearly and conspicuously informed, at every stage of the rental process – in advertisements, during the reservation process, and at the rental counter – (a) that they must present proof of primary liability insurance in order to rent a vehicle from Defendants and (b) that they need not purchase RLP or any other insurance or similar product from Defendants in order to rent a vehicle from Defendants (i.e. that these products are optional). If Defendants lack decisionmaking authority over a particular stage or portion of a stage of the rental process, then, with respect to that stage or portion of a stage, they shall make reasonable best efforts to ensure that renters are clearly and conspicuously informed.

b. If, on the other hand, the stated policies of Payless Corporate (which applies to Acceleron's locations) and Acceleron uniformly permit rental to persons who cannot provide written proof of primary liability

insurance of their own, then Defendants may not sell primary liability coverage unless Defendants ensure that renters are clearly and conspicuously informed, at every stage of the rental process – in advertisements, during the reservation process, and at the rental counter – that they need not purchase RLP or any other insurance or similar product from Defendants in order to rent a vehicle from Defendants (i.e. that these products are optional). If Defendants lack decisionmaking authority over a particular stage or portion of a stage of the rental process, then, with respect to that stage or portion of a stage, they shall make reasonable best efforts to ensure that renters are clearly and conspicuously informed.

2. Selling RLP, or any other insurance or similar product, unless renters are given the opportunity to decline coverage by initialing the rental contract next to a description of the insurance or similar product.

3. Failing to develop, maintain and employ either (1) a script or (2) an outline which all of Defendants, their employees and representatives must use in presenting insurance and similar products to all renters. The script or outline must convey clearly and conspicuously to all renters that the purchase of any insurance or similar product from Defendants is entirely optional and that Defendants will rent the vehicle to the renter even if the renter declines to purchase the products offered. The script or outline must also provide that if a customer says that he or she does not wish to purchase a particular type of coverage or coverages, Defendants or their employee or representative must not continue to discuss that type of coverage or coverages and may not raise the issue again later in the transaction. This provision shall not prevent Defendants or their employees or representatives from later discussing the issue if (but only if) the renter or another member of the renter's party raises the issue. If a regular Acceleron customer informs a counter agent that he or

she does not wish to hear the script or outline, the agent may terminate the presentation at that point.

4. Varying their employees' or agents' compensation in any way directly based on either (1) the number of renters to whom the employees or agents sell liability or other insurance or similar products, or (2) the amount of such coverage (i.e. premiums) sold.

C. With respect to the **Equipment Requirements of the Vehicle Code**, Defendants are immediately and permanently enjoined and restrained from:

Failing to ensure that the vehicles they offer for rental conform to all equipment-related requirements of the Vehicle Code, including but not limited to those set forth in Division 12 of that code.

D. With respect to **Charges for Forced Upgrades**, Defendants are immediately and permanently enjoined and restrained from:

Charging a renter for a compulsory upgrade. If a renter makes a reservation for a particular class of vehicle – for example, a compact – and Defendants do not have that class of vehicle available when the renter arrives at the rental counter and choose to offer instead a larger or otherwise "upgraded" vehicle, Defendants may charge no more than the applicable rate stated in the original rental reservation. This provision shall apply only when the renter either (1) arrives at the rental counter within two hours of the stated time of the reservation or (2) arrives at the rental counter within three hours of the stated time of the reservation after having telephoned Defendants within two hours of the stated time.

E. With respect to the **Unavailability of Vehicles**, Defendants are immediately and permanently enjoined and restrained from:

1. Failing to make reasonable best efforts not to unreasonably overbook reservations such that renters find that no suitable vehicle is available when they arrive at the rental counter.

2. Failing, if such a situation occurs through overbooking or otherwise, to make the renter whole – for example, by reimbursing the renter the amount of any payments made to Defendants and, if the renter chooses to rent from another rental car company, also reimbursing the difference, if any, between the amount quoted on the renter's reservation with Defendants and the amount the renter is required to pay the other rental company for a vehicle and terms comparable to those the renter had reserved with Defendants.

3. This provision shall apply only with respect to renters who either (1) arrive at the rental counter within two hours of the stated time of the reservation or (2) arrive at the rental counter within three hours of the stated time of the reservation after having telephoned Defendants within two hours of the stated time.

F. With respect to **Local Renter Restrictions**, Defendants are immediately and permanently enjoined and restrained from:

Failing, if they distinguish between "local renters" and others, to ensure that renters are clearly and conspicuously informed, at every stage of the rental process – in advertisements, during the reservation process, and at the rental counter — (1) of who qualifies as a "local renter" and (2) that "local renters" receive only 150 free miles per day (or whatever other "local renter" policy may then apply). For example, if Defendants state in any advertisement or other public statement that they offer "unlimited mileage," they must not fail to disclose clearly and conspicuously in that advertisement or statement that the unlimited mileage provision does not apply to "local renters." If Defendants lack decisionmaking authority over a particular stage or portion of a stage of the rental process, then, with respect to that stage or portion of a stage, they shall make reasonable best efforts to ensure that renters are clearly and conspicuously informed.

G. With respect to **Damage to Vehicles**, Defendants are immediately and permanently enjoined and restrained from:

Charging or making a claim against a renter for damage to a vehicle unless (1) the renter was explicitly given the opportunity to inspect the vehicle for damage at the commencement of and after the completion of the rental (specifically, prior to taking possession of the rental vehicle, the renter must have been informed both (a) orally and (b) in writing on the vehicle-damage diagram sheet, of his or her right to inspect the vehicle for damage; and reasonable best efforts must have been made to inform the renter orally of this right at the time he or she returned the vehicle); (2) Defendants inspected and can document the vehicle's condition immediately prior to and immediately after the rental (or, if the vehicle is returned after hours or must be retrieved, as soon as possible after the rental); and (3) Defendants notify the renter of the asserted damage within seven days of the end of the rental (or, if the vehicle must be retrieved, within seven days after the vehicle is retrieved and in any case within ten days of the end of the rental).

H. With respect to **Other Violations of Law**, Defendants are immediately and permanently enjoined and restrained from:

Otherwise violating section 17200 or 17500 of the Business & Professions Code or section 1936 of the Civil Code.

5. Defendants are additionally enjoined as follows:

A. With respect to **Retention of Records**, Defendants are immediately and permanently enjoined to:

Retain rental records for each renter, including the rental contract and copies of all correspondence, including email correspondence, for three years from completion of the rental period. Records must be kept in such a way that they can be made available to the offices of the District Attorney and Attorney General within seven days of the date of a request for inspection.

Such a request for inspection shall be made to defendant Andrew Wong or his designated successor by certified mail with return receipt requested or another method offering equivalent assurance of direct communication with Andrew Wong or his designated successor.

B. With respect to **Handling of Complaints**, Defendants are immediately and permanently enjoined to:

Develop and adopt a system of handling complaints that ensures that complaints are addressed promptly and effectively, such that any complaint is investigated and the result of the investigation communicated to the complaining renter within seven days after Defendants are made aware of the complaint. Defendants must maintain records of all complaints, including complaints sent directly to Payless Corporate and forwarded to Acceleron Corp., and all correspondence, including electronic correspondence, regarding those complaints, in a customer's file for at least three years from completion of the rental period. Records of complaints must be kept in such a way that they can be made available to the offices of the District Attorney and Attorney General within seven days of the date of a request for inspection. Such a request for inspection shall be made to defendant Andrew Wong or his designated successor by certified mail with return receipt requested or another method offering equivalent assurance of direct communication with Andrew Wong or his designated successor.

C. With respect to **Distribution of This Judgment**, Defendants are immediately and permanently enjoined to:

1. Ensure that a copy of the injunctive terms of this Judgment is distributed, on at least an annual basis, to each employee and representative of Defendants who has or will have direct contact with Acceleron's customers, and that each employee or representative is given sufficient time and opportunity at work to read and become familiar with the injunctive terms of the Judgment.

2. Ensure that a copy of the injunctive terms of this Judgment is provided to Payless Rental Car Systems, Inc., and the entity or entities responsible for operating each of Orbitz.com, Travelocity.com, Expedia.com, Galileo.com, Worldspan.com and SabreTravelNetwork.com. Defendants must also ensure that a copy of the injunctive terms of the Judgment that relate to the use of GPS (or similar) technology is provided to Aircept.com, LLC and to any other provider of GPS (or similar) tracking services to Defendants.

RESTITUTION

6. Pursuant to Business and Professions Code sections 17203 and 17535, Defendants shall pay restitution to their customers, as follows:

A. All those customers who, through the use of a GPS device in Defendants' vehicles, were assessed a surcharge for assertedly violating geographical restrictions shall have restored to them the full amount of the surcharge (including any tax thereon) that they paid and have not recovered. Any questions as to eligibility for or amount of restitution due shall be determined by the People in their sole discretion. Whether a renter submitted a complaint about the geographical penalty is not material to restitution under this Judgment.

B. Those customers who (1) submitted a complaint about Defendants to the Better Business Bureau, to Payless Corporate, to the California Attorney General's Office or to the San Mateo District Attorney's Office at any time between January 1, 2003 and the date of entry of this Judgment or (2) submit a complaint about Defendants that is received by the People within ninety (90) days of the date of entry of this Judgment shall have restored to them all amounts not previously restored that were obtained in violation of Business and Professions Code sections 17200 and/or 17500, as determined by the People in their sole discretion after consultation with Defendants.

C. Those customers who(1) submitted a complaint about Defendants to the Better Business Bureau, to Payless Corporate, to the California Attorney General's

Office or to the San Mateo District Attorney's Office at any time between January 1, 2003 and the date of entry of this Judgment or (2) submit a complaint about Defendants that is received by the People within ninety (90) days of the date of entry of this Judgment, and who purchased Renter's Liability Protection (RLP) coverage, shall have restored to them the full amount of the RLP charge (including any tax thereon) that they paid and have not recovered, whether or not their complaint involved or mentioned RLP. All customers who were assessed a surcharge for assertedly violating geographical restrictions, and who purchased Renter's Liability Protection (RLP) coverage, shall have restored to them the full amount of the RLP charge (including any tax thereon) that they paid and have not recovered, whether or not they filed a complaint of any kind. This restoration of "premiums" paid shall not revoke, diminish or otherwise adversely affect any renter's RLP coverage that may still be in effect (i.e. in covering an accident that occurred during the rental). Any questions as to eligibility for or amount of restitution due shall be determined by the People in their sole discretion, after consultation with Defendants.

D. The People shall set forth on a Restitution List to be provided Defendants the names of those customers due restitution and the amounts of restitution due. The People shall adjust the Restitution List as further information about customers eligible for restitution and the amounts due those customers is determined.

E. Restitution shall be provided in the following manner:

1. Upon execution of the Stipulation to Entry of Judgment filed with this Judgment, Defendants shall deliver a bank or certified check (the "Initial Restitution Check") payable to the San Mateo County District Attorney's Office, in care of Chuck Finney, Deputy District Attorney, in the amount of $215,293.47. This check will be deposited by the San Mateo District Attorney's Office into its trust account. From that account, the San Mateo District Attorney's Office shall begin to issue trust checks to those of

Defendants' customers who are eligible for restitution.

2. Any customer of Defendants who makes a complaint about Defendants that is received by the People or the Better Business Bureau within ninety (90) days of the date of entry of this Judgment shall be eligible to be included on the Restitution List.

3. Defendants' responsibility under this Judgment to pay restitution shall not be diminished, capped or impaired by the amount of the Initial Restitution Check, which amount represents a reasonable estimate by the People at the time of execution of the Stipulation, after consultation with Defendants, of the amount of restitution due under the Judgment. Defendants' obligation to make restitution shall extend to all those customers, as determined above, who are entitled to such restitution, whether or not the total amount of restitution ultimately provided exceeds the amount of the Initial Restitution Check.

4. At any time on or after the date 45 days after entry of the Judgment, the People in their sole discretion may assess the amount of Restitution paid, the amount of restitution likely still to be paid, and the amount remaining from the Initial Restitution Check and may require that Defendants deliver to the People within seven days an additional bank check or certified check ("Supplemental Restitution Check") payable to the San Mateo County District Attorney's Office, in an amount determined by the People in their sole discretion after consultation with Defendants. Thereafter, in their sole discretion, the People may from time to time, but no more frequently than monthly, require that Defendants deliver within seven days further restitution checks as often as necessary to achieve full restitution in this case. Defendants' obligation to make restitution shall extend to all those customers, as determined above, who are entitled to such restitution, whether or not the total amount of restitution ultimately provided exceeds the amount

of the sum of the Initial Restitution Check, the first Supplemental Restitution Check, and any additional Supplemental Restitution Check or Checks.

F. Any money remaining from the amount of the Initial Restitution Check after reasonable attempts at full restitution to all eligible customers (the "residual amount") shall be distributed as follows:

1. The money shall be paid to the Consumer Protection Prosecution Trust Fund previously created by the Stipulated Final Judgment and Permanent Injunction, filed on September 21, 1989, in the case of *People v. ITT Consumer Financial Corporation* (Alameda County Superior Court case number 656038-0). A bank check or certified check made out to "Consumer Protection Prosecution Trust Fund" for the residual amount shall be delivered by express mail to Ted Mermin, California Attorney General's Office, 455 Golden Gate Ave., 11th Floor, San Francisco, CA 94102 no later than the date 180 days after the date of entry of this judgment.

2. As specified in the judgment in *People v. ITT*, money from the Consumer Protection Prosecution Trust Fund will be used for the purpose of enhancing the investigation, prosecution, and enforcement of consumer protection actions brought pursuant to the unfair competition statutes of the State of California (Business and Professions Code section 17200 et seq.) by the California Attorney General, district attorneys, and city attorneys authorized to bring such actions pursuant to Business and Professions Code section 17206; assisting such prosecutors in connection with criminal consumer protection cases investigated and investigated by their agencies; and supporting significant consumer cases brought by Legal Aid to protect California citizens.

G. Any money remaining from the amount of the Supplemental Restitution Check or any subsequent Restitution Check, after reasonable attempts at full restitution to all eligible customers, shall be returned to Defendants.

H. The costs of administering Restitution shall be borne as follows:

1. Defendants shall be responsible for all costs incurred by the People for administration of the Restitution Program under this Judgment. These include the cost to San Mateo County of preparing, issuing, and mailing restitution checks (at a cost of $6.00 per trust check) to Defendants' customers as provided in this Judgment.

a. On or before entry of the Judgment, Defendants shall deliver to counsel for the People a bank or certified check made payable to the San Mateo County District Attorney's Office, in care of Deputy District Attorney Chuck Finney, in the amount of $5,100 (the "Initial Restitution Administration Check").

b. Defendants' responsibility under this Judgment to pay the costs of administering the Restitution Program shall not be diminished, capped or impaired by the amount of the Initial Restitution Administration Check, which amount represents a reasonable estimate by the People at the time of execution of the Stipulation, after consultation with Defendants, of their costs for preparing, issuing and mailing restitution checks under the Judgment. Defendants' obligation to pay the costs of administering restitution under the Judgment shall extend to all those customers, as determined above, who are entitled to such restitution, whether or not the total cost of administering restitution ultimately exceeds the amount of the sum of the Initial Restitution Administration Check.

c. At any time on or after the date 45 days after entry of the Judgment, the People assess the amount of Restitution paid, the amount of restitution likely still to be paid, and the amount remaining from the Initial Restitution Check and may require that Defendants deliver to the People within seven days an additional bank check or certified check

("Supplemental Restitution Administration Check") payable to the San Mateo County District Attorney's Office, in an amount determined by the People in their sole discretion after consultation with Defendants. Thereafter, in their sole discretion, the People may from time to time, but no more frequently than monthly, require that Defendants deliver within seven days further restitution administration checks as often as necessary to achieve full restitution in this case. Defendants' obligation to pay the costs of administering restitution under the Judgment shall extend to all those customers, as determined above, who are entitled to such restitution, whether or not the total cost of administering restitution ultimately exceeds the amount of the sum of the Initial Restitution Administration Check, the first Supplemental Restitution Administration Check, and any additional Supplemental Restitution Administration Check or Checks.

d. Any money remaining from the payment(s) made by Defendants for the cost of administering Restitution under this Judgment (i.e., from the Initial Restitution Administration Check or the Supplemental Restitution Administration Check or any additional Restitution Administration Check) shall be returned to Defendants within 180 days after the date of entry of this Judgment.

CIVIL PENALTIES, COSTS AND FEES

7. On or before entry of this Judgment, Defendants shall deliver to counsel for the People, in payment of civil penalties pursuant to Business & Professions Code sections 17206 and 17536, (1) a bank or certified check made out to the Attorney General of the State of California in the amount of $ 75,000 (seventy-five thousand dollars), and (2) a bank or certified check made out to the San Mateo County District Attorney's Office in the amount of $ 100,000 (one hundred thousand dollars).

8. On or before entry of this Judgment, Defendants shall in addition deliver to counsel for

the People (1) a bank or certified check made out to the Attorney General of the State of California in the amount of $ 50,000 (fifty thousand dollars), and (2) a bank or certified check made out to the San Mateo County District Attorney's Office in the amount of $ 25,000 (twenty-five thousand dollars), in payment of investigative expenses and costs.

PAYMENT OF COURT COSTS

9. Defendants shall pay all court costs associated with their appearance in this action, including any fee for the filing of the Stipulation to Entry of Judgment. Except as otherwise provided herein, each party shall bear its own costs and expenses.

EFFECTIVE DATE AND SCOPE OF JUDGMENT

10. This Judgment shall be binding and effective upon entry by the Court, and the clerk is ordered to enter the Judgment immediately upon filing. The settlement of this action shall act as a bar only to further actions by the Attorney General and District Attorney against Acceleron Corp., Andrew Wong and Betty Wong based on the specific violations asserted in the Complaint, through the date of entry of this judgment. Actions to enforce or collect on this Judgment are not barred.

INTEREST ON AMOUNTS OF JUDGMENT

11. Any amount that Defendants owe under this Judgment, but which is not paid in accordance with the provisions of this Judgment, shall earn interest at the rate of 10 percent per annum commencing on entry of this Judgment, and is subject to all available post-judgment remedies provided by law.

NO AUTHORIZATION OF CONDUCT

12. Neither Defendants nor anyone acting on their behalf shall state or imply or cause to be stated or implied that the Attorney General of California or the District Attorney of San Mateo County or any state agency or officer has approved, sanctioned, or authorized any practice, act or conduct of the Defendants.

NO LIMITATION OF REMEDIES

13. The remedies provided herein do not limit any other remedies that Defendants' customers may have under law.

RETENTION OF JURISDICTION

14. This Court shall retain jurisdiction over this matter for the purpose of enabling any party to this Judgment to apply to the Court at any time for such further orders or directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for modification of the injunctive provisions of this Judgment, and for the People to apply at any time for enforcement of any provisions of this Judgment or for punishment of any violations of this Judgment.

Dated: November 9, 2004

_____
JUDGE OF THE SUPERIOR COURT