UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL MARGULIS, individually and on behalf of all others similarly situated, Plaintiff, vs. THE HERTZ CORPORATION, Defendant.	Civil Action No. 14-1209(JMV)(MF)

PLAINTIFF'S BRIEF IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

James E. Cecchi
Lindsey H. Taylor
Mark M. Makhail
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.
5 Becker Farm Road
Roseland, NJ 07068
(973) 994-1700

Oren S. Giskan
Amy E. Robinson
GISKAN SOLOTAROFF &
ANDERSON LLP
90 Broad Street, 10th Fl.
New York, New York 10004
(212) 847-8315

Attorneys for Plaintiff

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

PRELIMINARY STATEMENT

This motion presents a straightforward question: Is Hertz responsible for the deception of its customers renting cars in Europe? Or should Hertz be rewarded for what, as Judge Arleo described as "clever incorporation"? Several courts have previously rejected Hertz's attempts to avoid liability for wrongdoing involving car rentals outside the United States. This Court should do the same.

Daniel Margulis, an American citizen living in New Jersey, entered into business transactions with Hertz, an American corporation, to rent cars when he travelled abroad. Mr. Margulis used his American credit card to reserve the cars and he sat on American soil when he initiated the transactions. Then, when the time came for Hertz to deliver on its promise to provide rental cars to Plaintiff, Hertz defrauded Mr. Margulis by charging him fees for a "service" that the company itself cannot even define and that is widely derided as anti-consumer.

Hertz pretends it has nothing to do with this scheme. Hertz claims that its subsidiaries are the entities that provide the rental services. Memorandum of Law in Support of Defendant The Hertz Corporation's Motion for Summary Judgment ("Def. MOL") at 2. However, the evidence submitted by Hertz does not support that assertion. *See* Exs. 1-4, ECF 170-1 – 170-4. Furthermore, Hertz's statements to the SEC and its customers differ starkly from the story it tells this Court. For example, in its 2013 Annual Report Hertz stated: "We are one of the only car rental companies that has an extensive network of company-operated rental locations both in the United States and in all major European markets." *See* Hertz 2013 Annual Report, Exhibit A, at 4. More recently, Hertz told its investors that it regards both its airport and non-airport locations "as aspects of a

single, unitary, vehicle rental business." See Hertz 2018 Annual Report, Exhibit B, at 2.[1] To the public, Hertz operates locations in Europe – indeed, it claims to have the most European airport rental locations. To the Court, however, Hertz claims those locations are separate companies and

[1] Hertz's 2018 Annual Report is rife with statements that show it considers its subsidiaries part of its "single unitary" business. For example, the 2018 Annual Report includes the following statements:

- We operate both airport and off airport locations which utilize common vehicle fleets, are supervised by common country, regional and local area management, use many common systems and rely on common vehicle maintenance and administrative centers. Additionally, our airport and off airport locations utilize common marketing activities and have many of the same customers. **We regard both types of locations as aspects of a single, unitary, vehicle rental business**. Off airport revenues comprised approximately 34% of our worldwide vehicle rental revenues in 2018 and approximately 33% in 2017. Ex. B at 12 (emphasis added).

- We have approximately 1,600 airport rental locations in the U.S. and approximately 1,500 airport rental locations internationally. Our international vehicle rental operations have company-operated locations in Australia, Belgium, Canada, the Czech Republic, France, Germany, Italy, Luxembourg, the Netherlands, New Zealand, Puerto Rico, Slovakia, Spain, the United Kingdom and the U.S. Virgin Islands. We believe that our extensive U.S. and international network of company-operated locations contributes to the consistency of our service, cost control, Vehicle Utilization, yield management, competitive pricing and our ability to offer one-way rentals. *Id*. at 13.

- For our airport company-operated rental locations, we have obtained concessions or similar leasing agreements or arrangements, **granting us the right to conduct a vehicle rental business** at the respective airport. *Id*. (emphasis added).

- Within Europe, the largest markets in which we do business are France, Germany, Italy, Spain, and the United Kingdom. Throughout Europe, we do business through company operated rental locations as well as through our partners or franchisees to whom we have licensed use of our brands. *Id*. at 21.

- As of December 31, 2018, we employed approximately 38,000 persons, consisting of approximately 29,000 persons in our U.S. operations and approximately 9,000 persons in our international operations. *Id*. at 23.

- Our international operations are based in Uxbridge, England and we have significant vehicle rental operations in the United Kingdom and the Eurozone. *Id*. at 32.

Hertz is not responsible for their deception.[2] This is not the first court in which Hertz has tried this. *See Fogel v. Hertz International, Ltd.*, 141 A.D.2d 375 (1st Dept. 1988); *Loyle v. Hertz Corp.*, 2007 PA Super 399 (PA Super. Ct. 2007); *Downing v. Jameson*, 1998 Conn. Super. LEXIS 3201 (Super. Ct. Nov. 13, 1998). This is not even the first time Hertz has tried this argument in **this** Court. Judge Arleo, on Hertz's Motion for Judgment on the Pleadings, rejected this argument and commented: "Clever incorporation and motion practice should not entirely free Hertz from accountability for its alleged breaches of contract and knowing misrepresentations." *Margulis v. Hertz Corp.*, 2015 WL 1969374, at *13 (D.N.J. Apr. 30, 2015). This Court should reject this maddening argument again.[3]

Conspicuously absent from Hertz's motion is a discussion of the practice at issue in this lawsuit. As explained at length in Plaintiff's Complaint, that practice, commonly known as "Dynamic Currency Conversion" ("DCC"), has no benefit for consumers, and serves solely to benefit the merchant. DCC is a much-maligned and predatory scheme that is widely considered deceptive and harmful to consumers. *See* Compl. ¶¶ 9-11. It is commonly perceived as a scam. *Id*. Recognizing the negative connotations of DCC, Hertz continuously changes the name of its program. First, Hertz called it Consumer Preferred Currency Conversion. Then, recognizing that no informed consumer would actually choose the service, it changed the name to Choose Your Currency. Now, for the Court, it is simply "currency conversion service." Even that is a misnomer

---

[2] Hertz provides no evidence that any entity other than Hertz provides vehicle rental services.

[3] Plaintiff is mindful of the different standards of review between a Motion for Judgment On the Pleadings pursuant to Rule 12 and a Motion for Summary Judgment under Rule 56. Even taking those standards into account, the outcome should be no different, since no new evidence has been adduced during discovery, or included in the record, that would alter the conclusion that Hertz operates as a single entity and should be liable for the actions of its subsidiaries abroad.

as no service is provided to the consumer. No matter the name, it's the same scam, and consumers are always harmed.[4]

Hertz now claims that it has nothing to do with the scam. All Hertz admits to is taking reservations (on its one and only website, Hertz.com) from U.S. residents for European car rentals. However, even that should not be glossed over. Hertz needs U.S. residents who rent in Europe to complete its scheme. Hertz uses its reputation and website to direct U.S. residents to its European locations. The role of Hertz.com and the Hertz reservation system is critical to the scheme.

Because the issue of whether Hertz and its subsidiaries – specifically Hertz Italiana S.r.l. and Hertz UK Ltd. – operate separately or as a single entity is a genuine issue of material fact that is in dispute, the Court should deny Hertz's motion.

STATEMENT OF FACTS

When Mr. Margulis went to pick up his rental car in Rome, he entered the office with the well-known yellow Hertz sign. He was presented a Rental Record which listed the charges for his rental. *See* Plaintiff's Statement of Undisputed Facts ("Pl. SOF"), ECF No. 167-1, ¶ 9. The charges looked correct, so he signed the Rental Record and was given his rental car. Mr. Margulis was never told he was renting from an entity other than Hertz. Pl. SOF ¶ 11. When he returned the car a few days later, he was presented with a different total, as Hertz had charged a fee to convert his charges from euros to dollars. This charge was not disclosed to him. Mr. Margulis was not asked if he would like his charges converted to U.S. dollars. *Id*. ¶ 12.

[4] Despite this lawsuit, Hertz has not meaningfully improved its disclosures to consumers regarding DCC. It continues to conceal the fees associated with the "service" that increase the cost of its car rentals. All it has done is implemented an arbitration clause to preclude future class actions against it (and effectively insulate itself from liability for deceptive practices).

The same thing happened when Mr. Margulis picked up his rental car in Wales. He entered the office with the yellow Hertz sign, reviewed the charges, which looked correct, signed the Rental Record, and was given his rental car. *Id*. ¶¶ 9, 11. When he returned, he was presented with a different total, as Hertz had charged a fee to convert his charges from euros to dollars. This charge was not disclosed to him. *Id*. ¶ 12.

Hertz argues that the charge was disclosed. Def. MOL at 3, 6. However, it is unclear from Hertz's brief and from its Statement of Undisputed Facts precisely where the DCC charge is disclosed. Hertz's own in-house counsel stated that he does not know where the DCC fee is disclosed, either. *See* Pl. SOF ¶ 8; Exhibit C. In its motion, Hertz points to a statement on the Rental Record, which refers to the back of the Rental Record. Def. MOL at 3-4. The back of the Rental Record merely says that other fees and charges may apply (which is obviously not a disclosure), and refers to yet *another* document which Hertz argues discloses the charge.[5] Page 13 (of the 15-page Rental Agreement) contains a section called "Charges," in which Choose Your Currency is mentioned; for more information, the renter is advised to "ask at the counter for a leaflet." It is hard to imagine a company burying a disclosure more deeply.

Car renters are anxious to get their cars and be on their way. They cannot be expected to wade through a series of documents to search for buried fees, especially when the charges appear correct, as they did to Mr. Margulis. Moreover, there is nothing on the Rental Record to trigger

[5] Hertz casually refers to the set of the three documents as "UK Rental Docs" or "Italian Rental Docs" as if this was a package of documents that a renter could read at the counter in a reasonable amount of time. *See* Rule 56 Statement of Undisputed Facts In Support of the Hertz Corporation's Motion for Summary Judgment ("Def. SOF") ¶¶ 13, 30, 31, 32. In fact, these documents consist of three separate items totaling more than 20 pages: the Rental Record, where all charges are set forth (but not the DCC); the back of the Rental Record, where the Estimate of Charges can be found; and the Rental Agreement, a 15-page fine-print document in Italian and English. A reasonable renter could not possibly be expected to absorb all of these materials at the pick-up counter, yet this is how Hertz chose to "disclose" the fee.

an unsuspecting consumer to inquire further about any additional fees – the Rental Record merely states that the renter has agreed to be billed in his or her home currency. The back of the Rental Record, which specifically references charges listed in the "Your Estimate of Charges explained," section, is also silent as to any DCC. *See* Def. MOL, Exh. 8, ECF No. 170-8. In contrast, other charges (such as pre-paid gas and insurance) are listed directly on the Rental Record. A reasonable renter would look to the front of the Rental Record for any additional charges above the reserved rate.

Hertz continues to bury the DCC on the final bill by providing only the total charge in dollars, lest a customer notice the additional fee. Hertz makes much of the fact that Plaintiff did not read the statement on the Rental Record regarding DCC charge. Def. MOL at 29. Of course it does, as Hertz relies on customers to check the rate and charges, and sign, in order to perpetuate its currency conversion scam, but even customers who notice that Hertz has slipped in this language are not put on notice of the extra charge. The Rental Record, while explicitly noting other charges, makes no mention of the DCC charge. Indeed, Hertz displays an estimated charge that does not include the DCC charge, even though Hertz will add that amount once the return is complete and the customer cannot do anything about the charge. This is what fraud looks like.[6]

[6] Plaintiff also brings a claim for injunctive relief to stop this scam. *See* Compl. ¶ 36. Implicit in Hertz's "it wasn't us" argument is the contention that this Court can do nothing to stop the practice. Surely, this Court has the power to order the Hertz Corporation (which controls its subsidiaries) to cease the deception or properly disclose the fee.

LEGAL ARGUMENT

I. WHETHER HERTZ AND ITS SUBSIDIARIES OPERATE SEPRATELY OR AS A SINGLE ENTITY IS A GENUINE ISSUE OF MATERIAL FACT THAT ONLY A JURY CAN RESOLVE.

More than four years ago, Judge Arleo, ruling on Hertz's motion for judgment on the pleadings, stated: "if Hertz and its subsidiaries are found to operate as a single entity, it would demonstrate that Hertz has control over the actions of its subsidiaries." *Margulis*, 2015 WL 1969374, at *6. On that basis, this Court denied Hertz's motion. Since that decision was rendered on April 30, 2015, nothing has changed in that the contracts explaining the relationship between Hertz and its European subsidiaries have still not been provided to the Court and the question of whether Hertz and its subsidiaries operate as a single entity remains very much unresolved. Because this crucial factual issue is in dispute, the Court should deny Hertz's motion.

Hertz insists that "there are no . . . contractual agreements" between Hertz and its subsidiaries, and that Hertz and its subsidiaries "do not stand in any contractual relationships to one another." Def. MOL at 26.[7] Hertz appears to argue that the lack of "any contractual relationship" supports its position that its subsidiaries are distinct entities, when in fact the exact opposite inference should be drawn: the lack of a contractual relationship between Hertz and its

[7] Hertz's position is implausible. There are at least two reported cases in which agreements between Hertz and a subsidiary are alluded to, leading Plaintiff in this case to logically conclude that there are also agreements at play here. In fact, in *Fogel*, the First Department alluded to "the agreement between Hertz Italiana and Hertz International," stating that such agreement "requires that Hertz Italiana name the Hertz defendants as additional insureds on all insurance policies." 141 A.D.2d at 376. The *Fogel* court held that "this agreement raises questions regarding the degree of control exercised by Hertz International over Hertz Italiana which preclude summary judgment." *Id.* (citing *Drexel v. Union Prescription Centers*, 582 F.2d 781 (3d Cir. 1978)). The second example is *Dickson v. Hertz Corp.*, where the United States District Court for the District of the Virgin Islands alluded to "the terms of the licensing agreement between Hertz and its St. Croix affiliate." 559 F. Supp. 1169, 1174-75 (D.V.I. 1983). Having litigated the issue and lost, Hertz now argues the documents do not exist.

subsidiaries who bear the same name, logo, website, and rewards program is strong evidence that they all operate as a single, unified entity. This inference is supported by the fact that Hertz repeatedly tells the SEC and the public that it operates locations in Europe and worldwide, and that it counts revenues from those rentals as its own. *See* Ex. B, at 11 ("We are one of the largest worldwide vehicle rental companies and our Hertz brand name is one of the most recognized globally"); Press Release, Ex D. If Hertz Italiana and Hertz UK were distinct from Hertz and operated at arm's length, then logically they would seek to memorialize the parameters of their distinct businesses in written contracts. A jury can conclude that these subsidiaries exist solely for Hertz to achieve those objectives, and therefore they are one and the same for the purposes of Plaintiff's claims.

A. Hertz's Position On Whether it is One Single Entity or Many Companies Shifts Based on Which Position Best Serves its Interests In this Litigation.

Throughout this litigation, and as Judge Falk noted, Hertz has oscillated between arguing that its subsidiaries are independent and are part of a single entity, depending on which position suited Hertz's interest at the time. *See* Opinion, ECF No. 120 at 17-18 (referencing Hertz's "shifting approach to corporate structure" during this litigation). Early in the litigation, in its Motion for Judgment on the Pleadings, Hertz argued that Hertz and its subsidiaries were separate, and that the subsidiaries were indispensable. *See* ECF No. 20 at 13.

A few months later, when Hertz needed a Rule 30(b)(6) witness to produce for testimony on its DCC program, it called on Robert Evans, Director of Global Payment Solutions, Hertz European, who is based in Dublin, Ireland – a strong indicator that Hertz is a single global corporation that speaks with one unified voice, not a disjointed assortment of subsidiaries. *See* Ex. 19, ECF 170-19. However, when Plaintiff sought to depose certain additional fact witnesses in Europe, Hertz revived its argument that it and its "foreign subsidiaries" were separate, and forced

Plaintiff to move for the issuance of Letters Rogatory under Rule 28. *See* ECF No. 84. The Court granted Plaintiff's motion and noted Hertz's (futile) effort to relitigate the Motion for Judgment on the Pleadings. *See*, ECF 99.

However, when Plaintiff challenged the assertion of attorney-client privilege by Hertz as a basis to withhold documents in Europe, Hertz once again argued that it was one single entity that shared attorneys. Judge Falk summarized Hertz's privilege argument: "For the first time, [Hertz] contended that a group of in-house attorneys, none employed by the Defendant but rather employed by the foreign Hertz entities, were joint attorneys for 'joint' clients, ***which were all of the Hertz companies***." ECF No. 120 at 7 (emphasis added).[8]

Now, in its motion for summary judgment, Hertz contends that its subsidiaries are independent entities, and argues that Hertz wasn't the one who imposed the DCC. The wrongdoer, according to Hertz, is an entity in Europe doing business under Hertz's name, but that Hertz doesn't control. The Court should reject this absurd argument. The law should not be construed to insulate corporations from liability for fraud and deception. As Judge Arleo observed earlier in this case, "Clever incorporation and motion practice should not entirely free Hertz from accountability for its alleged breaches of contract and knowing misrepresentations." *Margulis*, 2015 WL 1969374, at *13. The reach of consumer protection statutes such as the NJCFA is broad, and should not be narrowed here. *See, e.g.*, *Real v. Radir Wheels, Inc.*, 198 N.J. 511, 527 (2009) (discussing "the CFA's broad remedial purposes").

Hertz has adopted these shifting positions while at the same time representing to the SEC, the investing public, and its customers that the European locations are Hertz corporate locations.

[8] In the same Opinion Judge Falk also noted that Hertz's attempt to skirt the privilege issue by "claiming that it is essentially the wrong party in the case (something already rejected by Judge Arleo). . . ." ECF No. 120 at 5.

Apart from this litigation, Hertz presents itself as a single global enterprise, with locations worldwide but one brand that consumers can trust. Hertz consistently touts itself as a single global business.[9] The "About Hertz" section of all of Hertz's numerous press releases states:

> The Hertz Corporation, a subsidiary of Hertz Global Holdings, Inc., operates the Hertz, Dollar and Thrifty vehicle rental brands in approximately 10,200 corporate and franchisee locations throughout North America, Europe, the Caribbean, Latin America, Africa, the Middle East, Asia, Australia and New Zealand. The Hertz Corporation is one of the largest **worldwide** vehicle rental companies, and the Hertz brand is one of the most recognized **globally**.

See, Hertz Press Releases, Exhibit B.

Additionally, online car rental reservations are made on Hertz.com[10]; the European pick-up and drop-off locations display the famous Hertz yellow signage; and at no point in the reservation process does Hertz inform consumers that they are no longer dealing with Hertz, but rather some other entity that incidentally also bears the "Hertz" name. However, most tellingly is Hertz's own description of the DCC program in its Gold Rewards terms and conditions:

> If available, You may arrange for Your rental charges for Program rentals commencing at certain **Hertz** locations in Europe to be converted from the currency of the country of rental to the currency in which Your credit, charge, or debit card is issued. If you elect to convert Your rental charges, then **Hertz** will convert such charges into the currency of the country in which the card was issued on the date **Hertz** or **its agents** forward the charges to **Hertz's** card processor. **Hertz** will charge a currency conversion fee of up to 3% to perform this service. …

---

[9] Hertz's 2018 Annual Report states: "**We** operate our vehicle rental business globally primarily through the Hertz, Dollar and Thrifty brands from approximately 10,200 corporate and franchisee locations in North America, Europe, Latin America, Africa, Asia, Australia, the Caribbean, the Middle East and New Zealand. **We** are one of the largest worldwide vehicle rental companies and our Hertz brand name is one of the most recognized globally, signifying leadership in quality rental services and products. **We** have an extensive network of airport and off airport rental locations in the U.S. and in all major European markets." Ex. B at 1 (emphasis added).

[10] When consumers pre-pay for their rentals, they pay Hertz through Hertz.com at the time of the reservation.

Pl. SOF ¶ 5; Exhibit E. (emphasis added). There is no mention of Hertz Italiana, Hertz UK, or any entity other than Hertz. DCC is Hertz's program, plain and simple. Plaintiff's Response to Defendant Hertz Corporation's Rule 56 Statement of Undisputed Facts ("Pl.'s Response to Def. SOF"), ¶ 39. Hertz determines how it is offered (it is offered in the same manner across all locations) and Hertz receives the profits. It is insufficient for Hertz to simply state it has no "contractual relationship" with its subsidiaries in order to escape liability. *See Margulis*, 2015 WL 1969374, at *5-6. If the subsidiaries are truly not Hertz, they clearly operating as Hertz's agents (as Hertz acknowledges in the description of its DCC program quoted above).[11] The reality is that Hertz is an American company that charges Americans for DCC.

However, now that a defrauded consumer is attempting to hold Hertz liable for wrongdoing, Hertz has suddenly become a disorganized mess of subsidiaries, all operating under the same unified Hertz name, logo, and website but somehow completely distinct and operating independently from Hertz. A jury should decide whether Hertz is telling the truth to the SEC and its customers, or to this Court.

Unfortunately, this is not the first time Hertz has tried to evade liability by arguing that it is not liable for the tortious acts of its subsidiaries. In fact, Hertz has *repeatedly* presented to courts that it is not liable for rentals that occurred abroad, and courts have repeatedly rebuffed Hertz's motions for summary judgment.

---

[11] In support of its Statement of Facts, Hertz relies on the Declaration of Richard McEvily. Mr. McEvily was not disclosed as a witness by Hertz in its Rule 26 disclosures. The McEvily Declaration was not produced in discovery, and was only furnished to Plaintiff upon request. Hertz's flouting of the discovery rules should not be condoned and the McEvily Declaration should be stricken. Attorneys "owe a duty to the court and opposing counsel to make a full and fair disclosure of their views as to what the real issues of the trial will be . . . it is through such disclosure at pretrial that trial prejudice can be avoided." *Payne v. S.S. Nabob*, 302 F.2d 803, 807 (3d Cir. 1962).

In *Fogel*, Plaintiffs brought an action against Hertz to recover for personal injuries arising from an automobile accident that occurred near Florence, Italy. 141 A.D.2d at 375. Hertz argued that its subsidiary, Hertz Italiana S.p.A. was the liable party because "the vehicle was not owned by" Hertz. *Id*. at 376. The trial court granted summary judgment "on the ground that Hertz Italiana has a separate corporate structure from that of the Hertz defendants." *Id*. New York's Appellate Division reversed. The court stated that the case "raises triable issues with respect to the nature of the relationship" between Hertz and Hertz Italiana. *Id*. at 376. The court continued: "For example, where, as here, the circumstances raise the possibility of a principal-agent relationship but no written authority of the agent has been proven, questions of agency and of its nature and scope are questions of fact to be submitted to the jury under proper instructions by the court. *Id*. (citing *Garcia v. Herald Tribune Fresh Air Fund*, 51 A.D.2d 897 (1st Dept. 1976) and *Gizzi v. Texaco, Inc*., 437 F.2d 308 (3d Cir. 1970) (quotations omitted)). This Court is faced with precisely the same unresolved factual issue: Hertz rents its cars in Europe through its subsidiaries Hertz Italiana and Hertz UK, yet Hertz has been unable to prove any written authority (and Hertz claims no such written authority exists).

In *Loyle*, the Plaintiff-Appellant, a Pennsylvania resident, made a reservation to rent a car through Hertz for a business trip in Toronto Canada. 2007 PA Super at 402. After completing his business in Toronto, he returned the car to Hertz and went to the airport. *Id*. at 403. While awaiting his flight's departure, Plaintiff-Appellant was approached by police officers, taken into custody, and questioned for hours concern his alleged possession of a loaded handgun, which Hertz's cleaning personnel at the Toronto airport had discovered in the leased car. *Id*. Plaintiff-Appellant insisted the gun was not his, and sued Hertz under various tort theories. *Id*. Hertz argued, as it did in this case, that it was not the proper defendant, and that that Plaintiff should have sued Hertz

Canada, Ltd. *Id*. Unsurprisingly, Hertz argued that it "could not be held liable for the actions of Hertz Canada." *Id*. Although the trial court agreed with Hertz and granted summary judgment, the Superior Court of Pennsylvania reversed on a theory of apparent authority. It stated:

> Hertz clearly markets its car rental business as local, national, and international. Its advertising and reservations systems give no indication whatsoever than any entity other than "Hertz" is the entity with whom the consumer is dealing. A reasonable person could, indeed, have justifiably relied upon such presentations and concluded that Hertz was the entity with whom he or she was contracting and upon whom they could rely.

Id. at 408 (emphasis in original). The exact same reasoning applies in this case: Hertz held itself out to Plaintiff as a multinational company, with locations worldwide. Reservations can easily be made from within the United States on its website. The various worldwide Hertz locations where Plaintiff picked up his vehicles presented themselves as simply "Hertz," not "Hertz Italiana" or "Hertz UK." A reasonable renter – such as Mr. Margulis – "would naturally rely on the protection of 'Hertz' as the responsible entity for all of these various locations." *Loyle*, 2007 PA Super at 407.[12] Because a genuine issue of material fact exists as to whether Hertz exerts authority over Hertz Italiana and Hertz UK, Hertz's motion should be denied.

Downing is shockingly similar to *Fogel*: The plaintiff brought an action for negligence and breach of contract against Hertz after he was struck by a Hertz rental car that his travel companion had rented in England. *Downing*, 1998 Conn. Super. LEXIS 3201 at *2. Hertz moved for summary judgment, claiming that it was not a proper party to the action because the rental vehicle

[12] Hertz's attempt to shift liability onto Hertz Canada was so offensive to the court that even the dissenting justice noted: "While I have proceeded to this dissent, I am troubled that an American corporation conducting international operations can pursue profits from around the world, but seize the benefits of restricted liability imposed by international boundaries and clauses of contractual adhesion." Despite such admonitions from more than a decade ago, Hertz continues to employ the same dishonest legal tactics regarding liability when corporate wrongdoing takes places at one of its worldwide locations.

was owned by "another corporate entity, Hertz (U.K.) Limited." *Id*. at **2-3. The Connecticut court disagreed. *Id*. at *6. In its decision denying Hertz's motion, the court pointed to the contradiction between Hertz's position "stating that it does not own or operate Hertz (U.K.) Limited," and "the deposition testimony of Richard D. McEvily, a Hertz vice president, who testified that Hertz owns Hertz International Limited, which in turn owns Hertz (U.K.) Limited." The court continued: "McEvily acknowledged that through ownership of Hertz International Limited, Hertz can directly or indirectly control Hertz (U.K.) Limited." *Id.* at *4. The court additionally noted that the Hertz trademark, which "is recognizable and is associated with all of the Hertz subsidiaries" and Hertz advertisements "through which one might infer that Hertz holds itself out as a unified worldwide organization." *Id*. Finally, the court said: "The fact that the vehicle involved in the accident was reserved in Bethel [Connecticut], and was waiting when [Plaintiff] arrived at Heathrow Airport, only underscores and reinforces the absence of distinctions between Hertz and its various corporate entities." *Downing*, 1998 Conn. Super. LEXIS 3201, at *4-5.

Gizzi, which was cited in *Fogel*, is also instructive. In *Gizzi*, plaintiff had his car's brakes repaired at a Texaco service station and repair shop. He was later injured in a car accident when his brakes failed. The district court granted Texaco's motion for a direct verdict, but the Third Circuit later reversed. It explained:

> The concepts of apparent authority, and agency by estoppel are closely related. Both depend on manifestations by the alleged principal to a third person, and reasonable belief by the third person that the alleged agent is authorized to bind the principal. The manifestations of the principal may be made directly to the third person, or may be made to the community, by signs or advertising. Restatement (Second), Agency §§ 8, 8B, 27 (1957). In order for the third person to recover against the principal, he must have relied on the indicia of authority originated by the principal, *Bowman v. Home Life Ins. Co. of America*, 260 F.2d 521 (3d Cir. 1958); Restatement (Second), Agency § 267, and such reliance must have been reasonable under the circumstances.

Gizzi, 347 F. 2d at 309 (citing *N. Rothenberg & Son, Inc. v. Nako*, 49 N.J. Super. 372 (App. Div. 1958); *Hoddeson v. Koos Bros.*, 47 N.J. Super. 224 (App. Div. 1957); *Mattia v. Northern Ins. Co. of New York*, 35 N.J. Super. 503 (App. Div. 1955); *Elger v. Lindsay*, 71 N.J. Super. 82 (Salem Co. Court 1961)). Noting that there had been evidence presented that Texaco "exercised control over the activities" of the service station in question, that Texaco "engaged in substantial national advertising," and that the plaintiff "was aware of the advertising engaged in by Texaco and that it had instilled in him a certain sense of confidence in the corporation and its products," the Third Circuit concluded: "Questions of apparent authority are questions of fact and are therefore for the jury to determine." *Gizzi*, 347 F. 2d at 310.

Here, there is even more indicia that Hertz controls its subsidiaries: Hertz accepts reservations on behalf of its subsidiaries; it consistently holds itself out as a single, global company; it prominently displays its logo and brand at pick-up locations worldwide; and it "claims the assets, employees, and accomplishments" of its subsidiaries as its own. *Margulis*, 2015 WL 1969374, at *9. Plaintiff has shown that Hertz "exerts significant influence and control over its subsidiaries," *id*.; in contrast, Hertz has not provided any evidence in support of its own defense that the subsidiaries are independent other than the subsidiaries' Articles of Incorporation. At the very least, this is a question for a jury.

II. THE NJCFA IS APPLICABLE, AS PLAINTIFF'S RESERVATIONS WERE TRANSACTIONS WITH HERTZ MADE IN THE UNITED STATES.

Hertz's argument that the New Jersey Consumer Fraud Act ("NJCFA") "does not apply to the foreign transactions at issue in this litigation" (Def. MOL at 9) rests on a false premise. Mr. Margulis, a U.S. citizen, and Hertz, a U.S. corporation, entered into business transactions on U.S. soil when Plaintiff reserved rental cars while he was in New Jersey. Mr. Margulis received rental

agreements while in the United States, and he even pre-paid for one of his car rentals. Def. SOF ¶ 6. He then travelled to his destinations in foreign countries, picked up his rental cars from Hertz, and when returning the rental cars, discovered he had been charged for a "service" that he never signed up for and that conferred no benefit on him. Pl. SOF ¶ 12. Hertz attempts to avoid liability by making a convoluted argument about extraterritoriality when in fact the deceptive practice at issue has its origins in the United States and the fraudulent charges concerned rentals entered into in the United States.[13] That the rentals occurred abroad does not make the transactions themselves foreign.

A. New Jersey's Broad Application of the NJCFA

The Consumer Fraud Act is to be "construed liberally in favor of consumers." *Cox v. Sears Roebuck & Co.,* 138 N.J. 2, 15 (1994); *see also Real*, 198 N.J. at 527 (where defendant engaged in unconscionable practices and sold merchandise to out-of-state buyer, "nothing more was needed to invoke the CFA's broad remedial purposes"); *Elias v. Ungar's Food Prods., Inc.*, 252 F.R.D. 233, 248 (D.N.J. 2008) (applying New Jersey CFA to class action including plaintiffs from states other than New Jersey); *Ferguson v. JONAH*, 2019 N.J. Super. Unpub. LEXIS 1336, *39-40 (Law Div. June 10, 2019) (applying the NJCFA to conduct that occurred outside of Jersey and stating "defendants incorrectly assert that the Consumer Fraud Act's reach is limited to conduct in New Jersey and that the injunction loses force at the New Jersey border").

There are material issues of fact regarding Plaintiff's NJCFA claim including: (1) was Hertz's reservation system and website used to lure U.S. residents into European rentals; (2) are Hertz and its European entities part of a single entity used to deceive U.S. residents renting from

[13] Indeed, Herts claims the DCC program as its own. Pl.'s Response to Def. SOF ¶ 39.

Hertz in Europe; and (3) did Hertz conceal the charges associated with its worthless DCC service. Hertz's motion for summary judgment on Plaintiff's NJCFA should be denied.

B. New Jersey Law Applies To Plaintiff's Claims

Hertz argues that UK or Italian law actually governs Mr. Margulis' transactions, but it is getting ahead of itself in terms of its choice of law analysis. Def. MOL at 10 n.4. Regardless of what law the applicable contracts say should apply, the first step of a choice of law analysis is to determine whether there is actually a conflict between potentially applicable laws. *P.V. v. Camp Jaycee*, 197 N.J. 132, 142 (2008). If there is no conflict of laws, the forum state applies its own law. *McCarrell v. Hoffman-La Roche, Inc.*, 227 N.J. 569, 584 (2017). Hertz has not shown that there is actually a conflict between New Jersey law and Italian and/or UK law. In order to do that, Hertz would need to explain the conflict by analyzing both New Jersey law and the other applicable law, and then assessing how the result could be different if the Court applied one law rather than the other. Without some indication that a conflict of law actually exists, which Hertz had not provided, the Court is obliged to follow the law of the forum, *i.e.*, New Jersey law.

C. The Cases Relied On By Hertz Are Completely Inapposite.

In support of its argument, Hertz relies exclusively on cases that concern foreign nationals suing **foreign entities** for acts that took place abroad – none of which applies here. Every single case cited by Defendant in Point I of its Memorandum of Law – *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108 (2013), *Morrison v. National Australia Bank*, 561 U.S. 247 (2010), *EEOC v. Arabian American Oil Co. ("Aramco")*, 499 U.S. 244 (1991), *Foley Brothers v. Filardo*, 336 U.S. 281 (1949), and *United States v. Georgiou*, 777 F.3d 125 (3d Cir. 2015) – is wholly and wildly inapplicable to the facts and circumstances of this case.

Kiobel dealt with the application of the Alien Tort Statute ("ATS"), which necessarily requires that the claimant be a foreigner, seeking to recover damages for a tort committed in violation of the laws of the United States. *See* 28 U.S.C. § 1350. The plaintiffs in *Kiobel* were citizens of Nigeria who claimed that Dutch, British, and Nigerian oil-exploration corporations aided and abetted the Nigerian government in the 1990s to commit violations of international law in Nigeria. 569 U.S. 108, 112. The petitioners claimed that Royal Dutch Shell compelled Shell Nigeria, its Nigerian subsidiary, in cooperation with the Nigerian government, in a brutal crushing of peaceful resistance to aggressive oil development in the Ogoni Niger River Delta. *Id*. at 113. After a thorough analysis of the history and text of the ATS, the Court concluded that the plaintiffs' claims were barred because the "presumption against extraterritoriality" applied to the statute. Regarding the presumption against extraterritorial application, the Court stated: "We typically apply the presumption to discern whether an Act of Congress regulating conduct applies abroad." *Kiobel*, 569 U.S. at 116 (citing *Aramco* 499 U.S. at 246 and *Morrison*, 561 U.S. at 254). In its moving papers, Hertz takes this presumption grossly out of context and applies it to a situation where it truly does not belong.

Morrison was a case concerning the extraterritorial effect of U.S. securities legislation. Petitioners were **foreign shareholders** who sued a **foreign bank** and others, alleging violations of various provisions of the Securities and Exchange Act of 1934 (the "Exchange Act"). The bank's ordinary shares were traded on "**foreign securities exchanges**, but not on any exchange in the United States." *Morrison*, 561 U.S. at 250 (emphasis added). The Court affirmed the lower court's order dismissing the case for failure to state a claim on which relief could be granted because the Exchange Act did not apply extraterritorially, and the case involved no securities listed on a domestic exchange. *Id*. at 265. In affirming, the Court stated: "This case involves no

securities listed on a domestic exchange, and all aspects of the purchases complained of by those petitioners who still have live claims occurred outside the United States." *Id*. at 273. A clear analogy to the present case cannot be drawn: the instant case involves a domestic plaintiff, a domestic defendant, and transactions that took place within the United States.

Georgiou, a criminal matter in which a defendant's securities fraud conviction was challenged, 777 F.3d at 130, concerned the application of *Morrison*, and is also obviously inapplicable to the present case.

Aramco concerned the actions of a Saudi Arabian company on a U.S. citizen in the employment context. Petitioner was a naturalized United States citizen born in Lebanon and working in Saudi Arabia who was discharged by his employer, respondent Arabian American Oil Company, a **foreign company** licensed to do business in the U.S. 499 U.S. at 247. After filing a charge with the Equal Employment Opportunity Commission (EEOC), petitioner instituted suit in the District Court, seeking relief under, *inter alia,* Title VII of the Civil Rights Act of 1964, on the ground that he had been discriminated against because of his race, religion, and national origin. *Id*. In affirming the dismissal of the action, the Court ruled that it lacked subject matter jurisdiction because Title VII's protections do not extend to United States citizens employed abroad by American employers **outside** of the United States. *Id*.

Finally, *Filardo*, decided 70 years ago and hardly relevant, concerned a lawsuit by an American citizen for overtime pay for work done in excess of eight hours per day for a contractor on a construction project in the Middle East. *Filardo*, 336 U.S. at 283. The Supreme Court held that respondent was not entitled to receive overtime pay because the overtime law was "inapplicable to a contract for the construction of public works in a foreign country over which the United States has no direct legislative control." *Id*. at 290.

It is clear that the cases cited by Hertz are distinguishable from this matter in several ways. Here, Mr. Margulis is a U.S. citizen bringing an action pursuant to New Jersey state law against a U.S. corporation that initiated the practice that harmed him and benefitted from the same. Mr. Margulis made at least one reservation with Hertz here in the United States. This is simply a case about a United States citizen seeking to hold a United States corporation liable for its harmful conduct, despite the fact that Mr. Margulis rented the car abroad. It is not at all analogous to *Kiobel*, *Morrison*, *Georgiou*, *Aramco*, or *Filardo*.

D. Relevant Caselaw Favors Plaintiff's Claims.

Much more relevant to the instant case are three decisions **involving Hertz** that Hertz fails to mention at all: *Fogel*, *Loyle,* and *Downing*, discussed in Point I., *supra*. These cases address situations analogous to the one presented here: a U.S. citizen travels abroad, relies on the U.S. company Hertz to provide certain services, and Hertz attempts to convince the court that when it does business abroad, it is no longer the global brand Hertz, but rather is a disjointed mess of separate companies. Like the plaintiffs in *Fogel*, *Loyle* and *Downing*, Plaintiff reserved a car with Hertz in the United States for a rental in another country. His business with Hertz did not cease when he got on the plane departing the U.S. It continued through the entirety of the rental.

III. PLAINTIFF'S COMMON LAW CLAIMS EACH REST ON UNRESOLVED FACTUAL ISSUES THAT MUST BE DECIDED BY A JURY.

A. Whether Plaintiff Contracted with Hertz Depends on Whether Hertz Is Found to be a Single Global Entity.

Hertz moves for summary judgment on Mr. Margulis' breach of contract claim on the grounds that there is no contract between Hertz and Mr. Margulis. Def. MOL at 21. As detailed above, that fact is disputed, and a jury could certainly find that Hertz and its subsidiaries acted as a single entity. After all, Hertz has consistently represented to the SEC and its customers that it

rents cars in Europe, and other courts have held that Hertz must answer for claims relating to rentals in other countries. *See Loyle, supra.*, *Downing*, *supra*., *Fogel*, *supra.* Moreover, Hertz relies entirely on the McEvily Declaration in support of its argument that Hertz's only contact with Mr. Margulis was through Hertz.com and Hertz was not bound in any way by that contact. As noted in footnote 11, *supra*, this Declaration should be stricken.[14]

Hertz relies on the fact that it has not produced any contracts evidencing the relationship to show that Hertz and its subsidiaries do not operate as a single entity. As discussed above, the opposite inference can be drawn, particularly since Hertz provides no evidence in support of the argument.[15] Moreover, the actual evidence on the record refutes Hertz's position, since Hertz claims the DCC service as its own. *See* Pl.'s Response to Def. SOF ¶ 39.

While Hertz argues that a reservation is not a contract, *see* Hertz MOL at 22-23, it glosses over the fact of what it promises: a guaranteed rate. By then increasing that rate, without providing any service or anything of value in exchange for that increase, Hertz breaches that promise. Hertz's failure to honor its guaranteed rate constituted a breach of contract. *See Fellheimer v. Fairmont Hotels & Resorts, Inc.*, 2003 U.S. Dist. LEXIS 26733, at *8 (E.D. Pa. Nov. 19, 2003) (submission of "Hotel Reservation Form" created a contract between plaintiffs and hotel defendant). If Hertz does not want to guarantee that rate, and prefers to scam its customers who rent in Europe, it is free to do so, but it must say so when the reservation is made.

---

[14] *See also Downing, supra.* (citing McEvily testimony regarding Hertz's control of its subsidiaries).

[15] As noted in Point IV., *infra*, Hertz's own exhibits on this motion show that the locations in question are Hertz Corporate locations.

B. Plaintiff's Fraud Claim Is A Fact-Sensitive Inquiry.

Hertz argues that it did not make a material misrepresentation in misquoting the cost of its rentals to Plaintiff. Def. MOL at 27. As with the other causes of action, whether Hertz is entitled to summary judgment on Plaintiff's fraud claim turns on whether the conduct at issue is attributable to Hertz. Hertz relies, once again, on the fiction that it is separate from its corporate locations and that it cannot do anything about the overcharges. As explained in Point II., *supra*, Hertz operates as one single global entity and that the fraudulent conduct is of course attributable to Hertz. Indeed the arguments advanced by Hertz here are part of that fraud – *i.e.*, the company sneaks in charges that were never disclosed (and under no circumstances would be agreed to if they were properly disclosed) and then argues "it wasn't us, it was our subsidiary." Regardless, the only inquiry pertaining to this claim is whether the undisclosed fees were fraudulent – a fact-sensitive inquiry that must be left to the jury.

Hertz cites to caselaw that refers to what would be "reasonable for an average person." Def. MOL at 29. Surely an average person would expect that all fees would be disclosed on a form listing the applicable fees. Surely an average person would not expect that a fee would be buried in a document that was referred to by the back of another document that would be referred to by what he or she signed. The average renter certainly does not expect to be presented with what amounts to Russian nesting dolls, with each disclosure nested inside of a larger disclosure, until finally the DCC fee, in tiny print, is uncovered. The document Plaintiff signed does not refer to a fee. Questions of fact remain.

C. Hertz is Unjustly Enriched Because It Collects a Fee, in Exchange for Which It Provides No Service.

Hertz's practice of charging for Dynamic Currency Conversion, even when the customer has not asked for such a "service," has absolutely no benefit to consumers and results in a windfall

to Hertz. Of course, Hertz completely glosses over the reason why any reasonable renter would agree to Hertz's DCC "service." That is because there is no such reason. Hertz provides no service of value to the renter and is simply increasing its profits: that is the very essence of unjust enrichment.

The elements of an unjust enrichment claim are that the defendant received a benefit and that retention of the benefit would be unjust. *VRG Corp. v. GKN Realty Corp.*, 135 N.J. 539, 554 (1994). "The unjust enrichment doctrine requires that plaintiff show that it expected remuneration from the defendant at the time it performed or conferred a benefit on defendant and that the failure of remuneration enriched defendant beyond its contractual rights." *Id.* Hertz is simply wrong that Plaintiff has not satisfied the elements of an unjust enrichment claim. Def. MOL at 31.

Mr. Margulis conferred a benefit upon Hertz by paying the DCC fee, plus Hertz benefitted by charging him more than he would have been charged through his bank, had the charge been put through in the local currency. The "remuneration" that Mr. Margulis failed to get from Hertz was *any* benefit in return for using the currency conversion, or, more precisely, a charge that Hertz imposed upon him for what Defendant calls a "benefit" that he never asked for. It is hardly a "benefit" to Mr. Margulis to have to pay more than the market rate had Hertz not used its DCC feature when he never asked for or agreed to it.

Hertz's argument that Mr. Margulis is attempting to shift liability from one promisor or another is likewise incorrect. Def. MOL at 31. Liability for unjust enrichment depends upon some direct relationship between the parties. *Callano v. Oakwood Park Homes Corp.*, 91 N.J. Super. 105, 109 (App. Div. 1966). In *Callano,* the New Jersey Appellate Division rejected plaintiffs' unjust enrichment claim because they had "no dealings with defendant." *Id.* Here, by contrast, Mr. Margulis had direct dealings with Hertz. He booked his UK rental on Hertz.com and was

quoted a set price, in UK pounds, for that rental. However, because of the imposition of the currency conversion, which ultimately benefitted Hertz but provided absolutely no service for Mr. Margulis, he paid more than the price he was quoted.

Hertz's contention that Mr. Margulis' unjust enrichment claim is barred because of the existence of alleged contracts between Mr. Margulis and Hertz's foreign subsidiaries is also without merit. First, the doctrine that Hertz cites, that an unjust enrichment claim is barred if there is a contract relating to the same subject matter, presupposes that there is a *valid* contract addressing the subject matter. *In re Prudential Insurance Co. of American Sales Practices Litigation*, 975 F. Supp. 584, 622 (D.N.J. 1997). If the written contract is unenforceable, a plaintiff may pursue an unjust enrichment claim. *Id.* More to the point, the doctrine also presupposes a contract between the plaintiff and the defendant. *See, e.g., New York-Connecticut Development Corp. v. Blind-To-Go (U.S.) Inc.*, 449 N.J. Super. 542, 556 (App. Div. 2017) ("The parties are bound by their agreement, and there is no ground for implying a promise."); *Dandana LLC v. MBC FZ-LLC*, 507 Fed. Appx. 264, 270 (3d Cir. 2012) ("The parties are bound by their agreement, and there is no ground for implying a promise as long as a valid unrescinded contract governs the rights of the parties.").

With respect to this this portion of Hertz's argument, Hertz is talking out of both sides of its mouth. On the one hand, Hertz insists that there is no contract between Mr. Margulis and Hertz (*see* Def. MOL at 21-26), but at the same time, in order for a contract to bar Mr. Margulis' unjust enrichment claims, there would have to be a contract between Mr. Margulis and Hertz. Hertz cannot have it both ways. Either there is or there is not a contract between Mr. Margulis and Hertz. If there is a contract, then Mr. Margulis has a breach of contract claim that should rise and fall on

its own merits. On the other hand, if there is no contract between Mr. Margulis and Hertz, then Mr. Margulis' unjust enrichment claim should proceed.

IV. HERTZ'S OWN DOCUMENTS PROVE TWO THINGS: THAT IT OPERATES AS A SINGLE ENTITY, AND THAT IT ENGAGES IN DECEPTIVE PRACTICES.

Even the Exhibits submitted by Hertz highlight the deception. Exhibit 1 is Hertz's 2013 Annual Report. The first page of that Exhibit indicates that "Hertz operates its car rental business" in Europe. It further states that Hertz "is at approximately 130 major airports in Europe." Ex. 1, ECF 170-1, at 3. The report continues: "We are one of the only car rental companies that has an extensive network of company-operated rental locations both in the United States and in all major European markets." Ex. A at 4.[16] Such language clearly indicates that there is only one Hertz, operating in numerous locations.

Exhibit 7 is the Plaintiff's Rental Record for his rental in Rome. The document shows, as one court described, "the Hertz name in its upper-left-hand corner, printed in its familiar slanted typography." *Fogel*, 141 A.D.2d at 376. The rental location is "Hertz Roma Fiumicino Apt." Ex. 7, ECF 170-7, at 2. There is no indicated charge for DCC and the "Total estimated rental charges" does not include it.

Exhibit 13 is an email confirming Plaintiff's car rental reservation in the UK. The email is from "Hertz Reservations" from the Hertz.com server. The subject line reads "My Hertz Reservation." Ex. 13, ECF 170-13, at 2. The email indicates the "Rate is guaranteed" and DCC charge is not listed among the "Optional Items at the Counter." *Id*. The email says, "Location Type: Corporate," meaning this is a Hertz-owned location. Lastly, the email is from "The Hertz Corporation." *Id*. at 5.

---

[16] Curiously, although Hertz submitted certain pages from its 2013 Annual Report, it failed to include the page with this quotation.

Exhibit 14 is a second email confirming that Plaintiff has checked in for his car rental in the UK. Again, there is no indication that Plaintiff is doing business with anyone other than Hertz – there is no mention of Hertz UK or any other subsidiary. The email is from "The Hertz Corporation" and the subject line is again "My Hertz Reservation." Ex. 14, ECF 170-14, at 2. The email refers to the pickup location as a "branch." The discount code is a "Hertz CDP." *Id*. The email reiterates the "rate is guaranteed." *Id*. at 4. Plaintiff is directed to "call Hertz" with questions about form of payment. If Hertz wanted to notify renters that it was *not* the entity renting the car, and that the consumer was actually doing business with a subsidiary, these emails would have been a good place to do it, but Hertz chose not to.

Exhibit 15 is Plaintiff's Rental Record for his rental in the UK. Again, "the Hertz name . . . printed in its familiar slanted typography," *see Fogel*, *supra*, appears in large letters appears at the top. The pick-up and return location reads: "Hertz Holyhead Port." Ex. 15, ECF 170-1, at 2. Again, DCC is not listed among the additional charges and again the "Total estimated rental charge" does not include the DCC charge. *Id*. The second page of the Exhibit is a Customer Declaration. Though it does have an address on the top for Hertz UK, the document speaks of the customer's "responsibility to Hertz." *Id*. at 3.

Exhibit 16 is Plaintiff's Customer Statement of Charges for his UK rental. Again, "Hertz," printed in its familiar slanted typography, appears in large letters at the top right. This is the first document that gives a hint that there would be a charge for DCC, though the charge itself is concealed by reference to an exchange rate: See "Exchange Rate (including Conversion Charge)." Ex. 16, ECF 170-16, at 2. The document further misleads when it states, "Exchange Rate Source Reuters," which conveys that the actual rate listed above is from an independent news source, *Reuters*, when it is in fact inflated by the DCC charge. The second page in the Exhibit is an invoice.

Id. at 6. At the top center in large letters it reads "Hertz Invoice." The bottom also shows "Hertz" in larger font next to "Customer-Relations UK." In smaller letters on the top right, it lists the Renting Company as "Hertz UK Ltd." Even if this were proper notice to the customer, it is only given at the end of the rental process – *i.e.*, after it's too late to dispute the charge. Hertz refuses to reverse the currency charge after the rental. *See* Pl.'s Response to Def. SOF ¶ 20.

CONCLUSION

Anyone who reserves a car from Hertz on the internet, or by calling Hertz's reservation line, for a rental in Europe, or who looks at Hertz's Annual Reports, understands that Hertz operates its worldwide car rental business as a single entity. Nothing in Hertz's Motion for Summary Judgment establishes as a matter of law otherwise.

For the reasons discussed above, this Court should deny Hertz's motion for summary judgment and allow Plaintiff to present his case to a jury.

CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO
Attorneys for Plaintiff

By: /s/ James E. Cecchi
JAMES E. CECCHI

DATED: October 4, 2019

Oren S. Giskan
Amy E. Robinson
GISKAN SOLOTAROFF &
ANDERSON LLP
90 Broad Street, 10th Fl.
New York, New York 10004
(212) 847-8315