

**SUMMONS
(CITACION JUDICIAL)**

NOTICE TO DEFENDANT: FLIGHTCAR INCORPORATED, and DOE 1
(AVISO AL DEMANDADO): through DOE 50,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

YOU ARE BEING SUED BY PLAINTIFF: THE PEOPLE OF THE STATE
(LO ESTÁ DEMANDANDO EL DEMANDANTE): OF CALIFORNIA, by
and through Dennis J. Herrera, City Attorney for the
City and County of San Francisco

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
400 McAllister Street, Room 103
San Francisco, CA 94102

CASE NUMBER:
(Número de Caso):

CGC-13-531807

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
DENNIS J. HERRERA, City Attorney (SBN 139669) 415-554-3887 415-437-4644
JENNIFER E. CHOI, Deputy City Attorney (SBN 184058)
1390 Market Street, Sixth Floor
San Francisco, CA 94102

KEITH D. TOM

DATE: **MAY 31 2013**
(Fecha)

CLERK OF THE COURT

Clerk, by _____, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):

[SEAL]

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ENDORSED
FILED
San Francisco County Superior Court

MAY 31 2013

CLERK OF THE COURT
By: KEITH D. TOM
Deputy Clerk

Attorneys for Plaintiff
PEOPLE OF THE STATE OF
CALIFORNIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED JURISDICTION

THE PEOPLE OF THE STATE OF
CALIFORNIA, by and through Dennis J.
Herrera, City Attorney for the City and County
of San Francisco,

Plaintiff,

vs.

FLIGHTCAR INCORPORATED, and DOE 1
through DOE 50,

Defendants.

Case No. **CGC-13-531807**

COMPLAINT FOR INJUNCTIVE AND OTHER
RELIEF

Type of Case: (42) Other Complaint

The PEOPLE OF THE STATE OF CALIFORNIA, by and through San Francisco City
Attorney DENNIS J. HERRERA ("People"), file their Complaint against Defendants FLIGHTCAR
INCORPORATED, and DOE ONE through DOE FIFTY (collectively "Defendants" or "FlightCar").
The People hereby allege as set forth below:

INTRODUCTION

1. This action arises out of FlightCar's unlawful and unfair operation of a rental car
company and parking lot catering to individuals traveling to and from the San Francisco International

Airport (“SFO”). All other similarly situated businesses comply with SFO’s permitting and fee requirements, which are aimed at regulating the heavy volume of travelers and commercial businesses that utilize SFO and providing revenues necessary for SFO to maintain the SFO facilities such businesses use and the SFO operations from which such businesses derive commercial benefit. Despite multiple requests by SFO to operate lawfully and fairly, FlightCar refuses to comply and claims that it is not subject to SFO’s requirements.

PARTIES

4. Defendant FlightCar Incorporated (“Defendant” or “FlightCar”) is a corporation organized under the laws of Delaware with its principal place of business located at 960 David Street, Burlingame, California 94010. FlightCar also lists P.O. Box 985, Millbrae, California 94430 as its address in corporate filings with the California Secretary of State. From February 2013 to the present, FlightCar has owned and operated a rental car company and parking lot for individuals traveling to and from SFO.

6. At all times herein mentioned, each Defendant was an agent, servant, employee, partner, franchisee and joint venturer of each other Defendant and at all times was acting within the course and scope of said agency, service, employment, partnership, franchise and joint venture.

1 Actions taken, or omissions made, by FlightCar's employees or agents in the course of their
2 employment or agency for FlightCar are considered to be actions or omissions of FlightCar for the
3 purposes of this Complaint.

4 **JURISDICTION AND VENUE**

5 7. The San Francisco Superior Court has jurisdiction over this action. FlightCar conducts
6 unlawful and unfair business practices in the City and County of San Francisco ("City"), and the City
7 Attorney has express authority under Business and Professions Code section 17204 to prosecute this
8 case on behalf of the People of the State of California.

9 8. Venue is proper before this Court because FlightCar does business in the City.
10 Specifically, FlightCar directs advertising to City residents through its website, billboards on highways
11 in the City or between SFO and the City, and radio ads, conducts reservation and payment transactions
12 for its rentals with City residents online and over the phone, accepts cars from City residents who are
13 traveling out of SFO, and rents cars to City tourists. FlightCar also touts its association with SFO in
14 its advertisements.

15 **GENERAL ALLEGATIONS**

16 9. SFO is a world renowned international airport owned by the City and County of San
17 Francisco. The Airport Commission is a department of the City and County of San Francisco and
18 operates and manages SFO.

19 10. SFO is one of the busiest airports in the world. In 2012, over 44 million passengers
20 traveled through SFO. Each day, tens of thousands of individuals use SFO's 1.5 miles of roadways.

21 11. Given the huge number of passengers and employees of SFO and airport-related
22 businesses who traverse SFO's roadways and facilities, SFO must regulate the use of its roadways and
23 facilities to reduce traffic congestion so as to enhance the experience of SFO travelers, increase the
24 economic productivity of SFO and all who use it, advance public safety and reduce pollution and
25 environmental degradation. Among other things, SFO has invested in the construction of the AirTrain,
26 a light rail transit system that connects all SFO terminals, terminal garages, the BART station, and the
27 Rental Car Center. SFO encourages passengers and employees to use the AirTrain and requires all
28 rental car companies to transport customers to the terminals via the AirTrain by dropping off their

1 passengers at the Rental Car Center instead of using buses, taxis or other low occupancy vehicles. In
2 2012, the AirTrain carried almost eight million individuals. By requiring and promoting use of the
3 AirTrain, over taxis, limousines, vans, buses and other vehicles, to transport passengers to and from
4 SFO terminals, SFO significantly reduces traffic congestion and associated pollution.

5 12. SFO's regulations are mandated by the federal government. SFO receives federal
6 funding annually for capital improvements. In order to be eligible for federal funding, SFO must
7 comply with particular requirements, such as imposing a schedule of charges for use of its facilities
8 and services that generates sufficient income to be as financially self-sustaining as possible. 49 U.S.C.
9 Section 47107(a)(13)(A). California Government Code Section 50474 also authorizes SFO to
10 regulate the use of its roadways and other facilities and impose fees on those who use them.

11 13. As part of this regulation, SFO requires companies specializing in the transport of
12 travelers to and from SFO, including on and off-Airport rental car companies, to obtain permits, pay
13 fees, and follow designated traffic pathways. A rental car company is defined as a person or entity in
14 the business of renting passenger vehicles to the public. Cal. Civil Code §1936(a)(1). In fiscal year
15 2011-2012, SFO collected over \$94 million dollars in fees from rental car companies operating both
16 on and off SFO property. The fees constitute more than 10% of SFO's annual operating budget.

17 14. FlightCar operates a rental car company and parking lot for individuals traveling into
18 and out of SFO. FlightCar's business model is as follows: travelers flying out of SFO leave their cars
19 at FlightCar's rental facility in Burlingame, California. FlightCar transports the traveler to SFO and
20 drops them off curbside at the terminal. In exchange for free parking and other monetary
21 compensation, FlightCar rents departing travelers' cars to arriving travelers who fly into SFO.
22 FlightCar picks up the arriving passengers curbside at the terminal and transports them to its rental
23 facility where they pick up the car they have rented. The cars are returned in time for the owner's
24 return. The returning traveler is picked up by FlightCar at the terminal and brought back to
25 FlightCar's rental facility and retrieves his or her car. All contractual transactions between FlightCar
26 and its customers are conducted online or over the phone.

27 15. FlightCar advertises its business on its website, through radio spots, and on billboards
28 on the highways leading to SFO. FlightCar's advertising targets individuals traveling to and from

1 SFO, including San Francisco residents. FlightCar's advertising also emphasizes its association with
2 SFO and highlights its low rental rates.

3 16. FlightCar's website boasts the following:

- 4 • "We have the cheapest rentals. Guaranteed. Prove us wrong and get a free rental."
- 5 • "Rent a sweet ride."
- 6 • "We're revolutionizing the airport parking and car rental industries one car at a time –
7 join us by listing your car."
- 8 • "FlightCar lets people parking at the airport rent their vehicles out to other travelers."

9 17. On the same website, FlightCar's Mission Statement is as follows, "our founders,
10 former students from Harvard, Princeton, and MIT, started FlightCar with a goal to improve both the
11 airport parking and rental experiences for ordinary travelers."

12 18. On its billboards, FlightCar advertises "Get free parking at SFO" and "Now at SFO."

13 19. FlightCar began operating in February 2013. At the time, FlightCar conducted its
14 operations at a parking garage on SFO property. Before beginning operations, FlightCar neglected to
15 obtain any of the required permits or pay any of the required fees of SFO. SFO notified FlightCar of
16 its obligations under the law and required FlightCar to comply. FlightCar refused to comply. Instead,
17 FlightCar moved its operations off-airport to a lot four miles south of SFO in Burlingame, California,
18 and notified SFO that it was not a rental car company subject to SFO's regulations. SFO notified
19 FlightCar that as an off-Airport rental car company that catered primarily to individuals traveling to
20 and from SFO, FlightCar was still subject to its regulations.

21 20. FlightCar's obligations include obtaining the requisite SFO permits and paying the
22 requisite fees described in SFO Rules and Regulations. For example, FlightCar must obtain a
23 Commercial Ground Transportation Permit to transport its customers to and from SFO. The purpose
24 of this permit is to enable SFO to regulate and manage the commercial traffic that travels through
25 SFO. FlightCar must also transport its customers from its rental facility not to the curbside departure
26 or arrival areas in front of the terminals, but instead to the Airport Rental Car Center (on SFO
27 property) and to require the customers to use the AirTrain to get to and from airport terminals.
28 Finally, FlightCar must obtain an off-airport rental car business permit through which it agrees to

1 abide by SFO's regulations, including payment to SFO of 10% of its gross profits and a \$20
2 transportation fee for each rental car transaction.

3 21. FlightCar's move to a location off-airport does not relieve FlightCar of its obligations
4 to SFO. Airports are authorized to charge fees to rental car companies that serve the airport's
5 passengers whether their retail facilities or cars are located on or off airport property. *Alamo Rent-A-*
6 *Car, Inc. v. Board of Supervisors of Orange County, et al.* (1990) 221 Cal.App.3d 198. The fees are
7 authorized even for off-airport rental car companies because such companies serve the airport's
8 passengers and thus derive a commercial benefit from the airport. *Id.*, at 208. FlightCar's customer
9 base is comprised primarily of passengers traveling in and out of SFO, and, as a result, FlightCar
10 derives a significant commercial benefit from SFO. Government Code Section 50474.1 also
11 specifically authorizes SFO to impose fees on rental car companies for the costs associated with the
12 construction, maintenance and operation of the AirTrain.

13 22. FlightCar has nevertheless refused to comply with SFO's requirements. It insists that it
14 is not a rental car company subject to SFO's regulations. FlightCar also claims that it is not obligated
15 to transport its customers to the terminal via AirTrain because it arranges for them to be picked up and
16 dropped off curbside at the terminals.

17 23. FlightCar continues to operate its business from the Burlingame facility. FlightCar has
18 no permits, pays no fees, and drops off its customers curbside at the airport terminal, in violation of
19 SFO regulations.

20 24. Other than FlightCar, all off-airport rental car companies that primarily serve SFO
21 passengers, but otherwise have no presence on SFO property, comply with SFO's permitting and fee
22 requirements. In 2012, these other off-airport rental car companies paid over \$2 million dollars in
23 profit fees and transportation fees to SFO.

24 25. As a result of FlightCar's unfair and unlawful business practices, FlightCar is able to
25 charge lower prices on its rentals, gaining an unfair advantage over similarly situated businesses that
26 are forced to charge higher prices in order to operate lawfully and fairly.

27 26. On May 23, 2013, FlightCar launched identical operations at Logan International
28 Airport, in Boston, Massachusetts. As here, FlightCar has no permits and pays no fees to Logan for

1 the privilege of serving those who travel in and out of the airport, in violation of Logan's rules and
2 regulations. FlightCar has represented that it intends on launching operations at additional airports in
3 the near future.

4 **CAUSE OF ACTION**
5 **FOR UNLAWFUL AND UNFAIR BUSINESS PRACTICES BROUGHT BY PLAINTIFF**
6 **PEOPLE OF THE STATE OF CALIFORNIA AGAINST ALL DEFENDANTS**
7 **(California Business and Professions Code Sections 17200-17210)**

8 27. The People hereby incorporate by reference paragraphs 1 through 26 as though fully set
9 forth herein.

10 28. The People bring this cause of action in the public interest in the name of the People of
11 the State of California, pursuant to Business and Professions Code Sections 17200, 17204 and 17206
12 in order to protect consumers and competitors of the services provided by FlightCar from the unlawful
13 and unfair business practices committed by FlightCar within the City and County of San Francisco,
14 State of California.

15 29. The violations of law described herein have been and are being carried out in part
16 within the City and County of San Francisco. The actions of FlightCar are in violation of the laws and
17 public policies of the City and County of San Francisco and the State of California, and are inimical to
18 the rights and interest of the general public.

19 30. FlightCar is now engaging in and, for a considerable period of time and at all times
20 pertinent to the allegations of this Complaint, has engaged in unlawful business practices prohibited by
21 California's Unfair Competition Law by operating in violation of the following laws:

- 22 • Rule 4.4 of the SFO Rules and Regulations by failing to follow SFO's designated
23 traffic routes for rental car companies.
- 24 • Rule 4.7(a) of the SFO Rules and Regulation by failing to apply for and obtain a
25 Commercial Ground Transportation Operating Permit from SFO.
- 26 • Rule 4.7(c)(2) of the SFO Rules and Regulation by failing to pay the fees required of
27 off-airport rental car companies.
- 28 • California Government Code Section 50474.1 by failing to pay fees required of off-
airport rental car companies.

1 31. FlightCar is now engaging in and, for a considerable period of time and at all times
2 pertinent to the allegations of this Complaint, has engaged in unfair business practices prohibited by
3 California's Unfair Competition Law as follows:

- 4 • By dodging SFO's fees, FlightCar has been able to charge lower prices for rentals than
5 similarly situated rental car companies.
- 6 • By actively promoting an association with SFO and targeting its advertising to SFO
7 passengers, FlightCar has incurred a substantial commercial benefit, without having to
8 pay any of the lawfully imposed fees other rental car companies pay to obtain the same
9 benefit.
- 10 • By actively promoting and advertising its business in a manner that is untrue and
11 misleading.
- 12 • By targeting SFO customers while refusing to pay SFO's fees, FlightCar has been
13 unjustly enriched at the expense of SFO and deprived SFO of funds needed for its
14 operation.

15 32. As a direct and proximate result of the foregoing acts and practices, FlightCar has
16 received income, profits, and other benefits, which they would not have received if FlightCar had not
17 engaged in the violations of the UCL described in this Complaint.

18 33. As a direct and proximate result of the foregoing acts and practices, FlightCar has
19 obtained a competitive unfair advantage over similar businesses that have not engaged in such
20 practices.

21 34. The People have no adequate remedy at law in that damages are insufficient to protect
22 the public from the harm caused by the conditions described in this Complaint.

23 35. Unless injunctive relief is granted to enjoin the unfair and unlawful business practices
24 of FlightCar, the People will suffer irreparable injury and damage.

25 36. By engaging in unfair and unlawful business practices described herein, FlightCar is
26 subject to civil penalties in the amount of up to \$2,500.00 per violation, pursuant to California
27 Business and Professions Code Section 17206.

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PRAYER

WHEREFORE, the People pray that:

Declaratory Relief

1. FlightCar be declared to have engaged in unfair and unlawful business acts and practices in violation of California Business and Professions Code Sections 17200-17210;

Injunctive Relief

2. FlightCar be enjoined and restrained from operating as an off-airport rental company and parking lot until FlightCar fully complies with SFO's permitting and fee requirements;

3. Pursuant to California Business and Professions Code Section 17203-17204, FlightCar, its agents, officers, managers, representatives, employees, and anyone acting on its behalf, and their heirs, successors, and assignees be enjoined from committing unlawful and unfair business practices in their operation of FlightCar;

4. FlightCar be enjoined from spending, transferring, encumbering, or removing from California any money received for the unfair and unlawful acts alleged in the Complaint;

Penalties

5. Pursuant to Business and Professions Code Section 17206, FlightCar be ordered to pay a civil penalty of up to \$2,500.00 for each act of unfair and unlawful competition in violation of Business and Professions Code Sections 17200-17210;

6. FlightCar be ordered to pay restitution for money obtained through an unfair business practice to those persons in interest from whom the property was taken or wrongfully withheld, including SFO, pursuant to California Business and Professions Code Section 17203 and *People v. Beaumont Investment, Ltd., et al.* (2003) 111 Cal.App.4th 102, 134-136;

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1 **Fees and Costs**

2 7. The People be awarded their costs incurred herein pursuant to Code of Civil Procedure
3 Section 1032; and

4 8. the Court grant such other and further relief as this Court should find just and proper.

5 Dated: 5/31/13

6 DENNIS J. HERRERA
7 City Attorney
8 YVONNE MERÈ
9 Chief Attorney
 JENNIFER E. CHOI
 Deputy City Attorneys

10 By: 
11 JENNIFER E. CHOI

12 Attorneys for Plaintiff
13 PEOPLE OF THE STATE OF CALIFORNIA