

## **SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the “Settlement Agreement”) is entered into by and between Plaintiff Dan Golka (“Plaintiff” and/or “Class Representative”) for himself and the Settlement Class Members (as defined below) and Orange County Transportation Authority, Darrell Johnson and Lori Donchak (collectively “OCTA”) and Cofiroute USA, LLC (“Cofiroute”) (OCTA and Cofiroute are referred to collectively herein as “Defendants”). Plaintiff and Defendants, the Parties to the Settlement, are referred to collectively in this Settlement Agreement as the “Parties,” and singularly as “Party.”

### **I. RECITALS**

**1.01** This Settlement Agreement concerns claims brought in a consolidated action, comprised of two related putative class actions. Dkt. 60. Plaintiff Borsuk filed the first action in the Superior Court of the State of California on October 2, 2015, which was subsequently removed on February 16, 2016 and assigned Case No. 8:16-cv-00262 AG (JCGx). On May 23, 2016, Plaintiff Mahda filed the second action in the Central District of California (the “Court”), assigned Case No. 8:16-cv-00940 AG (KESx), and Plaintiffs Quarles and Carpenter subsequently stipulated on June 10, 2016 to dismiss their separately filed lawsuit and join the *Mahda* action as named plaintiffs. Dkt. 57. On August 9, 2016, the Court consolidated the two actions and captioned the consolidated action as *In Re Toll Roads Litigation*, Case No. 8:16-cv-00262-AG (JCGx) (the “Litigation”). Dkt. 60. Plaintiffs Coulter, Golka, Myers, and Watkins were subsequently added as named plaintiffs in the consolidated action. Dkt. 61.

**1.02** The operative Complaint is the Corrected First Amended Consolidated Class Action Complaint (Dkt. 119-1), filed on January 19, 2017 (“Complaint”). The Complaint alleged violations of (i) 42 U.S.C. § 1983 for violation of the 8th and 14th Amendments (excessive fines); (ii) Article I, § 17 of the California Constitution (excessive fines); (iii) 42 U.S.C. § 1983 for violation of the 14th Amendment (due process); (iv) Article I, § 7 of the California Constitution (due process); (v) California Streets and Highways Code § 31490 (“Section

31490”); (vi) Article I, § 1 of the California Constitution (right to privacy); (vii) California Civil Code § 1750 *et seq.*; (viii) California Business and Professions Code § 17200 *et seq.*; and (ix) California Civil Code § 1788 *et seq.*; and (x) a claim for negligence. The Court granted a motion for judgment on the pleadings dismissing plaintiffs’ claim against Defendants under California Civil Code § 1788 *et seq.*, and granted summary judgment dismissing plaintiffs’ claims against OCTA and Cofiroute under 42 U.S.C. § 1983 for violation of the 14th Amendment and Article I, § 7 of the California Constitution (due process), based on the facial validity of their enforcement procedures.

**1.03** Plaintiffs filed a motion for class certification on April 23, 2018. Dkt. 349. Plaintiffs moved to certify two classes, a “Penalty Class” for their first, second, third, fourth, seventh, and eighth causes of action, and a “Privacy Class” for their fifth and sixth causes of action. On July 31, 2018, the Court certified a class for plaintiffs’ fifth claim under Section 31490 and appointed Class Counsel. Dkt. 439. The Court issued a modified order on October 3, 2018, correcting references to California Route 71 to California Route 73. Dkt. 501. The Ninth Circuit denied Defendants’ 23(f) petition for permission to appeal the Court’s class certification decision. As to Defendants, the start date of the Class Period is June 29, 2015. *Id.* Notice to the Class has not yet been given under FRCP 23(c). On January 17, 2020, the Court entered an order ruling in favor of Defendants on three of the four Section 31490 claims asserted against them, and reserving judgment on the fourth Section 31490 claim. Dkt 566.

**1.04** Defendants deny all material allegations contained in the Complaint. Defendants further contend that the allegations contained in the Complaint are not amenable to class certification. Nevertheless, given the risks, uncertainties, burden, and expense of continued litigation, Defendants have agreed to settle all claims alleged in the Complaint on the terms set forth in this Agreement, subject to Court approval.

**1.05** This Settlement Agreement resulted from extensive, good faith and arm’s-length settlement negotiations conducted over the course of approximately one-year, including two in-person mediation sessions, an all-day session involving all of the parties to the Litigation held on

February 25, 2019 before Robert Kaplan, Esq., a neutral mediator, and a second in-person, all-day session between plaintiffs Golka and Coulter, and Defendants OCTA and Cofiroute held on March 2, 2020 before Mr. Kaplan.

**1.06** The Parties understand, acknowledge, and agree that the execution of this Settlement Agreement constitutes the settlement and compromise of disputed claims as it pertains to Defendants OCTA and Cofiroute only. This Settlement Agreement is inadmissible as evidence against any of the Parties except to enforce the terms of the Settlement Agreement and is not an admission of wrongdoing or liability on the part of any Party to this Settlement Agreement. The Parties desire and intend for this Settlement Agreement to constitute a full, complete, and final settlement and resolution of all existing disputes and claims between them as set forth herein.

**1.07** The Settlement contemplated by this Settlement Agreement is subject to preliminary and final approval by the Court, as set forth herein. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

**1.08** In exchange for the release of claims as described in this Settlement Agreement, the covenant not to sue, waiver of appeal rights, and entry of judgment in favor of OCTA and Cofiroute on certain of the claims asserted against them and dismissal with prejudice of remaining claims, among other terms of the Settlement, this Settlement Agreement provides for the following consideration, as described in Section 12: (a) a settlement cash payment of \$1,000,000; (b) a waiver of \$40 million in outstanding toll violation penalties sent to a third-party debt collector; and (c) non-monetary relief.

**1.09** This Settlement Agreement is not intended to, and does not, resolve any of the following claims:

- The claims expressly asserted in the January 6, 2020 First Amended Complaint on file in the case entitled *Mathew Skogebo et al., vs. Cofiroute USA, LLC, et al.*, Orange County Superior Court Case No. 30-2019-01118474;

- The claims expressly asserted in the January 13, 2020 Second Amended Complaint on file in the case entitled *Harvey J. Thompson, et al., vs. Cofiroute USA, LLC, et al.*, Orange County Superior Court Case No. 30-2019-01108804; and

- The claims expressly asserted in the January 3, 2020 Corrected First Amended Complaint on file in the case entitled *Sanket Vinod Thakur, et al., vs. Cofiroute USA, LLC, et al.*, United States District Court, Central District of California, Case No. 8:19-CV-02233 ODW (JDEx).

## II. DEFINITIONS

**2.01** “Agreement” means this Settlement Agreement and Release between Plaintiff and Defendants and each and every exhibit attached hereto.

**2.02** “CAFA Notice” refers to the notice pursuant to the Class Action Fairness Act, 28 U.S.C. § 1715(b) to be provided by the Class Administrator pursuant to Section 8.04.

**2.03** “Cash Award” means a cash payment from the Settlement Fund to a Cash Distribution Class Member, as calculated under Section 13.02.

**2.04** “Class Administration” means the activities of the Class Administrator consistent with the terms of this Settlement.

**2.05** “Cash Settlement Amount” means the sum of \$1,000,000.

**2.06** “Class Administrator” means Epiq Class Action & Claims Solutions, Inc.

**2.07** “Claims Deadline” means eighty-four (84) calendar days after the Settlement Notice Date.

**2.08** “Class Counsel” means Schonbrun Seplow Harris, Hoffman & Zeldes, LLP, Lindemann Law Firm, APC, and Cuneo Gilbert & LaDuca LLP, as designated by the Court.

**2.09** “Class Notice” means any type of notice that has been or will be provided to the Settlement Class pursuant to the Preliminary Approval Order and any additional notice that

might be ordered by the Court.

**2.10** “Class Period” means from June 29, 2015 to the Settlement Class Period End Date.

**2.11** “Class Representative” means Plaintiff Dan Golka.

**2.12** “Court” means the U.S. District Court for the Central District of California and the federal judge assigned to oversee the Litigation and Settlement thereof.

**2.13** “Defendants” are OCTA and Cofiroute.

**2.14** “Effective Date” means the date when the Settlement becomes effective after the Judgment approving it has become final, as defined in Section 11.

**2.15** “Exclusion Deadline” means eighty-four (84) calendar days after the Settlement Notice Date.

**2.16** “Final Approval Hearing” means the hearing held by the Special Master to determine whether to recommend that the Court finally approve the Settlement set forth in this Agreement as fair, reasonable and adequate pursuant to FRCP 23(e).

**2.17** “Final Approval Order” means the order to be submitted to the Court in connection with the Final Approval Hearing, substantially in the form attached hereto as **Exhibit C**.

**2.18** “Final Distribution Date” means the earlier of (i) the date as of which all the checks for Cash Awards have been cashed, or (ii) 210 calendar days after the date on which the last check for a Cash Award was mailed.

**2.19** “Funding Date” means the date on which Defendants pay the Cash Settlement Amount to create the Settlement Fund pursuant to Section 12.01(b).

**2.20** “Key Questions Motion” shall mean the Motion to Decide Key Legal Questions (Dkt. 527) filed in the Litigation on June 10, 2019, on which the Court ruled on January 17, 2020. Dkt 566.

**2.21** “Litigation” means the action described by the Corrected First Amended Consolidated Class Action Complaint (Dkt. 119-1) filed in the Central District of California on

January 19, 2017, including the individual putative class actions filed by the plaintiffs that were consolidated in the Litigation.

**2.22** “Non-Party Toll Agencies” means any California toll agency that is not a party to this Agreement, including without limitation Los Angeles County Metropolitan Transportation Authority, San Diego Association of Governments (SANDAG), Bay Area Toll Authority, Golden Gate Bridge Highway District, Foothill/Eastern Transportation Corridor Agency, San Joaquin Hills Transportation Corridor Agency, Riverside County Transportation Commission, and any private contractors or vendors of the foregoing Non-Party Toll Agencies.

**2.23** “Objection Deadline” means eighty-four (84) calendar days after the Settlement Notice Date.

**2.24** “PII” shall have the same definition currently given to “Personally Identifiable Information” in Section 31490(o) of the California Streets and Highways Code, presently defined as “any information that identifies or describes a person including, but not limited to, travel pattern data, address, telephone number, email address, license plate number, photograph, bank account information, or credit card number.” The use of this definition shall not constitute an admission by any Party regarding the definition of the term “PII” or “Personally Identifiable Information” for any other purpose other than the approval and administration of this Settlement Agreement.

**2.25** “Preliminary Approval Order” means the proposed order to be submitted to the Court in connection with the Motion for Preliminary Approval, substantially in the form attached hereto as **Exhibit A**.

**2.26** “Released Claims” shall have the meaning given in Section 15.

**2.27** “Released Parties” means Defendants, and their current, former, and future parents, joint-ventures, predecessors, successors, affiliates, assigns, subsidiaries, divisions, or other affiliated or related corporate entities, and all of their respective current, future, and former employees, officers, directors, shareholders, assigns, agents, trustees, administrators, executors, insurers, contractors, vendors, service providers and attorneys. Except as provided in Section 15,

the Released Parties do not include the Non-Party Toll Agencies (including without limitation, those named in *Avelar v. Los Angeles County Metro et. al*, Case No. 19TCV11537, (Los Angeles Sup. Ct.), *In re Toll Bridges Litigation*, Case No. CGC-17-562613; CGC-18-5680844 (San Francisco Sup. Ct.), *Quintero v. San Diego Association of Governments et. al*, Case No. 37-2019-00017834-CU-NP-CTL (San Diego Sup. Ct.)) or 3M Company, BRiC, Rhonda Reardon, Michael Kraman, Craig Young, Scott Schoeffel and Ross Chun.

**2.28** “Request for Exclusion” means the written submission submitted by a Settlement Class Member to be excluded from the Settlement consistent with the terms of this Agreement.

**2.29** “Settlement” means the Settlement set forth in this Agreement between Plaintiff and Defendants and each and every exhibit attached hereto.

**2.30** “Settlement Class” means all of the following individuals whose PII was provided by OCTA or Cofiroute to an individual or entity described below between June 29, 2015 and the Settlement Class Period End Date as follows:

- Any person with a transponder account with a Non-Party Toll Agency whose PII, including the date, time and location of a toll transaction, was sent by Defendants to a Non-Party Toll Agency for purposes of collecting a toll incurred on the 91 Express Lanes (the “Interoperability Subclass”); and
- Any person: 1) whose license plate number was sent by Defendants to the California Department of Motor Vehicles or out-of-state equivalent, directly or through a subcontractor, in connection with more than one alleged toll violation incurred on the 91 Express Lanes (the “DMV Subclass”); 2) whose PII was sent to a car rental company in connection with an alleged toll violation incurred on the 91 Express Lanes (the “Car Rental Subclass”); and/or 3) whose PII, other than the amount of tolls and penalties owed, the violation number, or the violator’s account number, was sent to a third-party debt collector for collection of unpaid tolls and/or

toll violation penalties incurred on the 91 Express Lanes (the “Debt Collection Subclass”).

The following individuals are excluded from the Settlement Class: Current member of the OCTA Board of Directors, OCTA’s Chief Executive Officer, the General Manager of the 91 Express Lanes, OCTA’s 91 Express Lanes Project Manager III, and the attorneys representing OCTA and Cofiroute in this Litigation.

**2.31** “Settlement Class Period End Date” shall mean the date ten (10) days after the date when the District Court for the Central District of California enters the Preliminary Approval Order.

**2.32** “Settlement Class Members” means the Class Representative and those persons who are members of the Settlement Class.

**2.33** “Final Settlement Class Members” means all Settlement Class Members who do not submit a timely and valid Request for Exclusion from the Settlement Class.

**2.34** “Settlement Costs” means 1) all costs incurred by the Class Administrator in administering the Settlement, including the cost of providing Notice (as defined below), costs of class administration, and all other costs of administering the Settlement, 2) the fees and expenses paid or payable to the Special Master, including any amounts advanced by or on behalf of the Parties prior to entry of the Final Approval Order and paid to the Special Master for which the Parties shall be entitled to be reimbursed from the Settlement Fund, and 3) costs incurred by the Class Representative and his attorneys, including but not limited to their attorneys’ fees, expenses and costs of suit, expert or consultant fees, and any time, expense, or service payments paid to the Class Representative.

**2.35** “Settlement Fund” means the Cash Settlement Amount that Defendant OCTA will pay after the Effective Date, pursuant to this Agreement.

**2.36** “Settlement Notice” or “Notice” means the notices to be provided to Settlement Class Members as set forth in Section 8 including, without limitation, email notice, postcard mail notice, internet notice, and/or publication notice. The forms of the email notice, postcard mail



notice, internet notice, and publication notice are attached hereto collectively as **Exhibit B**.

**2.37** “Settlement Notice Date” means the date upon which notices begin to issue pursuant to Section 8. The Parties will use their best efforts to ensure that such notices begin to issue no later than sixty-one days after the Settlement Class Period End Date. For efficiency and to avoid confusion, in the event that the notices for the TCA and 3M settlements are scheduled to be issued after the sixty-one days, the notices for this Settlement shall be coordinated with those notices, so that all notices begin to issue around the same time.

**2.38** “Settlement Website” means the Internet website operated by the Class Administrator as described in Section 8.02.

**2.39** “91 Express Lanes” means that portion of the toll lanes situated within the median of California State Route 91 between the intersection of State Route 91 and State Route 55 and the boundary line of the County of Orange and County of Riverside, California.

### **III. ALL PARTIES RECOMMEND APPROVAL OF THE SETTLEMENT**

**3.01** Defendants’ Position on the Conditional Certification of Settlement Class. Defendants dispute that a litigation class would be manageable and further deny that a litigation class may properly be certified on the claims asserted in this Litigation. Solely for purposes of avoiding the expense and inconvenience of further litigation, Defendants do not oppose the certification of the Settlement Class for the purposes of this Settlement only. Defendants’ non-opposition to certification of the Settlement Class will not be deemed a concession that certification of a litigation class is appropriate, nor would Defendants be precluded from challenging class certification on any claims in further proceedings in this Litigation or in any other action if the Settlement is not finalized or finally approved. If the Settlement is not finally approved by the Court for any reason whatsoever, the certification of the Settlement Class will be void, and no doctrine of waiver, estoppel, or preclusion will be asserted in any litigated certification proceedings in this Litigation or any other action or judicial proceeding. No agreements made by or entered into by Defendants in connection with the Settlement or this

Agreement may be used by Plaintiff, any Settlement Class Member, or any other person to establish any of the elements of class certification in any litigated certification proceedings, whether in this Litigation or any other action or proceeding.

**3.02** Plaintiff's Belief in the Merits of Case. Plaintiff believes that the claims asserted in this Litigation have merit and that the evidence developed to date supports those claims. This Settlement will in no event be construed or deemed to be evidence of or an admission or concession on the part of Plaintiff that there is any infirmity in the claims asserted by Plaintiff, or that there is any merit whatsoever to any of the contentions and defenses that Defendants have asserted.

**3.03** Plaintiff Recognizes the Benefits of Settlement. Plaintiff recognizes and acknowledges, however, the expense and amount of time which would be required to continue to pursue this Litigation against Defendants, as well as the uncertainty and risk inherent in prosecuting such claims on behalf of the Settlement Class. Plaintiff has concluded that it is desirable that this Litigation and all Released Claims be fully and finally settled and released as set forth in this Settlement. Plaintiff and Class Counsel believe that the Settlement set forth in this Agreement confers substantial benefits upon the Settlement Class, is fair, reasonable and adequate, and that it is in the best interests of the Settlement Class to settle this Litigation and resolve the Released Claims as described herein.

#### **IV. ATTORNEYS' FEES, COSTS AND PAYMENT TO CLASS REPRESENTATIVE**

**4.01** Payment to Class Representative. The Class Representative will ask the Court to award him a payment of up to \$5,000 for the time, effort, expense, and service that he personally invested in the Litigation.

**4.02** Settlement Independent of Award of Fees, Costs and Payment to Class Representative. Any awards of attorneys' fees, costs, and/or payment to the Class Representative are subject to and dependent upon the Court's approval. Any motion for award of such fees, costs and or payments will be filed no later than two weeks before the Objection and Exclusion

Deadlines, and the motion and all publicly filed supporting materials will be promptly posted on the Settlement Website. Class Counsel shall include all requests for fees or costs known to Class Counsel for services that have been provided on behalf of or for the benefit of Plaintiff or any Settlement Class Member, including but not limited to all counsel listed on the Court's docket as current or former counsel for any of the plaintiffs in this Litigation, and shall give notice of such motion to said attorneys and/or law firms to provide them an opportunity to assert any claimed rights to attorneys' fees and costs that they may have in this Litigation. Class Counsel represent and warrant that they are not aware of any attorneys who have provided any legal services to any of the plaintiffs or members of the Settlement Class in connection with the claims asserted in this litigation, other than those to whom they will give notice. This Settlement is not dependent or conditioned upon the Court's approving, in whole or in part, Plaintiff's requests for an award of attorneys' fees, costs, or payments to the Class Representative. If the Court denies Plaintiff's request(s) or awards less than the amount(s) sought, this Settlement will continue to be effective and enforceable by the Parties.

## V. PRELIMINARY APPROVAL

**5.01** Order of Preliminary Approval. As soon as practicable after the execution of this Agreement, Plaintiff will move the Court for entry of the Preliminary Approval Order in substantially the form attached as **Exhibit A**. Pursuant to the motion for preliminary approval, Plaintiff will request that:

- a. the Court conditionally certify the Settlement Class for purposes of this Settlement only and appoint Class Counsel (continuing their role, for purposes of the Settlement);
- b. the Court preliminarily approve the Settlement and this Agreement under FRCP 23(e) as fair, reasonable and adequate and within the reasonable range of possible final approval;
- c. the Court approve the forms of Notice and find that the Notice program set

forth herein constitutes the best notice practicable under the circumstances and satisfies due process and FRCP 23(e);

d. the Court orders OCTA and Cofiroute to provide to the Class Administrator the “Settlement Class Member Information” in accordance with Section 7.01;

e. the Court orders the Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills Transportation Corridor Agency (collectively “TCA”) to provide to the Class Administrator the “TCA Interoperability Subclass Member Information” in accordance with Section 7.02;

f. the Court orders that TCA, OCTA and Cofiroute’s compliance with the Court’s order to provide the Settlement Class Member Information and TCA Interoperability Subclass Member Information to the Class Administrator in accordance with this Agreement, including Sections 7.01 and 7.02, shall not be a violation of Section 31490 or any other federal, state or local constitution, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information, and issues an order enjoining any Settlement Class Member from filing or pursuing any claim or litigation against OCTA, Cofiroute, TCA, 3M Company, BRiC, and any other person or entity who provides information to the Class Administrator pursuant to the Preliminary Approval Order, and any of their respective officers, agents, employees and attorneys, asserting that any act taken in compliance with the obligations imposed by this Agreement, including Sections 7.01 and 7.02, the Preliminary Approval Order, and/or the Court ordered Class Notice requirements violates Section 31490 or any other federal, state or local constitution, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class Members and to otherwise implement this Settlement..

g. the Court specifically indicates its preliminary approval of Section 15 of this Settlement Agreement whereby the Final Settlement Class Members release TCA, OCTA, Cofiroute, 3M Company, BRiC, and any other person or entity who provides information to the Class Administrator pursuant to the Preliminary Approval Order, and any of their respective

officers, agents, employees and attorneys asserting that compliance with the obligations of this Agreement, the Preliminary Approval Order, and/or the Court approved class notice requirements violates Section 31490 or any federal, state or local constitution, ordinance, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class and to otherwise implement this Settlement..

h. the Court set the date and time for the Final Approval Hearing, which may be continued by the Court from time to time without the necessity of further notice; and,

i. the Court set the Claims Deadline, Objection Deadline, and Exclusion Deadline.

## **VI. APPOINTMENT OF CLASS ADMINISTRATOR**

**6.01. Appointment of Class Administrator.** Class Counsel will seek the Court's order appointing a Class Administrator. Given that the Class Administrator's duties include collecting and using PII obtained from OCTA and Cofiroute to provide notice of the Settlement to the Settlement Class, OCTA and Cofiroute shall have the right to approve or reject any proposed Class Administrator before Class Counsel seeks an order appointing such Class Administrator, but shall not unreasonably refuse Class Counsel's selection.

**6.02. Agreement to Terms of Settlement.** The Class Administrator will agree to all of the terms and conditions of this Agreement relating to the administration of the Settlement and will execute a copy of this Agreement indicating agreement to be bound by such terms.

**6.03 Duties of Third-Party Class Administrator.** The Class Administrator will be responsible for all matters relating to the administration of this Settlement, as set forth herein. Those responsibilities include, but are not limited to, giving notice, obtaining new addresses for returned mail, setting up and maintaining the Settlement Website and toll-free telephone number, fielding and responding to inquiries about the Settlement, acting as a liaison between Settlement Class Members and the Parties regarding claims information, directing the mailing of Cash

Awards to eligible Final Settlement Class Members, and any other tasks reasonably required to effectuate the foregoing. The Class Administrator will provide updates on the claims status to counsel for the Parties at least monthly. Counsel for the Parties and the Class Administrator will reach an agreement for the amounts to be paid to the Class Administrator for services rendered under this Settlement Agreement before any undertaking by the Class Administrator.

## **VII. SETTLEMENT CLASS MEMBER INFORMATION**

### **7.01. Settlement Class Member Information.**

a. To facilitate the Notice and Class Administration process, Plaintiff will request that the Preliminary Approval Order order OCTA and Cofiroute to provide to the Class Administrator, in an electronically searchable and readable format mutually acceptable to the Class Administrator, OCTA and Cofiroute, the following information to the extent the information is reasonably retrievable from Defendants' reasonably available and searchable data bases (maintained by Cofiroute): the names and the last known mailing addresses of the Settlement Class Members in the Debt Collection Subclass and whether the member is eligible for a Cash Award pursuant to Section 13.02 (the "Settlement Class Member Information").

b. OCTA and Cofiroute shall be obligated to provide Settlement Class Member Information to the Class Administrator pursuant to this Agreement if and only if the Court, as part of the Preliminary Approval Order: (1) orders OCTA and Cofiroute to provide the Settlement Class Member Information to the Class Administrator; (2) finds that the provision of Settlement Class Member Information to the Class Administrator pursuant to this Agreement and the Preliminary Approval Order does not violate Section 31490 or any other federal, state or local constitution, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information; (3) enters an order enjoining any Settlement Class Member from filing or pursuing any claim or litigation against OCTA, Cofiroute, or any of their respective officers, agents, employees or attorneys, or any other person or entity who provides information to the Class Administrator pursuant to the Preliminary Approval Order asserting that

compliance with the obligations imposed by this Agreement, the Preliminary Approval Order, and/or the Court approved Class Notice requirements violates Section 31490 or any federal, state or local constitution, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class Members and to otherwise implement this Settlement; and (4) specifically indicates preliminary approval of Section 15 of this Settlement Agreement whereby Final Settlement Class Members release any claim asserting that compliance with the obligations of this Agreement, the Preliminary Approval Order, and/or the Court approved Class Notice requirements violates Section 31490 or any federal, state or local constitution, ordinance, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class Members and to otherwise implement this Settlement.

c. The contract signed by the Class Administrator shall expressly require that any information relating to Settlement Class Members provided to the Class Administrator pursuant to this Agreement or Court ordered Class Notice requirements will be used solely for the purpose of providing notice to the Settlement Class Members, facilitating communication between the Class Administrator and Settlement Class Members about the Settlement and the Litigation, the administration and processing of claims and exclusions by the Class Administrator as described in Sections 8, 9 and 13 of this Agreement, and not for any other purpose. The Class Administrator will be contractually required to keep Settlement Class Member Information in strict confidence and not disclose such information to any person or entity, including Plaintiff or his attorneys, except to the extent such disclosure is expressly allowed in this Agreement, the Preliminary Approval Order or Final Approval Order.

d. The mailed postcard and emailed notice sent to Settlement Class Members and the long form notice on the Settlement Website shall include a statement explaining that their personally identifiable information was used pursuant to this Agreement, the Preliminary Approval Order and/or Court ordered Class Notice to provide notice of the Settlement.

e. The Class Administrator will certify that any Settlement Class Member Information in the Class Administrator's possession has been destroyed within ten (10) business days after the Final Distribution Date.

f. Defendants do not have any obligation to provide Settlement Class Member Information to Plaintiff or any of his attorneys, and neither the Preliminary Approval Order nor Final Approval Order shall provide otherwise.

**7.02. TCA Class Member Information.**

a. To further facilitate the notice and class administration process, Plaintiff will request that, as part of the Preliminary Approval Order, the Court order the TCA to provide to the Class Administrator, in an electronically searchable and readable format, the name and last known email address, or, if a last known email address is not available, the last known mailing address of any member of the Interoperability Subclass who had or has a FasTrak account with TCA and whose account was charged for a toll incurred on the 91 Express Lanes during the Class Period (the "TCA Interoperability Subclass Member Information") as such information is contained in TCA's reasonably available computerized account records.

b. Plaintiff will further request that the Court, as part of the Preliminary Approval Order, specifically indicates its preliminary approval of Section 15 of this Agreement whereby Final Settlement Class Members release TCA, BRiC, 3M Company, and any other person or entity who provides information to the Class Administrator and their respective officers, agents, employees and attorneys from any claim asserting that compliance with the obligations of this Agreement, the Preliminary Approval Order, and/or the Court approved Class Notice requirements violates Section 31490 or any federal, state or local constitution, ordinance, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class Members and to otherwise implement this Settlement and enters an order enjoining Settlement Class Members from filing or pursuing any claim or litigation against TCA, BRiC, 3M Company, and any other person or entity who provides information to the Class Administrator pursuant to the Preliminary



Approval Order, and any of their respective officers, agents, employees and attorneys, asserting that compliance with the obligations imposed by Sections 7.01 and 7.02 of this Agreement and/or Court ordered Class Notice requirements violates Section 31490 or any federal, state or local constitution, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class Members and to otherwise implement this Settlement.

c. The Class Administrator will certify that any TCA Interoperability Subclass Member Information in the Class Administrator's Possession has been destroyed within ten (10) business days after the Final Distribution Date.

## VIII. NOTICES

**8.01** Emailing & Mailing of Settlement Notice. By the Settlement Notice Date, the Class Administrator will begin to send the mailed postcard notice and email notice ("Direct Notice") as set forth in **Exhibit B**, or as otherwise approved by the Court, via: (1) electronic mail to all persons in the Settlement Class for whom the Class Administrator has been provided an email address as reflected in the Settlement Class Member Information and/or TCA Settlement Class Member Information; or (2) first class mail to all persons in the Debt Collection Subclass and TCA Interoperability Subclass for whom the Class Administrator has been provided a mailing address as reflected in the Settlement Class Member Information and/or TCA Settlement Class Member Information. The Direct Notice will advise Settlement Class Members of their ability to update their email address and mailing address with the Class Administrator.

a. Address Confirmation. The last known mailing address of Settlement Class Members who will be sent mailed postcard notice will be subject to confirmation or updating as follows: (1) the Class Administrator will check each mailing address against the United States Post Office National Change of Address Database before the initial mailing; (2) the Class Administrator will conduct a reasonable search to locate an updated address for Settlement Class Members whose postcard mailed Notice is returned as undeliverable; (3) the Class

Administrator will update addresses based on any forwarding information received from the United States Post Office; and (4) the Class Administrator will update addresses based on any requests received from Settlement Class Members.

b. Re-Mailing of Returned Settlement Notices. For all mailed postcard notices that are returned as undeliverable with a forwarding address, the Class Administrator will promptly re-mail postcard notice to such forwarding address. For all postcard notices returned without a forwarding address and for which the Class Administrator locates another address, the Class Administrator will promptly re-mail postcard notice to such other address.

**8.02** Internet Notice. By the Settlement Notice Date, the Class Administrator will maintain and administer a dedicated Settlement Website containing information about the Litigation, including Litigation and Settlement related documents. At a minimum, such documents will include the Complaint, the January 17, 2020 order on the Key Questions Motion, Settlement Agreement and attached exhibits, email notice, postcard notice, and when signed, the Preliminary Approval Order, all motions or other papers regarding final settlement approval, attorney's fees and costs, service award for the Class Representative, and the Final Approval Order. The Settlement Website will permit members of the Settlement Class who elect to do so to register online to receive (a) email notice that the Court has granted final approval of the Settlement, (b) updates and reminders on the deadlines to submit Requests for Exclusion and make Objections, and (c) the status of payments under the terms of the Settlement. The Settlement Website will be taken down and rendered inaccessible by the Final Distribution Date.

**8.03** Toll-Free Telephone Number. By the Settlement Notice Date, the Class Administrator will set up a toll-free telephone number for receiving toll-free calls related to the Settlement that will be maintained until the Exclusion Deadline. After the Exclusion Deadline, and for a period of ninety (90) calendar days thereafter, a recording will advise any caller to the toll-free telephone number that details regarding the Settlement may be reviewed on the Settlement Website.

**8.04** CAFA Notice. The Class Administrator will be responsible for preparing the

CAFA Notice in coordination with Defendants and for serving the required CAFA Notice within ten (10) days after the filing of the Preliminary Approval Motion.

**8.05** Publication Notice. The Class Administrator shall provide publication notice directing Settlement Class Members to the Settlement Website, as approved by Counsel for the Parties and the Court (the “Publication Notice”).

**8.06** Best Notice Practicable. The Parties agree that Notice requirements of this Agreement are the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class.

## **IX. EXCLUSIONS AND OBJECTIONS**

**9.01** Exclusions from the Settlement. Members of the Settlement Class who wish to exclude themselves from the Final Settlement Class must advise the Class Administrator by submitting a written Request for Exclusion by mail. The Request for Exclusion must be postmarked no later than the Exclusion Deadline. In it, the Settlement Class Member must state his or her full name and address and must state that he or she wishes to be excluded from the Settlement. Any member of the Settlement Class who submits a valid and timely Request for Exclusion will not be a Final Settlement Class Member and will not be bound by the terms of this Agreement. All Settlement Class Members who do not submit a timely, valid Request for Exclusion, however, will be bound by this Agreement and the Final Approval Order and Judgment, including the releases and covenant not to sue in Section 15 below. The Class Administrator will provide the Parties with a copy of each Request for Exclusion that it receives. The Class Administrator will also provide a list of all Settlement Class Members who timely and validly excluded themselves from the Settlement in its declaration filed with the Court in accordance with Section 10.01.

**9.02** Objections. Any Settlement Class Member who objects to this Settlement

("Objector") must file a written objection with the Court by the Objection Deadline ("Objection"). An Objection must state (1) the Objector's full name and address; (2) the Objector's account number with the OCTA or TCA, if one exists; and (3) any other proof of Settlement Class membership if such proof exists. The Objection must also state the reasons for the objection and indicate whether the Objector intends to appear at the Final Approval Hearing on his or her own behalf or through counsel. Any documents supporting the Objection must be attached to the Objection. Notwithstanding an Objector filing an Objection satisfying the above requirements, the Parties reserve the right to contest an Objector's status as a Settlement Class Member and standing to object to this Settlement and/or oppose the Objection. The Parties will have the right to obtain document discovery from and take the deposition of any Objector relevant to the objection. Any Objector who has timely filed an Objection and indicated an intent to appear may appear at the Final Approval Hearing, either in person or through an attorney hired at the Objector's own expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement.

## **X. FINAL APPROVAL ORDER AND JUDGMENT**

**10.01 Declaration of Class Administrator.** No later than fourteen (14) calendar days before the hearing on the motion for final approval before the Special Master, the Class Administrator will file with the Court and serve on counsel for all Parties a declaration stating that the Notice required by the Preliminary Approval Order has been completed in accordance with the terms of the Preliminary Approval Order.

**10.02 Request for Final Approval.**

If the Court issues the Preliminary Approval Order and all other conditions precedent to the Settlement have been satisfied, subject to the Supplemental Agreement and Sections 16.01 and 16.02 of this Agreement, no later than twenty-eight (28) calendar days before the Final Approval Hearing before the Special Master and no earlier than fourteen (14) calendar days after the Objection Deadline:

a. All Parties will request, individually or collectively, that the Court enter the Final Approval Order in substantially the form attached as **Exhibit C**, subject to changes based on the Preliminary Approval Order. Class Counsel will, and Defendants may, file a memorandum of points and authorities in support of the motion for final approval; and,

b. Class Counsel will, and Defendants may, file a memorandum addressing any Objections submitted to the Settlement.

**10.03 Consideration by the Special Master.** At the Final Approval Hearing, the Special Master will consider and determine: (a) whether the Settlement should be finally approved as fair, reasonable, and adequate; (b) how the Court should rule on Objections to the Settlement; (c) how the Court should rule on motion(s) for attorneys' fee award and incentive awards to the Class Representative; and (d) whether an order finally approving the Settlement and Judgement should be entered.

**10.04 Required Terms of Final Approval Order.** This Settlement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement and:

a. finds that the Notice provided satisfies the requirements of due process and Federal Rules of Civil Procedure Rule 23(e)(1);

b. finds that Settlement Class Members have been adequately represented by the Class Representative and Class Counsel;

c. finds that: (1) the Settlement is fair, reasonable, and adequate with respect to the Settlement Class; (2) each Final Settlement Class Member will be bound by this Agreement, including the releases and covenant not to sue in Section 15; and (3) that this Settlement should be and is approved;

d. finds that this Settlement was made in good faith pursuant to California Code of Civil Procedure sections 877 and 877.6 (collectively, "Section 877") and bars any other defendant in the Action from claiming or obtaining contribution against the OCTA and/or Cofiroute;

e. orders entry of judgment incorporating the merits rulings in Judge Guilford's January 17, 2020 order on the Key Questions Motion (Dkt 566) in favor of any of the defendants in this Litigation, together with rulings on prior motions on the merits of the claims in the Complaint and dismissing with prejudice all claims of the Final Settlement Class Members asserted in the Litigation in substantially the form of the judgment attached hereto as **Exhibit D** ("Judgment");

f. orders in the Judgment a permanent injunction enjoining each and every Settlement Class Member, regardless of whether they have opted out of the Settlement, from filing or pursuing any claim or litigation against OCTA, Cofiroute, TCA, 3M Company, BRiC, and any other person or entity who provides information to the Class Administrator pursuant to the Preliminary Approval Order, and any of their respective officers, agents, employees and attorneys, asserting that compliance with the obligations imposed by this Agreement, the Preliminary Approval Order, and/or the Court ordered Class Notice violates Section 31490 or any federal, state or local constitution, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class and to otherwise implement this Settlement.

g. orders in the Judgment a permanent injunction enjoining each and every Final Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against any of the Defendants or the Released Parties;

h. retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of this Agreement;

i. declares in the Judgment as to Final Settlement Class Members that as long as OCTA and Cofiroute (or any subsequent processing agency for OCTA) abide by the terms of Section 12.03(b) of this Agreement, providing the information listed in Section 12.03(b) to one or more third party debt collectors for use in the collection of unpaid tolls and toll violation penalties does not violate any state or federal constitutional or statutory protections.

**10.05 Waiver of Appeal Rights.** Effective upon entry of the Final Approval Order, Plaintiff and all members of the Final Settlement Class waive the right to appeal the judgment and all interlocutory rulings in the Litigation, except that waiver will not affect the right of a party to appeal a ruling on any motion for attorneys' fees or any Objection. Except to the extent of any award pursuant to the attorneys' fee motion to be filed by Class Counsel, upon entry of the Final Approval Order each party shall bear its own attorneys' fees and costs incurred in the Litigation.

## **XI. JUDGMENT**

**11.01 Effective Date.** The Judgment entered with the Final Approval Order will be deemed final, and the Effective Date will occur:

a. Thirty-five (35) calendar days after entry of the Final Approval Order and Judgment if no document is filed within that time seeking appeal, review, or rehearing of the Final Approval Order or Judgment or no other action is taken that would extend the time for seeking appeal or review of the Final Approval Order or Judgment; or

b. If any such document is filed, then five (5) business days after the date upon which all appellate and/or other proceedings resulting from such document have been finally terminated in such a manner as to permit the Final Approval Order and Judgment to take effect in substantially the form described in Section 10.04.

## **XII. CONSIDERATION FROM DEFENDANTS**

**12.01 Cash Consideration.** Subject to the terms of this Agreement, in consideration for the covenants and agreements by Plaintiff and Final Settlement Class Members including the releases, covenant not to sue, and the dismissal or termination of the Litigation provided for in this Agreement, and in addition to other monetary relief and non-monetary relief described in Sections 12.02-12.03 below, OCTA will pay cash consideration as follows:

a. Payment of Notice and Class Administration Costs. Within ten (10)

business days after entry of the Preliminary Approval Order, or as agreed upon with the Class Administrator, OCTA will pay to the Class Administrator \$217,000 as the estimated reasonable cost of Notice and Class Administration that will be incurred to implement the Preliminary Approval Order before the Settlement Fund is created. This amount will be deducted from the amount OCTA is required to pay to create the Settlement Fund.

b. Payment of Remainder of Settlement Fund. No later than thirty (30) days after the Effective Date, OCTA shall deliver the Cash Settlement Amount to the Class Administrator (after subtracting any amount already paid pursuant to Section 12.01(a) and any amount paid by any Defendant pursuant to Section 2.34(2)). Defendants thereafter will have no further obligation to pay any amount under this Agreement or any Court order approving the Settlement or settlement related motions.

c. All Cash Awards and Settlement Costs will be paid from the Settlement Fund, and Defendants will pay nothing more than the Cash Settlement Amount in settlement of the Released Claims and satisfaction of the Settlement Costs. The balance of the Cash Settlement Amount remaining after deductions for Settlement Costs (including any amounts paid pursuant to Section 12.01(a)) will be paid to those members of the Debt Collection Subclass who are not eligible for forgiveness of penalties under Section 12.02 and who submit a timely claim, on a pro-rata basis, up to \$15.00 per person. Any remaining funds will be donated to Privacy Rights Clearinghouse as a *cypres* award.

**12.02. Forgiveness of Penalties.** Subject to the terms of this Agreement, no later than ninety (90) days after the Effective Date, OCTA shall provide \$40 million in additional compensation to the Debt Collection Subclass in the form of forgiveness of penalties assigned to a third-party debt collector for collection and still outstanding as of the Settlement Class End Date. No written claim is required to obtain this forgiveness. The \$40 million in forgiveness will be distributed among eligible Debt Collection Subclass members as follows:

a. Each penalty currently subject to collection by a third-party debt collection subcontractor will be reduced to \$100.00.



b. Thereafter, the difference between the \$40 million in total penalty forgiveness and the amount forgiven under Section 12.02(a) will be divided by the total number of members of the Debt Collection Subclass who have outstanding penalties owed and an amount equal to the resulting quotient will be applied to reduce the total penalties owed by each such member of the Debt Collection Subclass.

**12.03. Additional Non-Monetary Relief.** In consideration for the entry of Judgment as described in this Agreement, and the releases contained herein, OCTA also agrees to the following:

a. Within 45 days after the Effective Date, OCTA will reduce the highest toll violation penalty it assesses to \$100 per violation for violations occurring after the Effective Date of the penalty reduction. Ten years after the Effective Date, the penalty structure may be adjusted based on inflation or industry standards. This will be incorporated into the Judgment, which shall also declare that the \$100 maximum toll violation penalty is not constitutionally excessive under either federal or state law.

b. For purposes of toll violation enforcement, absent a change in an existing statute or the adoption of a new statute governing PII that can be provided to a third-party debt collector, and without conceding that a unique toll violator identification number is PII, the only PII of toll violators OCTA, its processing agency, Cofiroute, or any successor processing agency, will provide a third-party debt collector will be the information contained in the relevant toll violation notice(s), together with any updated contact, address and/or email information obtained by OCTA, Cofiroute, or any successor processing agency, and a unique toll violator identification number. Nothing in this Section shall be construed to impose an obligation on OCTA, Cofiroute, or a successor processing agency to search for or obtain updated contact information.

### **XIII. SETTLEMENT FUND ADMINISTRATION PROCESS**

**13.01 Potential Claimants.** Each member of the Debt Collection Subclass who 1) had

debt sent by OCTA or Cofiroute to a third party debt collector for collection, 2) is not eligible for penalty forgiveness (as described in Section 12.02 above), and 3) submits a timely valid claim (“Cash Distribution Class Member”), will be entitled to receive a Cash Award. Each Cash Distribution Class Member is entitled to submit only one claim regardless of the number of times his or her PII was provided to another person or entity.

**13.02 Cash Distribution.** Each Cash Distribution Class Member will receive a Cash Award on a pro rata basis (calculated as [Settlement Fund minus Settlement Costs] divided by [the total number of Cash Distribution Class Members]), up to \$15.00 per person.

**13.03 Settlement Checks.** Settlement checks in payment of the initial Cash Award will be sent to each Cash Distribution Class Member by the Class Administrator via U.S. mail no later than fifteen (15) business days after the Funding Date. If a settlement check is returned, the Class Administrator will attempt to obtain a new mailing address for that Cash Distribution Class Member by taking the steps described in Section 8.01 (a) and (b) and promptly re-mail the settlement check if a forwarding or updated address is obtained. (A first or second mailing of a check in payment of an initial Cash Award is referred to as an “Initial Distribution”.) If, after a second mailing, the settlement check is again returned, no further efforts need be taken by the Class Administrator to resend the check. The Class Administrator will advise Defendants’ counsel of the names of the Cash Distribution Class Members whose checks are returned by the postal service as soon as practicable. Each original settlement check will be negotiable for one hundred eighty (180) calendar days after it is issued. Upon a timely request made by a Cash Distribution Class Member (i.e., a request made within 180 days from issuance of the original check), the Class Administrator may re-issue a settlement check, provided that the re-issued check will not be negotiable beyond thirty (30) days of the date of reissuance or the date that is one hundred eighty (180) calendar days after the date of issuance of the original check to such Cash Distribution Class Member, whichever is longer.

**13.04 No claims based on administration.** No person will have any claim against Plaintiff, Class Counsel, the Class Administrator, Defendants or their counsel, the Released

Parties, or any other person designated by Class Counsel, the Class Administrator, or the Court to assist in claims administration, based on the administration of and processing and payment of claims consistent with the terms of this Agreement.

**13.05 Responsibility for Taxes.** Each Final Settlement Class Member will be responsible for remitting to federal, state, and local taxing authorities any taxes that may be due and owing as a result of his or her receipt of a Cash Award and/or penalty forgiveness pursuant to the Settlement. Each Final Settlement Class Member will hold Class Counsel, Defendants, and Defendants' Counsel harmless and indemnify each of them for any liabilities, costs, and expenses, including attorneys' fees, caused by any such taxing authority relating in any way to the tax treatment of the Cash Award and/or any penalty forgiveness pursuant to the Settlement.

**13.06 Unused Funds.** After all checks issued or re-issued pursuant to the Initial Distribution have been cashed or expired, any unclaimed or unused funds shall be paid to Privacy Rights Clearinghouse as a *cy pres* award.

#### **XIV. GOOD FAITH SETTLEMENT**

**14.01 Good Faith.** The Parties agree that the totality of relief provided in this Agreement, namely the (i) Settlement Fund, (ii) penalty forgiveness, and (iii) non-monetary relief is, at minimum, proportional to Defendants' potential liability during the Settlement Class Period. The Parties intend and believe that this Settlement is made in good faith within the meaning of Section 877. This Settlement is contingent on the Court entering an order consistent with Section 877 determining that this Settlement is made in good faith and barring any other defendant in the Litigation from claiming or obtaining contribution against Defendants, as provided for in Section 10.04(d). The Parties agree to make reasonable best efforts to obtain the Court's determination that the Settlement is made in good faith.

#### **XV. RELEASE OF CLAIMS**

**15.01 Released Claims.** Upon the Effective Date, Plaintiff and each Final Settlement

Class Member, as well as their respective assigns, heirs, executors, administrators, successors, and agents (“Releasing Parties”), hereby release, resolve, relinquish, and discharge each and all of the Released Parties from each of the Released Claims (as defined below). The Releasing Parties further agree that they will not institute or maintain any action or cause of action (in law, in equity or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal or local government agency or with any administrative or advisory body, arising from or reasonably related to the Released Claims as against the Released Parties. The release does not apply to members of the Settlement Class who opt out of the Settlement by submitting a valid and timely Request for Exclusion. This release also does not apply to the following claims:

- The claims expressly asserted in the January 6, 2020 First Amended Complaint on file in the case entitled *Mathew Skogebo et al., vs. Cofiroute USA, LLC, et al.*, Orange County Superior Court Case No. 30-2019-01118474;

- The claims expressly asserted in the January 13, 2020 Second Amended Complaint on file in the case entitled *Harvey J. Thompson, et al., vs. Cofiroute USA, LLC, et al.*, Orange County Superior Court Case No. 30-2019-01108804; and

- The claims expressly asserted in the January 3, 2020 Corrected First Amended Complaint on file in the case entitled *Sanket Vinod Thakur, et al., vs. Cofiroute USA, LLC, et al.*, United States District Court, Central District of California, Case No. 8:19-CV-02233 ODW (JDEx).

“Released Claims” means any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorneys’ fees (except as provided for in the Class Settlement and ordered by the Court in accordance with this Agreement), and all other legal

responsibilities in any form or nature, including but not limited to, all claims relating to or arising out of any state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, suspected or unsuspected, had or has not or as of the Effective Date as against the Released Parties, asserted or unasserted, arising out of or in any way related to: (1) claims that were asserted in this Litigation; or (2) claims that could have been asserted in this Litigation based on the same operative facts, including but not limited to claims relating to any of the following: toll administration or enforcement, penalty imposition or enforcement, or the receipt, use or transmission of personal information. Releasing Parties also release any claim against Released Parties as well as TCA (and its constituent agencies, Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills Transportation Corridor Agency), 3M Company, BRiC, and any other person or entity who provides information to the Class Administrator pursuant to the Preliminary Approval Order, and any of their respective officers, agents, employees and attorneys, asserting that compliance with the obligations of this Agreement, the Preliminary Approval Order, and/or the Court ordered Class Notice violates Section 31490 or any other federal, state or local constitution, statute, rule, regulation or policy purporting to limit the disclosure of the personally identifiable information that is reasonably necessary to provide notice to the Settlement Class and to otherwise implement this Settlement. Final Settlement Class Members who receive consideration by way of cash or forgiveness, do not waive the right to pursue the Administrative Review process to dispute whether they are the owner of the vehicle in question to the extent the Final Settlement Class Member possesses such right.

**15.02** Waiver of Unknown Claims. Without limiting the foregoing, the Released Claims specifically extend to claims that Plaintiff and Final Settlement Class Members do not know or suspect to exist in their favor at the time that the Settlement and the releases contained therein become effective. This Section constitutes a waiver, without limitation as to any other applicable law, of Section 1542 of the California Civil Code, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

This Section also constitutes a waiver of any other law of any jurisdiction (domestic or foreign) or principle of common law that is similar, comparable, or equivalent to Section 1542.

**15.03 Acknowledgement of Waiver of Unknown Claims.** Plaintiff and the Final Settlement Class Members understand and acknowledge the significance of their waivers of California Civil Code Section 1542 and similar federal and state statutes, case law, rules, or regulations relating to limitations on releases. In connection with such waivers and relinquishment, Plaintiff and the Final Settlement Class Members acknowledge that they are aware that they may hereafter discover facts in addition to, or different from, those facts that they now know or believe to be true with respect to the subject matter of the Settlement, but that it is their intention to release fully, finally, and forever all Released Claims that could be asserted against the Released Parties in the Litigation, and in furtherance of such intention, the releases of the Released Claims and any claims that could be asserted against the Released Parties in the Litigation, will be and remain in effect notwithstanding the discovery or existence of any such additional or different facts.

**15.04 Covenant Not To Sue.** Plaintiff and each Final Settlement Class Member agree and covenant not to sue any Released Party with respect to any of the Released Claims, or otherwise to assist others in doing so, and agree to be forever barred from doing so, in any court of law or equity, or any other forum.

## XVI. TERMINATION OF AGREEMENT

**16.01** Either Plaintiff or Defendants May Terminate the Agreement. The Parties' willingness to enter into this Agreement and to agree to the certification of a conditional Settlement Class is dependent upon achieving finality in the Litigation and avoiding the uncertainties, risks, costs, and delays associated with the Litigation. Accordingly, the Parties shall each have the unilateral right to terminate this Agreement, declare it null and void, and have no further obligations under this Agreement by providing written notice to the Court and all other Parties hereto within ten (10) business days of any one of the following occurrences:

a. The Court rejects or declines to issue a Preliminary Approval Order or a Final Approval Order with respect to the Settlement Agreement without providing opportunity to file an amended motion for preliminary or final approval;

b. Any court modifies, amends, changes, or issues an order to modify, amend or change, the Preliminary Approval Order, the Final Approval Order, or the Agreement in a way that Plaintiff or Defendants reasonably consider material, unless such change, modification or amendment is accepted in writing by all Parties. Any change to: (1) the manner, form or extent of Settlement Class Information OCTA or Cofiroute is to provide; (2) the amount that OCTA and Cofiroute are required to pay; or (3) the scope of its release in favor of OCTA and Cofiroute will be deemed a material change for purposes of this Section, unless otherwise agreed to by OCTA and Cofiroute in writing. As provided above, the Court's approval of attorneys' fees and costs, or their amount and payment to the Class Representative is not a condition of the Settlement, and its rulings on those terms will not give rise to a right to terminate.

c. The Effective Date of the settlement is prevented from occurring for any reason, including but not limited to if the Final Approval Order does not become final; or

d. Any other ground for termination provided for elsewhere in this Agreement occurs.

**16.02** Confidential Termination Provision. This Settlement is subject to a confidential

termination provision, set forth in the Supplemental Agreement, that addresses the effect on this Settlement if a specified number of Settlement Class Members request Exclusion. The Parties agree that the Supplemental Agreement must remain confidential to protect the integrity of the notice and opt-out processes. If the terms of the confidential termination provision are met, Defendants have the right in their sole discretion, but not the obligation, to terminate the Settlement Agreement. Defendants will have ten (10) business days after receipt of the final report on Requests for Exclusion from the Class Administrator (as provided below) to determine whether to exercise the confidential termination provision. Beginning with the Settlement Notice Date, at least once per week the Class Administrator shall provide to the Parties copies of all Requests for Exclusion received by the Class Administrator during such week and no less than five (5) business days after the Exclusion Deadline the Class Administrator shall provide to the Parties a final report listing all Settlement Class members who timely and validly excluded themselves from the Settlement. The Supplemental Agreement will not be filed with the Court but will be made available for the Court to review upon request.

**16.03** Revert to Status Quo If Plaintiff or Defendants Terminate. If either Plaintiff or Defendants terminate this Agreement as provided in Sections 16.01 or 16.02, the Agreement will be of no force and effect and the Parties' rights and defenses will be restored, without prejudice, to their respective positions as if this Agreement had never been executed, and any orders entered by the Court in connection with this Agreement will be treated as vacated, *nunc pro tunc*. If Defendants terminate the agreement, any payments made to the Class Administrator for services rendered to the date of termination will not be refunded to Defendants. If Plaintiff terminates the agreement after issuance of a Final Approval Order and thereafter proceeds with litigation, any costs advanced by OCTA over and above the \$217,000 provided for in Section 12.01(a) shall be deemed a recoverable cost of litigation. Any payments made to the Settlement Fund other than for services by the Class Administrator rendered to the date of termination will be refunded to Defendants within ninety (90) days of termination pursuant to this Section.

**16.04** No Party shall have the right to terminate this Agreement based on any tentative



or final ruling in any other state or federal court, or any action by a federal or state legislative or regulatory body.

## **XVII. NO ADMISSION OF LIABILITY**

**17.01** Defendants deny any liability or wrongdoing of any kind associated with the alleged claims in the Litigation. Defendants have denied and continue to deny each and every material factual allegation and all claims asserted against them in the Litigation. Nothing herein will constitute an admission of wrongdoing or liability, or of the truth of any allegations in the Litigation. Nothing herein will constitute an admission by Defendants that the Litigation is properly brought on a class or representative basis, or that classes may be certified, other than for settlement purposes. To this end, the Settlement of the Litigation, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the Settlement: (1) are not and will not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the allegations in the Litigation; (2) are not and will not be deemed to be, and may not be used as an admission or evidence of any fault or omission on the part of Defendants in any civil, criminal, or administrative proceeding in any court, arbitration forum, administrative agency, or other tribunal; (3) are not and will not be deemed to be and may not be used as an admission of the appropriateness of these or similar claims for class certification; and (4) are not and will be used to establish any element of any claim against Defendants in this Litigation or any other action or proceeding.

**17.02** Pursuant to Federal Rule of Evidence Rule 408 and any similar provisions under the laws of any state, neither this Agreement nor any related documents filed or created in connection with this Agreement will be admissible as evidence in any proceeding, except as necessary to approve, interpret, or enforce this Agreement.

## **XVIII. MISCELLANEOUS**

**18.01 Effect of Denial of Final Approval on Class Notice Requirements.** The Parties agree that the notice provided to the Settlement Class under this Agreement and any Preliminary Approval Order is for purposes of settlement only. If the settlement is given preliminary approval but not final approval, the Parties agree that Plaintiff must satisfy his duty to provide notice to the class under FRCP 23(c) without regard to or reliance on the notice of the proposed settlement to be provided under this Agreement in accordance with FRCP 23(f).

**18.02 Remand to State Court.** Should a federal court presiding over this Litigation remand the Litigation, or dismiss the Litigation for re-filing in state court, due to lack of subject matter jurisdiction, the Parties agree to proceed with this Settlement, without material change other than any necessary to accommodate a change to the Orange County Superior Court (“Superior Court”). If this case is re-filed in state court pursuant to this section, then:

a. The Parties agree to propose materially the same proposed preliminary approval order, final approval order, Notices and claim form proposed here; the only material changes that may be made, and only if deemed necessary, will be to reflect the change of court, the passage of time, any need for a new state court presiding over the matter to make its own findings regarding the propriety of certifying the Settlement Class, and any other change in circumstance the Parties to this Settlement mutually agree is needed to secure the final approval of this Agreement;

b. The Parties will work in good faith to facilitate the Settlement, promptly secure its final approval from the Superior Court, and promptly carry out its terms.

**18.03 Entire Agreement.** This Agreement, the exhibits hereto, and the confidential termination provision referenced above constitute the entire agreement between the Parties. No representations, warranties, or inducements have been made to any of the Parties, other than those representations, warranties, and inducements contained in this Agreement.

**18.04 Governing Law.** This Agreement will be governed by the laws of the State of

California.

**18.05 Continuing Jurisdiction.** Except as agreed in writing by the Parties, the Court will retain continuing and exclusive jurisdiction over the Parties to this Agreement, including the Plaintiff and all Settlement Class Members, for purposes of the administration and enforcement of this Agreement.

**18.06 Resolution of Disputes.** The Parties will cooperate in good faith in the administration of this Settlement and agree to use their reasonable best efforts to promptly file a Motion for Preliminary Approval with the Court and to take any other actions required to effectuate this Settlement. Any unresolved dispute regarding the administration of this Agreement will be decided by the Court, or by a mediator or magistrate judge upon written agreement of the Parties.

**18.07 No Construction Against Drafter.** This Agreement was drafted jointly by the Parties and, in construing and interpreting this Agreement, no provision of this Agreement will be construed or interpreted against any Party based upon the contention that this Agreement or a portion of it was purportedly drafted or prepared by that Party.

**18.08 Counterparts.** This Agreement may be signed in counterparts and the separate signature pages executed by the Parties and their counsel may be combined to create a document binding on all of the Parties and together will constitute one and the same instrument.

**18.09 Time Periods.** The time periods and dates described herein are subject to Court approval as part of the preliminary or final approval of the Settlement and may be modified upon order of the Court or written stipulation of the Parties.

**18.10 Authority.** Each person executing this Settlement Agreement on behalf of any of the Parties hereto represents that such person has the authority to so execute this Agreement.

**18.11 No Oral Modifications.** This Agreement may not be amended, modified, altered, or otherwise changed in any manner, except by a writing signed by all of the duly authorized agents of Defendant and Plaintiff, and if necessary approved by the Court.

**18.12 No Waiver.** No delay or failure by any party to exercise any right under this

Agreement, and no partial or single exercise of that right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

**18.13 No Further Board Approval.** The OCTA Board has already approved this settlement, and no further board approval is required to approve this settlement.

**18.14 Captions and Headings.** The captions and headings throughout this Agreement are for convenience and reference only and the words used in them shall in no way be used to affect the interpretation, construction or meaning of any provision under any such caption or heading or elsewhere or otherwise in this Agreement.

**18.15 Notices.** Unless otherwise stated herein, any notice to the Parties required or provided for under this Agreement will be in writing and may be sent by electronic mail or hand delivery, postage prepaid, as follows:

If to Class Counsel:

Helen I. Zeldes  
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If to counsel for Defendant Orange County Transportation Authority:

M. Lois Bobak  
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lbobak@wss-law.com  
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Costa Mesa, California 92626-7670

And

Patrick M. Desmond  
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555 Anton Boulevard, Suite 1200  
Costa Mesa, California 92626-7670

If to counsel for Defendant Cofiroute:

Ken E. Steelman, General Counsel  
COFIROUTE USA, LLC  
ksteelman@cofirouteusa.com  
200 Spectrum Center Drive, Suite 1650  
Irvine, CA 92618

And

David F. Brown  
CORBETT, STEELMAN & SPECTER  
dbrown@corbsteel.com  
27281 Las Ramblas, Suite 200  
Mission Viejo, California 92691-8303

IN WITNESS WHEREOF, the Parties hereto have caused this Settlement Agreement to be executed.

DATED: April 5, 2021

Plaintiff Dan Golka



---

DATED: April \_\_\_\_\_, 2021

Orange County Transportation Authority

By: \_\_\_\_\_

Name: Darrell E. Johnson

Title: Chief Executive Officer

DATED: April 2, 2021

Cofiroute USA, LLC

By:  \_\_\_\_\_

Name: Richard Arce

Title: President & CEO



APPROVED AS TO FORM AND CONTENT:

DATED: April 7, 2021

WOODRUFF, SPRADLIN & SMART, APC

By: M. Lois Bobak  
M. Lois Bobak  
Attorneys for Defendant  
Orange County Transportation Authority

DATED: April \_\_\_\_\_, 2021

\_\_\_\_\_  
Ken E. Steelman, General Counsel  
Defendant Cofiroute USA, LLC

DATED: April \_\_\_\_\_, 2021

CORBETT, STEELMAN & SPECTER

By: \_\_\_\_\_  
David F. Brown  
Attorneys for Defendant Cofiroute USA, LLC

DATED: April \_\_\_\_\_, 2021

SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES, LLP

By \_\_\_\_\_  
Helen I. Zeldes  
Co-Lead Class Counsel

DATED: April \_\_\_\_\_, 2021

LINDEMANN LAW FIRM, APC

By \_\_\_\_\_  
Blake J. Lindemann  
Co-Lead Class Counsel

APPROVED AS TO FORM AND CONTENT:

DATED: April \_\_\_\_\_, 2021

WOODRUFF, SPRADLIN & SMART, APC

By: \_\_\_\_\_

M. Lois Bobak  
Attorneys for Defendant  
Orange County Transportation Authority

DATED: April 8, 2021

  
\_\_\_\_\_

Ken E. Steelman, General Counsel  
Defendant Cofiroute USA, LLC

DATED: April 8, 2021

CORBETT, STEELMAN & SPECTER

By:   
\_\_\_\_\_

David F. Brown  
Attorneys for Defendant Cofiroute USA, LLC

DATED: April \_\_\_\_\_, 2021

SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES, LLP

By: \_\_\_\_\_

Helen I. Zeldes  
Co-Lead Class Counsel

DATED: April \_\_\_\_\_, 2021

LINDEMANN LAW FIRM, APC

By: \_\_\_\_\_

Blake J. Lindemann  
Co-Lead Class Counsel

APPROVED AS TO FORM AND CONTENT:

DATED: April \_\_\_\_\_, 2021

WOODRUFF, SPRADLIN & SMART, APC

By: \_\_\_\_\_  
M. Lois Bobak  
Attorneys for Defendant  
Orange County Transportation Authority

DATED: April \_\_\_\_\_, 2021

\_\_\_\_\_  
Ken E. Steelman, General Counsel  
Defendant Cofiroute USA, LLC

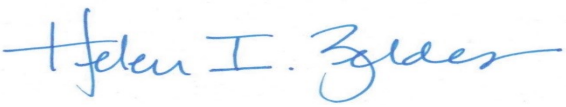
DATED: April \_\_\_\_\_, 2021

CORBETT, STEELMAN & SPECTER

By: \_\_\_\_\_  
David F. Brown  
Attorneys for Defendant Cofiroute USA, LLC

DATED: April 6, 2021

SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES, LLP

By:  \_\_\_\_\_  
Helen I. Zeldes  
Co-Lead Class Counsel

DATED: April \_\_\_\_\_, 2021

LINDEMANN LAW FIRM, APC

By: \_\_\_\_\_  
Blake J. Lindemann  
Co-Lead Class Counsel

APPROVED AS TO FORM AND CONTENT:

DATED: April \_\_\_\_\_, 2021

WOODRUFF, SPRADLIN & SMART, APC

By: \_\_\_\_\_

M. Lois Bobak  
Attorneys for Defendant  
Orange County Transportation Authority

DATED: April \_\_\_\_\_, 2021

\_\_\_\_\_  
Ken E. Steelman, General Counsel  
Defendant Cofiroute USA, LLC

DATED: April \_\_\_\_\_, 2021

CORBETT, STEELMAN & SPECTER

By: \_\_\_\_\_

David F. Brown  
Attorneys for Defendant Cofiroute USA, LLC

DATED: April \_\_\_\_\_, 2021

SCHONBRUN SEPLOW HARRIS  
HOFFMAN & ZELDES, LLP

By: \_\_\_\_\_

Helen I. Zeldes  
Co-Lead Class Counsel

DATED: April 12, 2021

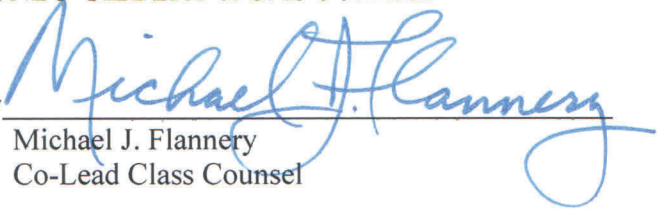
LINDEMANN LAW FIRM, APC

By:  \_\_\_\_\_

Blake J. Lindemann  
Co-Lead Class Counsel

DATED: April 5, 2021

CUNEO GILBERT & LADUCA LLP

By   
Michael J. Flannery  
Co-Lead Class Counsel

# EXHIBIT A

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

IN RE: TOLL ROADS LITIGATION

Case No: 8:16-cv-00262-ODW(ADSx)

Hon. Otis D. Wright II

PENNY DAVIDI BORSUK; DAVID COULTER; EBRAHIM E. MAHDA; TODD QUARLES; TODD CARPENTER; LORI MYERS; DAN GOLKA; and JAMES WATKINS on behalf of themselves and all others similarly situated,

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

Plaintiffs,

vs.

Date: April 23, 2021

Time: 9:00 a.m.

Location: Judicate West

55 Park Plaza, Suite 400

Irvine, CA 92614

FOOTHILL/EASTERN TRANSPORTATION CORRIDOR AGENCY; SAN JOAQUIN HILLS TRANSPORTATION CORRIDOR AGENCY; ORANGE COUNTY TRANSPORTATION AUTHORITY; 3M COMPANY; BRiC-TPS LLC; RHONDA REARDON; MICHAEL KRAMAN; CRAIG YOUNG; SCOTT SCHOEFFEL; ROSS CHUN; DARRELL JOHNSON; LORI DONCHAK; COFIROUTE USA, LLC; and DOES 3-10; inclusive,

Special Master: Hon. Andrew J. Guilford (ret.)

Defendants

1 **ORDER GRANTING PRELIMINARY APPROVAL**

2  
3 On April \_\_, 2021, Plaintiff Dan Golka on behalf of himself and the proposed  
4 Settlement Class (“Plaintiff”) and Defendants Orange County Transportation  
5 Authority, Darrell Johnson and Lori Donchak (collectively “OCTA”), and  
6 Defendant Cofiroute USA, LLC (“Cofiroute”) (OCTA and Cofiroute are  
7 collectively referred to as “Defendants”) entered into a Settlement Agreement and  
8 Release (“Agreement”), after two arm’s-length mediations, both with the assistance  
9 of mediator Robert Kaplan<sup>1</sup> The settlement reached by Plaintiff and Defendants will  
10 be referred to as the “Settlement.”

11 Plaintiff now moves this Court, pursuant to Federal Rule of Civil Procedure  
12 (“Rule”) 23(e), for an order preliminarily approving the Settlement and directing  
13 notice of the proposed Settlement be given to the Settlement Class upon the terms  
14 and conditions set forth in the Agreement (“Motion”). The Motion was referred to  
15 the Special Master, Judge Andrew J. Guilford (ret.) (see Dkt. 582), and a hearing on  
16 the Motion occurred on April 23, 2021. Special Master Guilford issued a Report and  
17 Recommendation recommending granting the Motion for Preliminary Approval of  
18 the Settlement.

19 After carefully considering Plaintiff’s Motion for Preliminary Approval and  
20 accompanying declarations; the Agreement, including the accompanying Exhibits;  
21 Special Master Guilford’s Report and Recommendation; and the applicable law, the  
22 Court finds that:

23 1. The proposed Settlement is fair, reasonable, adequate and the Court  
24 will likely be able to approve it under Rule 23(e)(2) and enter judgment on it. The  
25 proposed Settlement does not improperly grant preferential treatment to any  
26

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27 <sup>1</sup> Unless otherwise defined, all terms used herein have the same meanings as set  
28 forth in the Agreement.



1 segment of the Settlement Class. The proposed Settlement is sufficient to warrant  
2 sending notice to the class members about the Settlement in the manner proposed by  
3 Plaintiff. The procedures for establishing and administering the benefits provided  
4 by the proposed Settlement and for notice to class members satisfy Rule 23 and due  
5 process.

6         2. The Court finds and determines that it will likely be able to certify the  
7 Settlement Class for purposes of judgment on the proposed Settlement under Rule  
8 23(b)(3) of the Federal Rules of Civil Procedure, because the Settlement Class is  
9 similar to the privacy class previously certified by the Court (Dkt 439 and 501) as to  
10 Defendants, and the Court had therefore previously determined that: (a) members of  
11 each subclass of the Settlement Class are so numerous that joinder of all members  
12 would be impracticable, (b) there are questions of law and fact that are common  
13 within each subclass of the Settlement Class, and those common questions of law  
14 and fact predominate over any questions affecting any individual class member; (c)  
15 the claims of the Plaintiff are typical of the claims of the Settlement Class; (d) a  
16 class action on behalf of each subclass of the Settlement Class is superior to other  
17 available means of adjudicating this dispute; and (e) Plaintiff and Class Counsel are  
18 adequate representatives of the Settlement Class. Defendants retain all rights to  
19 assert that this action should not be certified as a class action, other than for  
20 settlement purposes.

21         3. The Court has reviewed the class notices for the Settlement Class and  
22 the methods for providing notice and has determined that these forms and methods  
23 of notice constitute the best notice practicable under the circumstances; are  
24 reasonably calculated to apprise Settlement Class members of the terms of the  
25 Settlement and of their right to participate in it, object, or opt-out; are reasonable  
26 and constitute due, adequate, and sufficient notice to all persons entitled to receive  
27 notice; and meet all applicable requirements of Rule 23 and due process.

28

1 **Accordingly, IT IS HEREBY ORDERED that:**

2 1. The Motion for Preliminary Approval is **GRANTED**. The Court  
3 preliminarily approves the Settlement.

4 2. The Court hereby certifies, for settlement purposes only, a Settlement  
5 Class consisting of the following individuals whose PII was provided by OCTA or  
6 Cofiroute to an entity described below between June 29, 2015 and the Settlement  
7 Class Period End Date (10 days after entry of this Order):

- 8 • Any person with a transponder account with a Non-Party Toll Agency whose  
9 PII, including the date, time and location of a toll transaction, was sent by  
10 Defendants to a Non-Party Toll Agency for purposes of collecting a toll incurred  
11 on the 91 Express Lanes (the “Interoperability Subclass”);
- 12 • Any person whose license plate number was sent by Defendants to the  
13 California Department of Motor Vehicles or out-of-state equivalent, directly or  
14 through a subcontractor, in connection with more than one alleged toll violation  
15 incurred on the 91 Express Lanes (the “DMV Subclass”);
- 16 • Any person whose PII was sent to a car rental company by Defendants in  
17 connection with an alleged toll violation incurred on the 91 Express Lanes (the  
18 Car Rental Subclass”); and
- 19 • Any person whose PII, other than the amount of tolls and penalties owed, the  
20 violation number, or the violator’s account number, was sent by Defendants to a  
21 third-party debt collector for collection of unpaid tolls and/or toll violation  
22 penalties incurred on the 91 Express Lanes (the “Debt Collection Subclass”).

23 The following individuals are excluded from the Settlement Class: Current members  
24 of the OCTA Board of Directors, OCTA’s Chief Executive Officer, the General  
25 Manager of the 91 Express Lanes, OCTA’s 91 Express Lanes Project Manager III,  
26 the attorneys representing OCTA or Cofiroute in this Litigation. and the judge to  
27 whom this case is or was assigned, any member of the judge’s immediate family,  
28 and any member of the judge’s staff.

1           3.     Class Representative. The Court preliminarily finds and determines,  
2 pursuant to Rule 23(a), that Plaintiff Dan Golka will fairly and adequately represent  
3 the interests of the Settlement Class in enforcing their rights in the action and  
4 appoints him as “Class Representative.” The Court preliminarily finds that he is  
5 similarly situated to absent Settlement Class members and therefore typical of the  
6 Settlement Class, and that he will be an adequate class representative.

7           4.     Class Counsel. For purposes of the Settlement, the Court appoints  
8 Helen I. Zeldes of Schonbrun Seplow Harris Hoffman & Zeldes, LLP, Blake J.  
9 Lindemann of Lindemann Law, APC and Michael J. Flannery of Cuneo Gilbert &  
10 LaDuca, LLP as Class Counsel to act on behalf of the Settlement Class and the  
11 Class Representative with respect to the Settlement. The Court authorizes Class  
12 Counsel to enter into the Settlement on behalf of the Class Representative and  
13 Settlement Class, and to bind them all to the duties and obligations contained  
14 therein, subject to final approval by the Court of the Settlement.

15           5.     Administration. Epiq Class Action & Claims Solutions, Inc is  
16 appointed as Class Administrator to administer the notice procedure and the  
17 processing of claims for the Settlement Class, under the supervision of Class  
18 Counsel.

19           6.     Class Notice. The form and content of the proposed Notice of Class  
20 Action Settlement (“Long Form Notice”), the Email Notice, Mail Notice, and  
21 Publication Notice are hereby approved. The Parties and Class Administrator may  
22 amend the Class Notice documents as necessary to add dates, correct errors, and  
23 improve the information provided to Settlement Class members consistent with the  
24 guidance provided by the Special Master.

25           7.     Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills  
26 Transportation Corridor Agency (collectively, “TCA”) are hereby ordered to  
27 provide to the Class Administrator, in an electronically searchable and readable  
28 format, the names, email addresses and, if necessary (i.e., if an email address is

1 unavailable or if the Class Administrator notifies TCA that an email was returned as  
2 undeliverable) the last known mailing addresses of TCA FasTrak account holders  
3 who used their TCA FasTrak account to pay for a toll on the Orange County portion  
4 of the 91 Express Lanes between June 29, 2015 and the tenth (10<sup>th</sup>) day after the  
5 entry of this Order. Defendants are hereby ordered to provide to the Class  
6 Administrator, in an electronically searchable and readable format mutually  
7 acceptable to the Class Administrator and Defendants, the following information, to  
8 the extent the information is reasonably retrievable from Defendants' reasonably  
9 available and searchable data bases as maintained by Cofiroute: the names and last  
10 known mailing addresses of the members of the Debt Collection Subclass and  
11 whether the member is eligible for penalty forgiveness pursuant to Section 12.02.  
12 The Court finds that the provision of the foregoing information by OCTA, Cofiroute  
13 and/or TCA to the Class Administrator is necessary so that reasonable notice can be  
14 given to the Settlement Class, as required by state and federal constitutional  
15 provisions and Rule 23, and so the Class Administrator can verify membership in  
16 the Settlement Class and verify claim eligibility, as necessary. The Court further  
17 finds and orders that compliance with this Order by OCTA, TCA and/or Cofiroute  
18 will not and does not violate California Streets & Highways Code section 31490 or  
19 any other federal, state or local constitution, statute, rule, regulation or policy  
20 purporting to limit the disclosure of personally identifiable information.

21 8. To effectuate this Order and to ensure adequate notice is provided to  
22 the members of the Settlement Class, and in accordance with both the Court's  
23 general authority to protect its jurisdiction and the All Writs Act (28 USC § 1651),  
24 the Court hereby permanently enjoins each and every member of the Settlement  
25 Class from filing or pursuing any claim or litigation against any of the persons  
26 and/or entities listed below in subparagraphs 8(a) through (c) asserting that  
27 compliance with the obligations imposed by this Order or the Agreement violates  
28 California Streets & Highways Code section 31490 or any other federal, state or

1 local constitution, statute, rule, regulation or policy purporting to limit the disclosure  
2 of personally identifiable information:

3 a. OCTA, Cofiroute, and any and all other Released Parties (as defined in  
4 Section 2.26 of the Agreement);

5 b. TCA and BRiC-TPS, LLC (“BRiC”), together with their respective  
6 officers, agents, employees and attorneys;

7 c. Any other person or entity who provides information to the Class  
8 Administrator pursuant to this Order, together with their respective officers, agents,  
9 employees and attorneys.

10 9. The Class Administrator shall send the applicable Class Notice as  
11 provided by the Agreement via: (i) electronic mail, to the most recent email address  
12 of all persons in the Interoperability Subclass for whom TCA provides an email  
13 address; (ii) first class mail, to the most recent mailing address of all persons in the  
14 Interoperability Subclass for whom TCA had no reasonably available email address  
15 or whose email notice was returned as undeliverable and for whom TCA provides a  
16 mailing address, and all persons in the Debt Collection Subclass for whom OCTA or  
17 Cofiroute provides a mailing address; and (iii) via publication and social media  
18 advertisements for all other members of the Settlement Class. The Notice will  
19 advise the Settlement Class members of the opportunity to update their email  
20 address and/or mailing address with the Class Administrator.

21 10. The Class Administrator shall treat the records of Settlement Class  
22 members as confidential and shall not disclose all or any portion of those records to  
23 any person or entity except as authorized by Court order. The Class Administrator  
24 shall use the records containing Settlement Class member information solely for the  
25 purposes of providing notice to Settlement Class members, facilitating  
26 communication with them about the Settlement, administering and processing  
27 claims and exlcusions including verifying claim forms, and calculating and paying  
28 settlement awards. No copies of Settlement Class member information may be

1 made, nor utilized by the Class Administrator for any purpose not specified in this  
2 Order.

3 11. Settlement Website. By the Settlement Notice Date, the Class  
4 Administrator will maintain and administer a dedicated Settlement Website  
5 containing class information and related documents. At a minimum, such documents  
6 will include the operative Corrected First Amended Consolidated Class Action  
7 Complaint (Dkt 119-1), the Agreement and attached exhibits, E-mail Notice, Mail  
8 Notice, this Order, the Court’s January 17, 2020 order on Defendants’ Key  
9 Questions Motion (Dkt 566), all motions or other papers filed regarding final  
10 settlement approval, attorney’s fees, costs, and/or service awards for the Class  
11 Representative, and the Final Approval Order. The Settlement Website will permit  
12 members of the Settlement Class who elect to do so to register online to receive (a)  
13 email notice that the Court has granted final approval of the Settlement, (b) updates  
14 on the deadlines to submit Requests for Exclusion and make Objections, and (c) the  
15 status of payments under the terms of the Settlement. The Settlement Website will  
16 be taken down and rendered inaccessible by the Final Distribution Date.

17 12. Claims. All claims must be postmarked or submitted electronically  
18 within **eighty-four (84) days after the Settlement Notice Date (“Claims  
19 **Deadline”**) as specified by the Agreement. Any eligible Settlement Class member  
20 who does not timely and properly submit a claim within the time provided for shall  
21 be forever barred from sharing in the distribution of the proceeds of the Settlement,  
22 unless otherwise agreed by the Parties or ordered by the Court, but will in all other  
23 respects be subject to and bound by the provisions of this Order and upon final  
24 approval of the Settlement by the provisions of the Agreement, the releases and  
25 covenant not to sue contained therein, the Judgment, and the Final Approval Order.**

26 13. The Class Administrator shall review and process each claim to  
27 determine whether it qualifies for a Cash Award, and in what amount, in accordance  
28 with the terms of the Agreement. Claims that do not meet the submission

1 requirements may be rejected. Prior to rejecting a claim, in whole or in part, the  
2 Class Administrator shall communicate with the claimant in writing to give the  
3 claimant a reasonable opportunity to remedy any deficiencies in the claim.

4 14. Exclusions from the Settlement. Members of the Settlement Class who  
5 wish to exclude themselves from the Settlement Class must advise the Class  
6 Administrator by providing a written Request for Exclusion. The Request for  
7 Exclusion must be postmarked no later than **eighty-four (84) days after the**  
8 **Settlement Notice Date** (the “Exclusion Deadline”). In it, the Settlement Class  
9 member must state his or her full name and address and must state that he or she  
10 wishes to be excluded from the Settlement. Any member of the Settlement Class  
11 who submits a valid and timely Request for Exclusion will not be a Final Settlement  
12 Class member and will not be bound by the terms of the Agreement (but will be  
13 bound by the injunction in paragraph 8, above). All members of the Settlement  
14 Class who do not submit a timely, valid Request for Exclusion, however, will be  
15 bound by this Order, and upon final approval of the Settlement by the Agreement,  
16 including the releases and covenant not to sue, the Final Approval Order and the  
17 Judgment.

18 15. Objections. Any Settlement Class member who intends to object to the  
19 Settlement (“Objector”) must file a written objection with the Court, located at 350  
20 W. 1<sup>st</sup> Street, Los Angeles California, 90012, Courtroom 5D, no later than **eighty-**  
21 **four (84) days after the Settlement Notice Date** (the “Objection Deadline”). In the  
22 written objection, the Objector must state his or her (1) full name and address; (2)  
23 account number with OCTA, if one exists; and (3) any other proof of Settlement  
24 Class membership if such proof exists (“Objection”). The written Objection must  
25 also state the reasons for the Objector’s objection to the Settlement and indicate  
26 whether he or she intends to appear at the hearing on the motion for final approval  
27 of the Settlement (“Final Approval Motion”) before the Special Master on his or her  
28 own behalf or through counsel. Any documents supporting the Objection must be

1 attached to the Objection. The Parties shall have the right to obtain document  
2 discovery from and take the deposition of any Objector relevant to the Objection.  
3 Any Objector who timely files an Objection and indicates an intent to appear may  
4 appear at the hearing before the Special Master on the Final Approval Motion, either  
5 in person or through an attorney hired at the Objector's own expense, to object to  
6 the fairness, reasonableness, or adequacy of the Settlement.

7 16. Declaration of Class Administrator. No later than fourteen (14)  
8 calendar days before the hearing before the Special Master on the Final Approval  
9 Motion, the Class Administrator shall file with the Court and serve on counsel for  
10 all Parties a declaration stating that the Notice required by this Order has been  
11 completed.

12 17. Motion for Final Approval. The Final Approval Motion shall be filed  
13 and served **at least twenty-eight (28) days before the hearing on the Final**  
14 **Approval Motion before the Special Master.** Any opposition papers in response  
15 to any Objections shall be filed and served at least **fourteen (14) calendar days**  
16 **prior to the hearing on the Final Approval Motion before the Special Master.**

17 18. Any motions for attorneys' fees and costs and service awards shall be  
18 filed **at least two weeks before the Objection and Exclusion Deadlines.**

19 19. Defendants shall bear no responsibility for any application for  
20 attorneys' fees and costs and service awards, and such matters will be considered  
21 separately from the fairness, reasonableness, and adequacy of the Settlement. At or  
22 after the hearing before the Special Master on the Final Approval Motion, the  
23 Special Master shall make recommendations to the Court on any application for  
24 attorneys' fees and costs to Class Counsel and any service award to the Class  
25 Representative.

26 20. All reasonable expenses incurred in accordance with the Agreement  
27 and this Order in identifying and notifying Settlement Class members, as well as  
28



1 administering the Settlement, shall be paid in accordance with the terms set forth in  
2 the Agreement.

3 21. The Court preliminarily approves Section 15 of the Agreement in  
4 which OCTA, Cofiroute, and any other Released Parties, and TCA, 3M Company,  
5 BRiC, any other person or entity who provides information to the Class  
6 Administrator pursuant to this Order, and any of their respective officers, agents,  
7 employees and attorneys are released from any and all claims asserting that  
8 compliance with the obligations of this Order, the Agreement, and/or the Court  
9 ordered Notice requirements violates Section 31490 or any other federal, state or  
10 local constitution, ordinance, statute, rule, regulation or policy purporting to limit  
11 the disclosure of the personally identifiable information which is reasonably  
12 necessary to provide notice to the Settlement Class and to otherwise implement the  
13 Settlement.

14 22. The Special Master, Hon. Andrew J. Guilford (ret.), shall hold a  
15 hearing on the Final Approval Motion and on any motions for award of attorneys'  
16 fees and costs and/or service award to the Class Representative on a date(s) selected  
17 by the Special Master at Judicate West, to determine: (a) whether the Settlement on  
18 the terms and conditions provided for in the Agreement is fair, reasonable and  
19 adequate to class members and should be finally approved by the Court; (b) whether  
20 a judgment should be entered pursuant to the Settlement; (c) whether Class Counsel  
21 should be awarded attorneys' fees and costs, and if so, in what amount; and  
22 (d) whether a service award should be awarded to the Class Representative, and if  
23 so, in what amount. The Special Master may postpone the hearing on the Final  
24 Approval Motion and any motions for attorneys' fees and service awards and will  
25 provide notice of any such postponement to the Class Administrator who shall post  
26 such information to the Settlement Website without the need for further or  
27 additional notice to the Settlement Class members. The Special Master shall produce  
28 a Report and Recommendation as to whether the Settlement should be approved as

1 fair, reasonable and adequate under Rule 23(e) and whether any motions for  
2 attorneys' fees or service awards should be granted and if so in what amounts.

3 23. Neither the Agreement or any of its terms or provisions, nor any of the  
4 negotiations or proceedings connected with the Settlement, whether or not  
5 consummated, shall be construed as an admission or concession of any kind by any  
6 of the Parties. Neither the Agreement or any of its terms or provisions, nor any of  
7 the negotiations or proceedings connected with the Settlement, may be offered  
8 against any of the Parties in this case or any other action or proceeding as evidence  
9 of, or construed as or deemed to be evidence of, any presumption, concession or  
10 admission by any of the Parties regarding any issue whatsoever including:  
11 (i) whether it was appropriate for class certification; (ii) the validity of any  
12 allegation or claim or element thereof that was, could have been or will be asserted  
13 against any of the Defendants; (iii) liability, negligence, fault, or wrongdoing of any  
14 kind; and (iv) the existence or scope of any damages.

15 24. The Court retains exclusive and continuing jurisdiction over the Parties  
16 and the Settlement Class members to consider all further motions and applications  
17 arising out of, or connected with this Order, the Agreement or related Settlement  
18 matters. The Court may approve the Settlement with such modifications as may be  
19 agreed to by the Parties, if appropriate, without further notice to the Settlement  
20 Class. The Court also retains jurisdiction with respect to the implementation and  
21 enforcement of this Order, the terms of the Agreement, and all Parties hereto submit  
22 to the jurisdiction of the Court for purposes of implementing and enforcing the  
23 Settlement embodied in the Agreement.

24 25. All Settlement Class members shall be bound by all determinations and  
25 judgments of the Court in this case concerning the Settlement and related matters,  
26 whether favorable or unfavorable to the Settlement Class.

27 26. All proceedings in this action relating to OCTA and Cofiroute shall be  
28 stayed until further order of the Court, except for proceedings that may be necessary

1 to implement this Order, the Agreement, its Exhibits, or to comply with or effectuate  
2 the terms and conditions of the Settlement.

3 27. Pending determination of the Final Approval Motion, neither Plaintiff  
4 nor any Settlement Class member, directly or indirectly, representatively, or in any  
5 other capacity, shall commence or prosecute against OCTA, Cofiroute or any of the  
6 other Released Parties any action or proceeding in any court or tribunal asserting  
7 any of the Released Claims; provided that this prohibition shall not apply to the  
8 following claims, which were expressly carved out of the Settlement by the Parties:

- 9 - The claims expressly asserted in the January 6, 2020 First Amended  
10 Complaint on file in the case entitled Mathew Skogebo et al., vs. Cofiroute  
11 USA, LLC, et al., Orange County Superior Court Case No. 30-2019-  
12 01118474;
- 13 - The claims expressly asserted in the January 13, 2020 Second Amended  
14 Complaint on file in the case entitled Harvey J. Thompson, et al., vs.  
15 Cofiroute USA, LLC, et al., Orange County Superior Court Case No. 30-  
16 2019-01108804; and
- 17 - The claims expressly asserted in the January 3, 2020 Corrected First  
18 Amended Complaint on file in the case entitled Sanket Vinod Thakur, et  
19 al., vs. Cofiroute USA, LLC, et al, United States District Court, Central  
20 District of California, Case No. 8:19-CV-02233 ODW (JDEx).

21  
22  
23 **IT IS SO ORDERED:**

24  
25 Dated: \_\_\_\_\_, 2021

\_\_\_\_\_  
26 Otis D. Wright II  
27 United States District Judge  
28

# EXHIBIT B

# **LONG FORM NOTICE**

# If You Used a FasTrak Account To Pay a Toll On The 91 Express Lanes, Or Received a Toll Violation For the 91 Express Lanes in Orange County, California, You May Be Entitled To Benefits From A Class Action Settlement

*A federal court directed this notice. This is not a solicitation from a lawyer.*

- A settlement has been reached in a class action lawsuit about whether the Orange County Transportation Authority and Cofiroute USA, LLC (the “Defendants”) improperly shared with third parties certain “Personally Identifiable Information” (“PII”) of owners or operators of motor vehicles that used the 91 Express Lanes in Orange County, California. The Defendants deny the allegations in the lawsuit. The Court has decided that certain claims against the Defendants lack merit but has not ruled on one remaining claim.
- The settlement between Plaintiff Dan Golka and the Defendants (“Settlement”) covers the time period from June 29, 2015 to [10 days after Prelim Approval Order].
- The Settlement offers eligible Settlement Class Members cash payments or penalty forgiveness as set forth below.
- Your legal rights are affected whether you act or do not act. Read this notice carefully.

<b>SUBMIT A CLAIM FORM</b>	You may submit a Claim Form seeking a cash payment of up to \$15.00 if your toll violation was sent to a debt collector and you are not entitled to automatic penalty forgiveness (see below).
<b>AUTOMATIC PENALTY FORGIVENESS</b>	If you <b>have outstanding penalties</b> for driving on the 91 Express Lanes that were sent to a third-party debt collector (including Linebarger Goggan Blair & Sampson) as of the Effective Date of the Settlement (see below), you will receive automatic forgiveness of a portion of the penalty for such violation(s). The penalty on each of your toll violations will automatically be reduced to \$100.00. You will also receive approximately an additional \$40.00 off the total debt owed. You do not have to do anything to participate in the penalty forgiveness program - your account will automatically be credited if you are in this Class and do not exclude yourself from the Settlement.
<b>EXCLUDE YOURSELF</b>	You may request to be excluded and get no benefits from the Settlement. This is the only option that allows you to start or continue your own lawsuit against the Defendants for the claims at issue in the Settlement (see question 12 below).
<b>OBJECT</b>	If you do not exclude yourself from the Settlement, you may submit a written objection to the Court about why you do not like the Settlement.
<b>GO TO A HEARING</b>	You may ask to speak in Court about the fairness of the Settlement.

**QUESTIONS? CALL 1-XXX-XXX-XXXX OR VISIT [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com)**

<b>Do NOTHING</b>	You will not receive a cash payment but may still qualify for automatic forgiveness of a portion of your toll violation penalties. You will give up any rights you might have to sue the Defendants about the claims resolved by the Settlement.
-------------------	--

- These rights and options—**and the deadlines to exercise them**—are explained in this notice.
- The Court still has to decide whether to approve the Settlement. If it does, and after any appeals are resolved, benefits will be distributed to eligible class members who submit qualifying claim forms or are found eligible for automatic forgiveness of toll violation penalties. Please be patient.

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## BASIC INFORMATION

### 1. Why is there a notice?

A Court authorized this notice because you have a right to know about the proposed Settlement in a class action lawsuit known as *In re Toll Roads Litigation*, Case No. 8:16-cv-262-ODW(ADSx) (C.D. Cal.), and about all of your options, before the Court decides whether to give final approval to the Settlement. This notice explains the lawsuit, the Settlement, and your legal rights regarding the Settlement.

Judge Otis D. Wright II of the United States District Court, Central District of California is overseeing this case. The people who sued are called the “Plaintiffs.” The Orange County Transportation Authority, Darrell Johnson and Lori Donchak (collectively “OCTA”) and Cofiroute USA, LLC (“CUSA”) are collectively called the “Defendants.” The lawsuit alleges that in the course of operating the 91 Express Lanes, the Defendants in violation of Section 31490 of the California Streets and Highways Code provided personally identifiable information (as defined in section 31490, “PII”) to certain third parties. The lawsuit seeks statutory damages on behalf of the named Plaintiffs and a proposed class of all individuals in the United States who operated motor vehicles on the 91 Express Lanes and had their PII captured and shared with third parties. The lawsuit also alleges that Defendants’ toll collection practices and imposition of penalties violated the excessive fines and due process clauses of the U.S. and California Constitution, violated the California constitutional right of privacy and the California Consumer Legal Remedies Act and Unfair Competition Law, and that they were negligent. There are other defendants, including Foothill/Eastern Transportation Corridor Agency, San Joaquin Hills Corridor Transportation Agency, Michael Kraman, Craig Young, Scott Schoeffel, Ross Chun, Rhonda Reardon (collectively “TCA”), 3M Company (“3M”) and BRiC-TPS, LLC (“BRiC”), who entered into separate settlement agreements with the Plaintiffs, and are not part of this Settlement.

There are **three separate settlements** in this single lawsuit. In addition to this Settlement, the Plaintiffs settled separately with TCA and BRiC on the one hand, and 3M on the other regarding their operation of the 73, 133, 241 and 261 Toll Roads in Orange County.

You received notice because the records of one or more of the defendants showed that you may be a member of the OCTA/CUSA settlement class. United States District Court Judge Otis D. Wright II ordered OCTA, CUSA and TCA to provide your name and contact information (either your mailing address or your email address) to the Class Administrator so that notice could be sent to you.

As explained further below, from the Settlement with OCTA and CUSA you may:

- get a cash payment if your toll violation was sent to a third-party debt collector and you do not currently owe any additional penalties, by filing a valid claim form;
- have a portion of your outstanding toll violation penalties forgiven;
- object to the Settlement; or
- request exclusion from the Settlement.

Defendants deny each and every allegation of wrongdoing, liability, and damages that were or could have been asserted in the litigation and further deny that the claims in the litigation would be appropriate for class treatment if the litigation were to proceed through litigation and trial. The Court ruled for Defendants on most of the Plaintiffs’ privacy claims but has not decided who is right on one remaining class privacy claim.

The Plaintiffs' Complaint, the Settlement Agreement, the Court's ruling on the privacy claims, and other case-related documents are posted on the website [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com). The Settlement resolves the claims against OCTA and CUSA in the lawsuit.

## 2. What is "Personally Identifiable Information" or PII?

In the context of the Settlement, Personally Identifiable Information ("PII") means "any information that identifies or describes a person including, but not limited to, travel pattern data, address, telephone number, email address, license plate number, photograph, bank account information, or credit card number," as provided in Section 31490(o) of the California Streets and Highways Code.

## 3. Which toll roads are the subject of the lawsuit?

Plaintiffs allege that the toll roads upon which motor vehicles owned or driven by Plaintiffs and Class Members were operated include the 91 Express Lanes operated by OCTA and other California toll roads in California operated by other public entities, including the TCA. Visit the [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com) website to see a map of the included toll roads. If you received this Notice, you are likely included in the Settlement because the defendants' records have identified you as a person whose PII may have been shared as part of the operation of the 91 Express Lanes.

## 4. Why is this a class action?

In a class action, one or more people called "Class Representative(s)" (in this case, Plaintiff Dan Golka) sue on behalf of themselves and other people with similar claims. Together, all the people with similar claims (except those who exclude themselves) are members of a "Settlement Class."

## 5. Why is there a Settlement?

The Court has ruled in favor of the Defendants on a number of the privacy claims raised in the lawsuit, but has not decided wholly in favor of either the Plaintiffs or Defendants. Instead, Plaintiff Dan Golka and Defendants have agreed to the Settlement. By agreeing to the Settlement, the Parties avoid the costs and uncertainty of a trial, and if the Settlement is approved by the Court, Settlement Class Members will receive the benefits described in this Notice. The proposed Settlement does not mean that any law was broken or that the Defendants did anything wrong. The Defendants deny all liability and legal claims against them in this case. Plaintiff Dan Golka and the lawyers representing the class think the proposed Settlement is best for everyone who is affected.

# WHO IS PART OF THE SETTLEMENT

## 6. Who is included in the Settlement?

**If you received a Notice by email or mail you are likely a Settlement Class Member.**

The following individuals whose PII was provided by OCTA or CUSA to an individual or entity described below between June 29, 2015 and [10 days after Prelim Approval Order] are included in the Settlement:

- Any person with a transponder account with a California toll road operator other than OCTA whose PII including the date, time and location of a toll transaction on the 91 Express Lanes was sent by Defendants to another California toll road operator between June 29, 2015 and [10 days after Prelim Approval Order] for purposes of collecting a toll incurred on the 91 Express Lanes (the “Interoperability Subclass”); and
- Any person whose PII was sent by Defendants between June 29, 2015 and [10 days after Prelim Approval Order] to: a) the California Department of Motor Vehicles or out-of-state equivalent in connection with more than one alleged toll violation incurred on the 91 Express Lanes (the “DMV Subclass”); b) a car rental company in connection with an alleged toll violation incurred on the 91 Express Lanes (the “Car Rental Subclass”); and/or c) a third-party debt collector for collection of unpaid tolls and/or toll violation penalties incurred on the 91 Express Lanes (the “Debt Collection Subclass”)

The following individuals are excluded from the Settlement Class: Current members of the OCTA Board of Directors, OCTA’s Chief Executive Officer, the General Manager of the 91 Express Lanes, OCTA’s 91 Express Lanes Project Manager III, and the attorneys representing OCTA and Cofiroute in this Litigation.

The Settlement Agreement does not include any of the following claims:

- The claims expressly asserted in the January 6, 2020 First Amended Complaint on file in the case entitled *Mathew Skogebo et al., vs. Cofiroute USA, LLC, et al.*, Orange County Superior Court Case No. 30-2019-01118474;
- The claims expressly asserted in the January 13, 2020 Second Amended Complaint on file in the case entitled *Harvey J. Thompson, et al., vs. Cofiroute USA, LLC, et al.*, Orange County Superior Court Case No. 30-2019-01108804; and
- The claims expressly asserted in the January 3, 2020 Corrected First Amended Complaint on file in the case entitled *Sanket Vinod Thakur, et al., vs. Cofiroute USA, LLC, et al.*, United States District Court, Central District of California, Case No. 8:19-CV-02233 ODW (JDEx).

**7. What if I am not sure whether I am included in the Settlement?**

If you are still not sure whether you are in the Settlement Class or have any other questions about the Settlement, visit the settlement website at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com) or call the toll-free number, 1- [REDACTED].

**THE SETTLEMENT BENEFITS**

**8. What does the Settlement provide?**

The benefits provided by the Settlement are as follows:

OCTA will pay \$1 million to create a “Settlement Fund.” The Settlement Fund will be used to pay all Settlement costs, including notice and administration costs, the Special Master’s fees and costs, any attorneys’ fees awarded to the attorneys representing the Settlement Class, and any approved service award to the Class Representative. The remainder (the “Net Settlement Funds”) will be distributed as cash payments to eligible Settlement Class Members who had a toll violation sent to a

third-party debt collector and who submit valid claims and who are not eligible for the penalty forgiveness described below. The cash payments will be distributed on a pro rata basis to valid claimants depending on the number of valid claims filed, up to a maximum of \$15.00 per person. Any amount remaining will be donated to Privacy Rights Clearinghouse, a Southern California non-profit privacy rights advocacy organization.

OCTA will also provide \$40 million in toll violation penalty forgiveness. This will be allocated as follows: Every toll violation penalty currently assigned to a third party debt collector for collection will be reduced to \$100.00. In addition, each toll violator who currently owes OCTA a debt for one or more toll violation penalties assigned to a third party debt collector will have the amount of that debt reduced by approximately \$40.00. You do not have to submit a claim to obtain this reduction. If you do not submit a request to be excluded from the Settlement Class, and you have a qualifying toll violation debt, you will automatically receive this benefit.

## 9. How do I file a claim?

If you qualify for a cash payment (i.e., you had a toll violation sent to a third-party debt collector and are not eligible for penalty forgiveness) you must complete and submit a valid Claim Form. You can file your Claim Form online at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com). The deadline to file a claim online is **11:59 p.m. PST on** \_\_\_\_\_.

You may also file your Claim Form via regular mail. A Claim Form can be downloaded from the website at [www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com). Claim Forms submitted by mail must be **postmarked** on or before \_\_\_\_\_ **and mailed to:**

91 Express Lanes Settlement Administrator  
PO Box \_\_\_\_\_  
Portland, OR 97208-\_\_\_\_\_

No matter which method you choose to file your Claim Form, please read the Claim Form carefully and provide all the information required, including the unique identifying number provided to you on the notice you were sent by email or mail (if you received a notice). Only one Claim Form per Settlement Class Member may be submitted.

## 10. When will I receive my payment?

Payments to eligible Class Members who submit valid claims and reductions in outstanding toll violation penalties will be made only after the Court grants final approval to the Settlement and after any appeals are resolved (*see* “The Court’s Fairness Hearing” below). If there are appeals, resolving them can take time. Please be patient.

## EXCLUDING YOURSELF FROM THE SETTLEMENT

If you do not want benefits from the Settlement, and you want to keep any rights you might have to sue the settling Defendants about the issues in this case, then you must take steps to get out of the Settlement. This is called excluding yourself or “opting out” of the Settlement Class.

### 11. How do I exclude myself from the Settlement?

To exclude yourself from the Settlement, you must send a letter or other written document by mail to:

91 Express Lanes Settlement Administrator  
PO Box [REDACTED]  
Portland, OR 97208-[REDACTED]

Your request to be excluded from the Settlement must be personally signed by you and contain a statement that indicates your desire to be excluded from the Settlement Class. A request to be excluded will not affect your eligibility to participate in any settlement regarding any toll roads other than the 91 Express Lanes.

Your exclusion request must be postmarked no later than [REDACTED]. You cannot ask to be excluded on the phone, by email, or at the website.

### 12. If I do not exclude myself, can I sue the Defendants for the same thing later?

No. Unless you exclude yourself, you give up any right you might have to sue the Defendants for legal claims that the Settlement resolves.

If you start your own lawsuit, you will have to hire your own lawyer, and you will have to prove your claims.

### 13. What am I giving up to stay in the Settlement Class?

If you stay in the Settlement Class and do not exclude yourself, you cannot sue or be part of any other lawsuit or other proceeding against the Defendants about the issues settled in this case, except even if you don't exclude yourself you can still pursue informal or formal administrative procedures to contest a prior toll evasion violation that has not been resolved. If you stay in the Settlement Class, all of the decisions and judgments by the Court related to the Settlement will bind you. If you file a Claim Form or do nothing at all, you will be releasing Defendants from all of the claims described and identified in Section 15 of the Settlement Agreement. Whether you exclude yourself or stay in the Settlement Class, you cannot bring a new claim based on the fact that one or more of the defendants provided your name and contact information to the Class Administrator so notice of the Settlement could be sent to you.

The Settlement Agreement is available at [www.XXXXXXXXXXX.com](http://www.XXXXXXXXXXX.com). The Settlement Agreement provides more detail regarding the release and describes the released claims, so read it carefully. You can talk to the law firms representing the Class listed in Question 15 for free, or you can, at your own expense, talk to your own lawyer if you have any questions about the released claims or what they mean.

### 14. If I exclude myself, can I still get a payment or a reduction of penalties?

No. You will not get a payment from the Settlement Fund if you exclude yourself from the Settlement. And if you owe toll violation penalties assigned to a debt collector, those penalties will not be reduced if you exclude yourself.

## THE LAWYERS REPRESENTING YOU

### 15. Do I have a lawyer in the case?

The Court has appointed the following lawyers as Class Counsel to represent all members of the Settlement Class.

Helen Zeldes Schonbrun Seplow Harris Hoffman & Zeldes, LLP 501 W. Broadway, Suite 800 San Diego, CA 92101	Blake J. Lindemann 433 North Camden Drive 4 <sup>th</sup> Floor Beverly Hills, CA 90201	Michael Flannery Cuneo Gilbert & LaDuca LLP 500 North Broadway, Suite 1450 St. Louis, MO 63102
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You will not be charged for these lawyers. If you want to be represented by another lawyer, you may hire one to appear in Court for you at your own expense.

### 16. How will the lawyers be paid?

Class Counsel intend to request up to \$250,000 for attorneys' fees, plus reimbursement of reasonable, actual out-of-pocket expenses incurred in the litigation. Any fees and expenses awarded by the Court will be paid out of the cash Settlement Fund. The Court will decide the amount of fees and expenses to award, if any.

Class Counsel will also request a Service Award of up to \$5,000 for Plaintiff Daniel Golka, to be paid from the Settlement Fund, for his service as representative on behalf of the whole Settlement Class.

The motion by Class Counsel for attorneys' fees, costs and Service Awards will be posted on the Settlement website at least two weeks before the           ,    , 2021 deadline for filing an objection to the Settlement or excluding yourself from the Settlement.

## OBJECTING TO THE SETTLEMENT

### 17. How do I tell the Court if I do not like the Settlement?

If you are a Settlement Class Member (and do not exclude yourself from the Settlement Class), you can object to any part of the Settlement. You can object even if you also submit a claim for benefits under the Settlement. To object, you must submit a letter or other written document to the court that includes the following:

- 1) A heading that includes the case name and case number: *In re Toll Roads Litigation*, Case No. 8:16-cv-262-ODW(ADSx) (C.D. Cal.);
- 2) Your name, address, telephone number, and if represented by counsel, the name, bar number, address, and telephone number of your counsel;
- 3) A signed declaration stating, under penalty of perjury, that you are a member of the Settlement Class;
- 4) A statement of all your objections to the Settlement, including the legal and factual basis for each objection and whether your objections apply only to you, to a specific subset of the class, or to the entire class; and

- 5) A statement of whether you intend to appear at the Fairness Hearing, either with or without counsel, and if with counsel, the name, bar number, address, and telephone number of your counsel who will attend.

You must file your objection with the Court (in the manner provided by the Local Rules for the Central District of California) and mail your objection to each of the following eight addresses, and your objection must be postmarked by \_\_\_\_\_:

CLERK OF THE COURT	ADMINISTRATOR
Clerk of the Court United States District Courthouse Central District of California Div. Los Angeles, CA XXXXX	91 Express Lanes Settlement Administrator P.O. Box _____ Portland, OR 97208-3656

OCTA COUNSEL	CUSA Co-COUNSEL	CUSA Co-COUNSEL
M. Lois Bobak Woodruff, Spradlin & Smart, 555 Anton Boulevard Suite 1200 Costa Mesa, CA 92626-7670	Ken E. Steelman General Counsel Cofiroute USA, LLC 200 Spectrum Center Drive Suite 1650 Irvine, CA 92618	David F. Brown Corbett, Steelman & Specter 27281 Las Ramblas, Suite 200 Mission Viejo, CA 92691-8303

CLASS COUNSEL		
Helen Zeldes Schonbrun Seplow Harris Hoffman & Zeldes, LLP 501 W. Broadway, Suite 800 San Diego, CA 92101	Blake J. Lindemann 433 North Camden Drive 4 <sup>th</sup> Floor Beverly Hills, CA 90201	Michael Flannery Cuneo Gilbert & LaDuca LLP 500 North Broadway, Suite 1450 St. Louis, MO 63102

**18. What is the difference between objecting and excluding myself?**

Objecting is simply telling the Court that you want to be part of the Settlement Class but you do not like something about the Settlement. You can object to a Settlement only if you do not exclude yourself from it. Excluding yourself is telling the Court that you do not want to be part of the Settlement. If you exclude yourself, you have no basis to object to the Settlement because you will not be part of the settling class.

**THE COURT’S FAIRNESS HEARING**

The Court has appointed the U.S. District Court Judge who presided over this case for four years and is now retired, Hon. Andrew J. Guilford, Ret., as Special Master to consider whether the Settlement should be approved and submit a report and recommendation to the Court. The Special Master will hold a hearing on whether to recommend approval of the Settlement to the Court (“Fairness Hearing”).

**19. When and where will the Court decide whether to approve the Settlement?**

The Special Master has scheduled a Fairness Hearing on approval of the Settlement on \_\_\_\_\_ at \_\_\_\_\_ . The hearing may be moved to a different date or time without additional notice, so it is a good idea to check

[www.XXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXX.com) for updates. At this hearing, the Special Master will consider whether the Settlement is fair, reasonable, and adequate. The Special Master will also consider the requests by Class Counsel for attorneys' fees and expenses and for a service award to the Class Representative. If there are objections, the Special Master will consider them at that time. After the hearing, the Special Master will decide whether to recommend approval of the Settlement to the Court. The Special Master's report and recommendation will be filed with the Court and posted to the website. Judge Wright will decide whether to accept it or not and enter an order accordingly. It is unknown how long these decisions will take.

#### **20. Do I have to attend the hearing?**

No. Class Counsel will answer any questions the Special Master may have. But, you are welcome to attend the Fairness Hearing at your own expense. If you file an objection, you do not have to attend the Fairness Hearing to talk about it, but you are free to do so. As long as you submit your written objection on time, to the proper addresses, and it complies with the other requirements set forth above, the Special Master will consider it. You may also pay your own lawyer to attend the Fairness Hearing, but it is not necessary.

#### **21. May I speak at the hearing?**

It is in the discretion of the Special Master whether to allow oral arguments at the Fairness Hearing. If you want to speak at the Fairness Hearing, include a statement in your objection that you intend to appear at the Fairness Hearing (*See* Question 17 above) and want to speak.

You cannot speak at the hearing if you exclude yourself from the Settlement.

### **IF YOU DO NOTHING**

#### **22. What happens if I do nothing at all?**

If you are a member of the Settlement Class and do nothing, you will be bound by the judgment entered by the Court on the Settlement, including the release in the Settlement Agreement. This means you will not be able to start a lawsuit, continue with this lawsuit, or be part of any other lawsuit or proceeding against the Defendants about the claims settled and released in this case, except even if you do nothing you can still pursue informal or formal administrative procedures to contest a prior toll evasion violation that has not been resolved. If you are a member of the Settlement Class and owe toll violation penalties assigned to a debt collector for collection you will receive the reduction in your penalties (discussed in response to Question 8, above) even if you do nothing in response to this notice.



## GETTING MORE INFORMATION

### 23. How do I get more information?

This notice summarizes the proposed Settlement. More details are in the Settlement Agreement. For a complete, definitive statement of the Settlement's terms, refer to the Settlement Agreement at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com). You may also write with questions to the Settlement Administrator at 91 Express Lanes Settlement Administrator, PO Box [REDACTED], Portland, OR 97208-[REDACTED], or call the toll-free number, 1-[REDACTED]-[REDACTED]-[REDACTED].

# **EMAIL NOTICE**

Draft Email Notice

To: [customer email address]  
From: administrator@xxx.com [xxx Class Action Settlement]  
Subject: Legal Notice about a Toll Roads class action settlement -- click link to submit a claim

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**If You Used a FasTrak Account To Pay a Toll on the 91 Express Lanes Or Received A Toll Violation In Connection With The 91 Express Lanes in Orange County, California, You May Be a Member of a Class Action and May be Entitled To Penalty Forgiveness Or A Payment of up to \$15.00 From the Class Action Settlement.**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.*

Use your Claim ID Number XXXXXXXXXXXX to file an easy online claim [here](#).

**Why am I receiving this notice?** You are receiving this notice because the records of the Orange County Transportation Authority (“OCTA”) show that your “Personally Identifiable Information” (“PII”) may have been shared for purposes of toll or penalty collection or toll-road interoperability for the 91 Express Lanes in Orange County, California between June 29, 2015 and [10 days after Prelim Approval Order]. You are therefore likely a class member and may be eligible to receive relief under a class action settlement (the “Settlement”) with OCTA and Cofiroute USA, LLC (“Defendants”). The United States District Court for the Central District Court of California ordered defendants to provide your name and email address to the Class Administrator so this notice could be sent to you advising you of the lawsuit and proposed settlement.

**What was the lawsuit about?** A settlement has been reached in a class action lawsuit in which Plaintiffs raised several claims, including that Defendants improperly collected and shared the PII of drivers and owners of vehicles who used a FasTrak transponder account with another California toll agency to pay for a toll on the 91 Express Lanes toll road or who used the 91 Express Lanes toll road without a valid transponder account. Defendants deny all allegations. The Court has decided that certain claims against Defendants lack merit but has not ruled on one remaining claim.

**What are the Settlement terms?** Every toll violation penalty currently assigned for third party debt collection will be reduced to \$100.00, and all outstanding toll violation debts assigned to a third party debt collector will be reduced by approximately an additional \$40.00. If your toll violation penalty was sent to a third-party debt collector but you currently do not owe an outstanding penalty, you may submit a claim for a cash award of up to \$15.00 from a \$1 million Settlement Fund. The amount of your cash award will depend on the total number of claims

filed, the costs of administration, and the amount the Court awards for attorneys' fees, costs and service awards. The lawyers representing the class intend to request up to \$250,000 for attorneys' fees, plus reimbursement of reasonable expenses, and for a service award of \$5,000 from the Settlement for the class representative. The details of the Settlement are available [here](#).

**What are my options?** You have **four options**: **First**, if you are eligible, using your Claim ID number shown at the top of this email, you can file your claim online [here](#) at the settlement website, [www.XXXXXXX.com](http://www.XXXXXXX.com) and seek benefits from the Settlement. Alternatively, you may download a paper [Claim Form](#) at the website and file via regular mail. **Second**, you may **do nothing**, in which case you will not receive a cash award but may still receive penalty forgiveness, your claims against Defendants will be released, and you will be bound by the orders and judgments of the Court. **Third**, you may **exclude yourself** from the Settlement by mailing a signed letter to the Settlement Administrator, indicating that you wish to be excluded from the Settlement. If you exclude yourself, you will receive no penalty forgiveness or cash awards from the Settlement, but you will keep any claims you have against Defendants to the extent that they are not barred by applicable law and have not been resolved by the Court (except any claim arising out of any defendant providing your name and contact information to the Class Administrator so notice could be sent to you). **Fourth**, as long as you do not exclude yourself from the Settlement, you may **object to the Settlement and indicate whether you plan to appear at the Fairness Hearing**, which is scheduled to occur on [REDACTED], 2021 at Judicate West, 55 Park Plaza, Suite 400, Irvine, CA 92614. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to.

**What are the deadlines?** The deadline for submitting a claim, excluding yourself, or objecting is 11:59 p.m on **Month Date, 2020**. The [Detailed Notice](#) available on the website explains how to exclude yourself or object.

For more information, visit [www.XXXXXXX.com](http://www.XXXXXXX.com). You may also call 1-XXX-XXX-XXXX.

# **POSTCARD NOTICE**

91 Express Lanes Settlement Administrator  
PO Box XXXX  
Portland, OR 97XXX-XXXX

FIRST-CLASS MAIL  
U.S. POSTAGE  
PAID  
Portland, OR  
PERMIT NO. 2882

**If You Used a FasTrak Account To Pay a Toll on the 91 Express Lanes Or Received A Toll Violation In Connection With The 91 Express Lanes in Orange County, California, You May Be a Member of a Class Action and May be Entitled To Penalty Forgiveness Or A Payment of up to \$15.00 From the Class Action Settlement.**

*A federal court has authorized this Notice. This is not a solicitation from a lawyer.*

Your Claim ID Number is: <<ClaimID>>

www.XXXXXXXXXX.com

<<BARCODE>>

<<NAME LINE 1>>  
<<NAME LINE 2>>  
<<ADDRESS LINE 1>>  
<<ADDRESS LINE 2>>  
<<CITY, STATE ZIP>>  
<<COUNTRY>>

**CLAIM FORM**

To claim your payment, sign this form and mail it by the deadline below. You can also file your claim online at [www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) by using your Claim ID number on the front of this Notice.

**Your Claim Form must be postmarked by Month, Day, 2020 or submitted online at [www.XXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXX.com) by 11:59 ET on Month, Day, 2020. Late claims will be rejected.**

By signing this Claim Form, you are affirming that you are eligible to receive the benefits of the Settlement.

Signature:

Date (MM/DD/YY):

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I would like to receive my payment by (email address required below):

 Paper Check Digital Payment

**PERSONAL INFORMATION UPDATE FORM**

To notify the Settlement Administrator of any change in your contact information, you may fill out and return this card.

First Name:

MI:

Last Name:

Mailing Address:

City:

State:

ZIP Code:

Email Address:

<<MailID>>

Claim ID: <<ClaimID>>

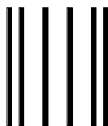
**Why am I receiving this notice?** The records of the Orange County Transportation Authority ("OCTA") show that some of your "Personally Identifiable Information" ("PII") may have been shared for purposes of toll or penalty collection or toll-road interoperability for the 91 Express Lanes in Orange County, California between June 29, 2015 and [10 days after Prelim Approval Order]. You are therefore likely a class member and may be eligible to receive relief under a class action settlement with OCTA and Cofiroute USA, LLC ("Defendants"). The United States District Court for the Central District Court of California ordered defendants to provide your name and address to a settlement administrator so this notice could be sent.

**What was the lawsuit about?** The class action claims allege that Defendants improperly collected and shared the PII of drivers and owners of vehicles who used a FasTrak transponder account with another California toll agency to pay for a toll on the 91 Express Lanes toll road or who used the 91 Express Lanes toll road without a valid transponder account. Defendants deny all allegations. The Court has decided that certain claims against Defendants lack merit but has not ruled on one remaining claim.

**What are the Settlement terms?** Under a proposed settlement, every toll violation penalty currently assigned for third party debt collection will be reduced to \$100.00, and all toll violation debts assigned to a third-party debt collector will be reduced by approximately an additional \$40.00. If your toll violation penalty was sent to a third-party debt collector but you currently do not owe an outstanding penalty, you may submit a claim for a cash award of up to \$15.00 from a \$1 million settlement fund. The amount of your cash award will depend on the total number of claims filed, the costs of administration, and the amount the Court awards for attorneys' fees, costs and service awards. The lawyers representing the class intend to request up to \$250,000 for attorneys' fees, plus reimbursement of reasonable expenses, and for a service award of \$5,000 from the settlement for the class representative. The details of the settlement are available at [www.XXXXXXXXXX.com](http://www.XXXXXXXXXX.com).

**What are my options?** You have **four options**: **First**, if you are eligible, you may **submit a Claim Form** either online using your Claim ID on the front of this postcard or by using the attached tear-off form, and seek benefits from the Settlement. **Second**, you may **do nothing**, in which case you will not receive a cash award but may still receive penalty forgiveness, your claims against Defendants will be released and you will be bound by the orders and judgments of the Court. **Third**, you may **exclude yourself** from the class and the settlement by mailing a signed letter to the Class Administrator, indicating that you wish to be excluded from the class and the settlement. If you exclude yourself, you will receive no penalty forgiveness or cash award from the settlement, but you will keep any claims you have against Defendants to the extent that they are not barred by applicable law and have not been resolved by the Court (except any claim arising out of any defendant providing your name and contact information to the Class Administrator so notice could be sent to you). **Fourth**, as long as you do not exclude yourself from the settlement, you may **object to the settlement and indicate whether you plan to appear at the Fairness Hearing**, which is scheduled to occur on \_\_\_\_\_, 2021 at Judicate West, 55 Park Plaza, Suite 400, Irvine, CA 92614. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to. The deadline for submitting a claim, excluding yourself, or objecting is 11:59 p.m. on **Month Date, 2020**. The Detailed Notice available on the website explains how to exclude yourself or object. For more information, call or visit the website.

[www.XXXXXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXXXXX.com) • 1-XXX-XXX-XXXX



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IF MAILED  
IN THE  
UNITED STATES

**BUSINESS REPLY MAIL**  
FIRST-CLASS MAIL    PERMIT NO 581    PORTLAND OR

POSTAGE WILL BE PAID BY ADDRESSEE



91 Express Lanes Settlement Administrator  
PO Box XXXX  
Portland, OR 97XXX-XXXX



# **PUBLICATION NOTICE**




*OCTA Settlement*  
**Banner Advertisement**

**Online Display Banner –**


Frame 1: Visible for 5 seconds.

If you drove on the 91 Express Lanes  
in Orange County, California,




Frame 2: Visible for 5 seconds.

your rights may be affected by  
a Class Action Settlement.



Frame 3: Visible for 5 seconds.

For more information visit  
[www.XXXXXXXXXXXXXXX.com](http://www.XXXXXXXXXXXXXXX.com)





**Facebook – Right Hand Column**




Class Action Settlement | Drivers of 91  
Express Lanes  
[www.websiteurl.com](http://www.websiteurl.com)




## Facebook – Newsfeed

 **Epiq**  
Sponsored · 

If you drove on the 91 Express Lanes, your rights may be affected.





[WWW.WEBSITEURL.COM](http://WWW.WEBSITEURL.COM)  
**Class Action Settlement** [LEARN MORE](#)

 Like  Comment  Share





## Instagram – Newsfeed

*Instagram*

 **Epiq**  
Sponsored



**Learn More** [>](#)

If you drove on the 91 Express Lanes, your rights may be affected by a Class Action Settlement.

# EXHIBIT C

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

IN RE: TOLL ROADS LITIGATION

Case No: 8:16-cv-00262-ODW(ADSx)

PENNY DAVIDI BORSUK; DAVID  
COULTER; EBRAHIM E. MAHDA;  
TODD QUARLES; TODD  
CARPENTER; LORI MYERS; DAN  
GOLKA; and JAMES WATKINS on  
behalf of themselves and all others  
similarly situated,

**[PROPOSED] ORDER GRANTING  
FINAL APPROVAL OF CLASS  
ACTION SETTLEMENT**

Plaintiffs,

Date:  
Time:

vs.

Courtroom: 5D  
Fifth Floor  
350 W. 1<sup>st</sup> Street  
Los Angeles, California

FOOTHILL/EASTERN  
TRANSPORTATION CORRIDOR  
AGENCY; SAN JOAQUIN HILLS  
TRANSPORTATION CORRIDOR  
AGENCY; ORANGE COUNTY  
TRANSPORTATION AUTHORITY;  
3M COMPANY; BRiC-TPS LLC;  
RHONDA REARDON; MICHAEL  
KRAMAN; CRAIG YOUNG; SCOTT  
SCHOEFFEL; ROSS CHUN;  
DARRELL JOHNSON; LORI  
DONCHAK; COFIROUTE USA, LLC;  
and DOES 3-10; inclusive,

Judge: Hon. Otis D. Wright II

Defendants.

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**ORDER GRANTING FINAL APPROVAL**

On April \_\_, 2021, Plaintiff Dan Golka on behalf of himself and the proposed Settlement Class (as defined below) (“Plaintiff”) and Defendants Orange County Transportation Authority, Darrell Johnson and Lori Donchak (collectively “OCTA”), and Defendant Cofiroute USA, LLC (“Cofiroute”) (OCTA and Cofiroute are collectively referred to as “Defendants”) entered into a Settlement Agreement and Release (“Agreement”), after two arm’s-length mediations, both with the assistance of mediator Robert Kaplan<sup>1</sup> The settlement reached by Plaintiff and Defendants will be referred to as the “Settlement.”

On \_\_\_\_\_ this Court granted Preliminary Approval of the Agreement and ordered that Notice be sent to the Settlement Class.

On \_\_\_\_\_, this Court heard Plaintiff’s motion for final approval of the Settlement. After reviewing (a) the motion and the supporting papers, including the Agreement; (b) any objections filed with or presented to the Court; (c) the parties’ responses to any objections; and (d) counsels’ arguments, the Court finds good cause to grant the motion.

**FINDINGS:**

1. Upon review of the record, the Court hereby finds that the Settlement is, in all respects, fair, adequate, and reasonable The Court has come to this determination pursuant to the factors outlined in Federal Rules of Civil Procedure (“Rule”) 23(e)(2). Among other matters considered, the Court took into account: (a) the complexity of Plaintiff’s theory of liability; (b) the arguments raised by Defendants in their pleadings that could potentially preclude or reduce the recovery by class members; (c) the prior rulings of the Court on the merits of some of Plaintiff’s claims and in particular on Defendants’ Motion to Decide Key Legal

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<sup>1</sup> Unless otherwise defined, all terms used herein have the same meanings as set forth in the Agreement.

1 Questions (Dkt. 566); (d) delays in any award to the Settlement Class that would  
2 occur due to further litigation and appellate proceedings; (e) the amount of  
3 discovery that has occurred; (f) the relief provided to the Settlement Class; (g) the  
4 recommendation of the Settlement by counsel for the Parties; and (h) the low  
5 number of objectors to the Settlement, demonstrating that the Settlement Class had a  
6 positive reaction to the Settlement.

7         2. The Court finds that the Settlement Class members have been  
8 adequately represented by the Class Representative and Class Counsel.

9         3. The Court also finds that extensive arm's-length negotiations have  
10 taken place, in good faith, between Class Counsel and Defendants' Counsel  
11 resulting in the Settlement. These negotiations were presided over by the  
12 experienced mediator Robert Kaplan, Esq.

13         4. The Settlement provides substantial and adequate value to the  
14 Settlement Class.

15         5. The Court finds that the Settlement was made in good faith pursuant to  
16 Section 877 of the California Code of Civil Procedure ("Section 877") and bars any  
17 other defendant in the case from claiming or obtaining contribution against OCTA  
18 or Cofiroute.

19         6. The Class Administrator provided notice to members of the Settlement  
20 Class in compliance with the Agreement, the Preliminary Approval Order, due  
21 process, and Rule 23. The notice: (i) fully and accurately informed Settlement Class  
22 members about the lawsuit and settlement; (ii) provided sufficient information so  
23 that Settlement Class members were able to decide whether to accept the benefits  
24 offered, opt-out and pursue their own remedies, or object to the proposed settlement;  
25 (iii) provided procedures for Settlement Class members to file written objections to  
26 the proposed settlement, to appear at the hearing, and to state objections to the  
27 proposed settlement; and (iv) provided the time, date, and place of the final fairness  
28 hearing.

1           7.     The Parties have adequately performed their obligations under the  
2 Agreement and Preliminary Approval Order to date.

3           8.     For the reasons stated in the Preliminary Approval Order, and having  
4 found nothing in any submitted objections that would disturb these previous  
5 findings, this Court finds and determines that the proposed Settlement Class, as  
6 defined below, meets all of the legal requirements for class certification for  
7 settlement purposes under Rule 23(a) and (b)(3).

8 **IT IS ORDERED THAT:**

9           1.     Settlement Class. The Settlement Class is defined as:

10           All individuals whose PII was provided by OCTA or Cofiroute to an entity  
11 described below between June 29, 2015 and \_\_\_\_\_ (10 days after entry  
12 of the Preliminary Approval Order):

- 13           •     Any person with a transponder account with a Non-Party Toll Agency  
14                 whose PII, including the date, time and location of a toll transaction,  
15                 was sent by Defendants to a Non-Party Toll Agency for purposes of  
16                 collecting a toll incurred on the 91 Express Lanes (the “Interoperability  
17                 Subclass”);
- 18           •     Any person whose license plate number was sent by Defendants to the  
19                 California Department of Motor Vehicles or out-of-state equivalent,  
20                 directly or through a subcontractor, in connection with more than one  
21                 alleged toll violation incurred on the 91 Express Lanes (the “DMV  
22                 Subclass”);
- 23           •     Any person whose PII was sent to a car rental company by Defendants  
24                 in connection with an alleged toll violation incurred on the 91 Express  
25                 Lanes (the “Car Rental Subclass”); and
- 26           •     Any person whose PII, other than the amount of tolls and penalties  
27                 owed, the violation number, or the violator’s account number, was sent  
28                 by Defendants to a third-party debt collector for collection of unpaid

1 tolls and/or toll violation penalties incurred on the 91 Express Lanes  
2 (the “Debt Collection Subclass”).

3 The following individuals are excluded from the Settlement Class: Current members  
4 of the OCTA Board of Directors, OCTA’s Chief Executive Officer, the General  
5 Manager of the 91 Express Lanes, OCTA’s 91 Express Lanes Project Manager III,  
6 the attorneys representing OCTA or Cofiroute in this Litigation. and the judge to  
7 whom this case is or was assigned, any member of the judge’s immediate family,  
8 and any member of the judge’s staff.

9 2. Binding Effect of Order. This Order applies to all claims or causes of  
10 action settled under the Agreement, and binds all members of the Settlement Class,  
11 including those who did not properly request exclusion. Except for Paragraph 3  
12 below, this Order does not bind persons who filed timely and valid Requests for  
13 Exclusion. Attached as Exhibit A is a list of persons who properly requested to be  
14 excluded from the Settlement.

15 3. In accordance with both the Court’s general authority to protect its  
16 jurisdiction and the All Writs Act (28 USC § 1651), the Court hereby permanently  
17 enjoins each and every member of the Settlement Class from filing or pursuing any  
18 claim or litigation against any person or entity asserting that compliance with the  
19 obligations imposed by this Order, the Preliminary Approval Order, or the  
20 Agreement violates California Streets & Highways Code section 31490 or any other  
21 federal, state or local constitution, statute, rule, regulation or policy purporting to  
22 limit the disclosure of personally identifiable information.

23 4. Release. Plaintiff and all members of the Settlement Class who did not  
24 properly request exclusion are: (1) deemed to have released and discharged all  
25 Released Parties from all Released Claims (2) deemed to have released and  
26 discharged any claim against Released Parties and any other person or entity who  
27 provided information to the Class Administrator pursuant to the Preliminary  
28 Approval Order asserting that compliance with the obligations of the Agreement, the



1 Preliminary Approval Order, and/or the Court ordered Class Notice violates  
2 Section 31490 or any other federal, state or local constitution, statute, rule,  
3 regulation or policy purporting to limit the disclosure of the personally identifiable  
4 information; and (3) barred and permanently enjoined from asserting, instituting, or  
5 prosecuting, either directly or indirectly, any of those claims. The full terms of the  
6 releases described in this paragraph are set forth in Section 15 of the Settlement  
7 Agreement and are specifically incorporated herein by this reference.

8       5. Class Relief. OCTA, through the Class Administrator, shall issue a  
9 Cash Award to each Cash Distribution Class Member, and shall also provide penalty  
10 forgiveness to those members of the Debt Collection Subclass eligible for such  
11 relief, as stated in the Settlement Agreement.

12       6. Entry of Judgment. Judgment shall be entered in favor of Defendants  
13 and against Settlement Class Members as provided in the Agreement.

14       7. Court's Jurisdiction. Pursuant to the Parties' request, the Court shall  
15 retain jurisdiction over all matters relating to the interpretation, administration,  
16 implementation, effectuation, and enforcement of the Agreement until final  
17 performance of the Agreement.

18

19 **IT IS SO ORDERED:**

20

21 Dated: \_\_\_\_\_

\_\_\_\_\_

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Otis D. Wright II  
United States District Judge

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# EXHIBIT D

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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

IN RE: TOLL ROADS LITIGATION

Case No: 8:16-cv-00262-ODW(ADSx)

PENNY DAVIDI BORSUK; DAVID  
COULTER; EBRAHIM E. MAHDA;  
TODD QUARLES; TODD  
CARPENTER; LORI MYERS; DAN  
GOLKA; and JAMES WATKINS on  
behalf of themselves and all others  
similarly situated,

Plaintiffs,

vs.

FOOTHILL/EASTERN  
TRANSPORTATION CORRIDOR  
AGENCY; SAN JOAQUIN HILLS  
TRANSPORTATION CORRIDOR  
AGENCY; ORANGE COUNTY  
TRANSPORTATION AUTHORITY;  
3M COMPANY; BRiC-TPS LLC;  
RHONDA REARDON; MICHAEL  
KRAMAN; CRAIG YOUNG; SCOTT  
SCHOEFFEL; ROSS CHUN;  
DARRELL JOHNSON; LORI  
DONCHAK; COFIROUTE USA, LLC;  
and DOES 3-10; inclusive,

Defendants.

**[PROPOSED] CLASS ACTION  
JUDGMENT**

Date:  
Time:  
Courtroom: 5D  
Fifth Floor  
350 W. 1<sup>st</sup> Street  
Los Angeles, California

Judge: Hon. Otis D. Wright II

1 On April \_\_, 2021, Plaintiff Dan Golka on behalf of himself and the proposed  
2 Settlement Class (as defined below) (“Plaintiff”) and Defendants Orange County  
3 Transportation Authority, Darrell Johnson and Lori Donchak (collectively  
4 “OCTA”), and Defendant Cofiroute USA, LLC (“Cofiroute”) (OCTA and Cofiroute  
5 are collectively referred to as “Defendants”) entered into a Settlement Agreement  
6 and Release (“Agreement”)<sup>1</sup>. The settlement reached by Plaintiff and Defendants is  
7 referred to herein as the “Settlement.”

8 On \_\_\_\_\_, 2021, this Court granted preliminary approval of the  
9 Agreement and ordered that notice be sent to the Settlement Class (Dkt. \_\_,  
10 “Preliminary Approval Order”).

11 Concurrently with entry of this Class Action Judgment, this Court granted  
12 final approval of the Settlement. Now pursuant to this Court’s Order Granting Final  
13 Approval of Class Action Settlement (“Final Approval Order”), and the Plaintiff,  
14 Final Settlement Class Members and Defendants having so agreed as provided in the  
15 Agreement, and good cause appearing therefor,

16 **IT IS ORDERED, ADJUDGED AND DECREED** in favor of Defendants  
17 and against the Final Settlement Class Members as follows:

18 1. On Count V of Plaintiff’s Corrected First Amended Consolidated Class  
19 Action Complaint (“Complaint”), as the Court determined in its Order Regarding  
20 Defendants’ Motion to Decide Key Legal Questions (Dkt. 566), the Court finds and  
21 declares that:

22 a. It is not a violation of California Streets & Highways Code  
23 section 31490 (“Section 31490”) for OCTA or its processing agency (as defined in  
24 California Vehicle Code section 40253), including Cofiroute, to send a license plate  
25 number of a vehicle which incurred a toll violation and the violation date directly or  
26

27 \_\_\_\_\_  
28 <sup>1</sup> Unless otherwise defined, all terms used herein have the same meanings as set  
forth in the Agreement (Dkt. \_\_).

1 indirectly through a vendor to a department of motor vehicles to get the registered  
2 owner's name and address so the agency can send a notice of toll evasion violation  
3 to the registered owner or to send a license plate number directly or indirectly to a  
4 department of motor vehicles for a second or subsequent violation to get the  
5 registered owner's name and address so the agency can send a notice of toll evasion  
6 violation to the registered owner;

7           b. It is not a violation of Section 31490 for OCTA or its processing  
8 agency, including Cofiroute, to send to the California Department of Motor Vehicles  
9 the information it requires to prevent the registration of a vehicle that incurred a toll  
10 violation from being renewed until outstanding tolls and penalties are paid as  
11 authorized by California Vehicle Code sections 40267(a) and 4770(a);

12           c. It is not a violation of Section 31490 for OCTA or its processing  
13 agency, including Cofiroute, to send to the California Franchis Tax Board ("FTB")  
14 the information the FTB requires to intercept a toll violator's tax refund or lottery  
15 winnings and use them to pay outstanding tolls and penalties as authorized by  
16 California Government Code sections 12419.10 and 12419.12;

17           d. It is not a violation of Section 31490 for OCTA or its processing  
18 agency, including Cofiroute, to send to a vendor the name and address of the  
19 registered owner of a vehicle which incurred or other person responsible for a toll  
20 violation to obtain an updated address to send a notice directly related to a toll  
21 evasion violation;

22           e. It is not a violation of Section 31490 for OCTA or its processing  
23 agency, including Cofiroute, to send to a car rental company the information  
24 required to be included in a notice of toll evasion violation when a vehicle owned by  
25 that car rental company incurs a toll violation; and

26           f. It is not a violation of Section 31490 for OCTA or its processing  
27 agency, including Cofiroute, to send another transportation agency the license plate  
28 number, transponder Hex ID number, unique account identifying number, date and

1 time of transaction, and toll plaza and/or lane of the other transportation agency's  
2 accoutheadholder's use of its toll road or toll lane for purposes of interoperability as  
3 authorized by California Streets and Highways Code section 27565(a)(2) and  
4 required by the California Toll Operators Committee interoperability specifications.

5       2. On Counts III and IV of the Complaint, as the Court determined in its  
6 Orders Regarding Defendants' Motions For Partial Summary Judgment (Dkt. 297)  
7 the Court finds and declares that Defendant OCTA's toll violation enforcement  
8 procedures, including (a) OCTA's use of addresses of registered owners obtained  
9 from departments of motor vehicles to send notices of toll evasion violation, (b) the  
10 display of signs on the 91 freeway announcing the 91 Express Lanes, (c) OCTA's  
11 administrative review process for toll evasion violations; and (d) the bond  
12 requirement for OCTA's administrative review, are not facially a violation of the  
13 Due Process Clause of the Fourteenth Amendment of the United States Constitution  
14 or Article I, Section 7(a) of the California Constitution.

15       3. All other counts or claims alleged in the Complaint are hereby  
16 dismissed with prejudice and, except as otherwise provided in the Agreement or  
17 ordered by the Court, each party shall bear his, her or its own costs and attorney's  
18 fees.

19       4. Plaintiff and Final Settlement Class Members are hereby permanently  
20 enjoined from bringing, joining, or continuing to prosecute any Released Claims  
21 against any of the Defendants or the Released Parties.

22       **IT IS FURTHER ORDERED ADJUDGED AND DECREED** against  
23 Plaintiff and all Settlement Class Members, regardless of whether they opted out or  
24 excluded themselves from the Final Settlement Class, that:

25       1. The Court finds and declares that providing Settlement Class Member  
26 Information to the Class Administrator pursuant to the Agreement, the Preliminary  
27 Approval Order, Court ordered Class Notice, or the Final Approval Order does not  
28 violate Section 31490 or any other federal, state or local constitution, statute, rule,

1 regulation or policy purporting to limit the disclosure of the personally identifiable  
2 information that is reasonably necessary to provide notice to the Settlement Class  
3 Members and to otherwise implement this Settlement

4         2. Plaintiff and Settlement Class Members are permanently enjoined from  
5 filing or pursuing any claim or litigation against Defendants OCTA, Cofiroute,  
6 Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills  
7 Transportation Corridor Agency, 3M Company, BRiC-TPS, LLC, and any other  
8 person or entity who provided or provides information to the Class Administrator  
9 pursuant to the Preliminary Approval Order or Final Approval Order, and any of  
10 their respective officers, agents, employees and attorneys, asserting that compliance  
11 with the obligations imposed by the Agreement, the Preliminary Approval Order,  
12 Court ordered Class Notice, or Final Approval Order violates Section 31490 or any  
13 federal, state or local constitution, statute, rule, regulation or policy purporting to  
14 limit the disclosure of the personally identifiable information that is reasonably  
15 necessary to provide notice to the Settlement Class and to otherwise implement this  
16 Settlement.

17                 **IT IS FURTHER ORDERED ADJUDGED AND DECREED** that:

18         1. Defendant OCTA shall, for a period of 10 years, maintain its maximum  
19 toll violation penalty at no more than \$100.00 per violation. The Court finds and  
20 declares that a maximum penalty of \$100.00 per violation is not facially a violation  
21 of the Excessive Fines Clause under the Eighth and Fourteenth Amendments of the  
22 United States Constitution or Article I, Section 17 of the California Constitution.

23         2. Unless there is a change in current law governing the personally  
24 identifiable information of a toll violator that a transportation agency may provide to  
25 a third-party debt collection agency, the only personally identifiable information of a  
26 toll violator Defendant OCTA, and its processing agency, including Defendant  
27 Cofiroute while acting in its capacity as processing agency for OCTA, shall provide  
28 a third-party debt collection agency is the information contained in the relevant toll

1 violation notice, any updated contact, address and/or email information, and a  
2 unique violation number and toll violator identification number,. Defendant OCTA  
3 and its processing agency shall have no obligation under this Judgment to search for  
4 or obtain updated contact information for a toll violator before providing  
5 information to a third-party debt collection agency.

6 3. The Court finds and declares that it is not a violation of Section 31490  
7 or the United States Constitution, California Constitution or any federal or  
8 California statutory provision for OCTA or its processing agency, including  
9 Cofiroute, to provide a third-party debt collection agency with the information  
10 contained in the relevant toll violation notice, any updated contact, address and/or  
11 email information, and a unique violation number and toll violator identification  
12 number.

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15 Dated: \_\_\_\_\_

\_\_\_\_\_  
Otis D. Wright II  
United States District Judge

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