

## SETTLEMENT AGREEMENT

***Avery, et al. v. Orange County Transportation Authority, et al.***

**Orange County Superior Court, case no. 07CC00004  
(consolidated with 07CC05541 and 30-2008 00055056)**

This Settlement Agreement ("Agreement") is entered into as of the "Effective Date" (as defined below), by and between, on the one hand, plaintiffs, Pamela Mathews Avery, Yolanda Edmondson, Jeffrey Edmondson, Rachelle Geach, Maria Gonzalez, Pablo Gonzalez, Ruth Arlene Murray (deceased, now represented by her husband, Stan Murray) Jeff Murray, Michael Roldan, Cynthia Roldan, Bill Sempertegui, Jennifer Sempertegui, Brian Young, and Stephanie Young, as well as Jocelyn Woods and Rosemarie Sepeda ("Plaintiffs"), individually and as representatives of the "Settlement Class" (as defined below), and on the other hand, defendants Orange County Transportation Authority, Arthur T. Leahy, Law Enforcement Systems, Inc., Richard K. Carrier, San Joaquin Hills Transportation Corridor Agency, Jim Dahl, Foothill/Eastern Transportation Corridor Agency, Lance MacLean, VESystems, LLC, and Manfred Rietsch ("Defendants").

Named Plaintiffs Ron Hall and Marta Royball shall not be deemed to be class representatives, but shall be treated as other Class Members, subject to the opt out provisions set forth in this Agreement. Defendant, Orange County Transportation Authority, is referred to herein as "OCTA," and Defendants, San Joaquin Hills Transportation Corridor Agency and Foothill/Eastern Transportation Corridor Agency, are collectively referred to herein as the "TCA."

Plaintiffs and Defendants are collectively referred to herein as the "Parties."

"Plaintiffs' Counsel" and "Defendants' Counsel," in this Agreement, means Plaintiffs' counsel and Defendants' counsel, respectively, who are identified below on the signature pages of this Agreement and who have executed this Agreement to approve the form of this Agreement.

### **I. RECITALS.**

**A.** On January 9, 2007, a proposed "Class Action Complaint for Damages and Injunctive Relief" was filed in this action, entitled, *Avery, et al. v. Orange County Transportation Authority, et al.*, case number 07CC00004 in the Orange County Superior Court. A "First Amended Class Action Complaint for Damages and Injunctive Relief" was filed on January 23, 2007.

**B.** In the operative "Second Amended Class Action Complaint for Damages and Injunctive Relief," filed on February 13, 2008, Plaintiffs allege the following causes of action: (1) 42 U.S.C. Section 1983 for Violation of the Due Process Clause of the Fourteenth Amendment; (2) 42 U.S.C. Section 1983 for Violation of the Excessive Fines Clause of the Eighth and Fourteenth Amendments; (3) Violation of Article I, Section 7 of

the California Constitution; (4) Violation of Article I, Section 17 of the California Constitution; (5) Violation of Business and Professions Code Section 17200 et seq.; (6) Violation of Business and Professions Code Section 17200 et seq.; and (7) Illegal Expenditure of Funds (California Code of Civil Procedure § 526a) (Injunctive Relief).

C. On or about February 27, 2008, the Court consolidated this action for all purposes with another action entitled, *Jocelyn Woods v. Orange County Transportation Authority, et al.*, case number 07CC05541, filed as of May 3, 2007 (“*Woods Action*”). The Court designated the *Avery* action as the lead action.

D. On June 12, 2008, the Court consolidated this action for all purposes with another action entitled, *Rosemarie Sepeda v. Orange County Transportation Authority, et al.*, case number 30-2008 00055056, filed March 19, 2008 (“*Sepeda Action*”). The Court designated the *Avery* action as the lead action.

E. The *Avery Action*, as consolidated with the *Woods Action* and the *Sepeda Action*, is referred to herein as the “*Action*.” The “*Action*” challenges the procedures, policies, and practices of Defendants in assessing, collecting, and enforcing toll evasion penalties on OCTA toll roads and TCA toll roads, including the amounts of such penalties.

F. On or about August 15, 2008, pursuant to stipulation, the Court entered an order setting a hearing and briefing schedule for “Plaintiffs’ Motion for Class Certification, Appointment of Representative Plaintiffs and Lead Counsel” (“*Certification Motion*”). Pursuant to that order, Plaintiffs served and filed their moving papers on September 26, 2008, and Defendants served and filed their opposing papers on October 15, 2008. Also pursuant to that order, the parties were required to meet and confer regarding the *Certification Motion* no later than October 24, 2008, and Plaintiffs’ reply papers were due to be served and filed no later than October 27, 2008.

G. The Parties, through their respective counsel, met and conferred, and agreed to submit this *Action* to private mediation prior to the hearing on Plaintiffs’ *Certification Motion*. The Parties met with mediator Lynn Frank, with the mediation firm of Gregorio Haldeman Piazza Rotman Frank & Feder, for over 12 hours on December 2, 2008. A subsequent all-day mediation session with Ms. Frank was held on January 13, 2009. Since these mediation sessions and up to the present, the settlement negotiations have involved numerous conference calls and in-person meetings of counsel, as well as extensive correspondence. To accommodate these settlement discussions, the Parties periodically stipulated that the Court should continue the deadline for Plaintiffs’ reply papers and the date for hearing on the *Certification Motion*, and in each instance, the Court entered an order granting said continuances.

H. Plaintiffs have agreed to settle this *Action*, pursuant to the provisions of this Agreement, considering, among other things: (1) the substantial benefits available to Plaintiffs and the Settlement Class under the terms of this Agreement; (2) the attendant risks and uncertainties of litigation, especially in complex litigation such as this *Action*, as well as the difficulties and delays inherent in such litigation; and (3) the desirability of

consummating this Agreement promptly to provide effective monetary and other relief to the Settlement Class.

I. Defendants expressly have denied and continue to deny all charges of wrongdoing or liability against them arising out of or relating to any of the conduct alleged in this Action. Nonetheless, Defendants have agreed to enter into this Agreement in order to avoid the costs, risks, uncertainties and inconvenience of litigation.

J. The Parties make the promises contained in this Agreement for good and valuable consideration, the adequacy of which is hereby acknowledged.

## II. SETTLEMENT CLASS CERTIFICATION.

A. **Stipulation.** The Parties stipulate to certification of the "Settlement Class" (as defined below) for settlement purposes only, and stipulate to Plaintiffs as class representatives of the Settlement Class.

B. **Settlement Class.** The "Settlement Class" is any person, whether a TCA or OCTA patron (FasTrak account holder) or non-patron, who has been assessed any toll evasion penalty by TCA or OCTA for any violation during the period from January 1, 2003 to the "Data Date" for the TCA, and May 31, 2003 to the "Data Date" for the OCTA ("Data Date" is defined below). This Settlement Class includes any individual against whom a judgment was entered from January 1, 2003 for the TCA and May 31, 2003 for the OCTA, up to the Data Date, regardless of when the penalties associated with that judgment were assessed. The Settlement Class also includes those individuals who were assessed escalated penalties after May 31, 2003 by OCTA for violations that occurred prior to May 31, 2003.

C. **Data Date.** In order to be able to make, and later to verify, the calculations regarding the amounts of monetary relief (restitution and waiver of assessed penalties) provided for in this Agreement, it is necessary for Defendants to pick a particular "Data Date" as a "snapshot" in time. The data as of that date will be preserved so that all calculations can be made and verified. The "Data Date" will be the date on which the initial hearing is held on the motion for a Preliminary Approval Order by the Court, as provided for in this Agreement.

D. **Class Period.** The time periods referenced in the above definition of the Settlement Class shall constitute the "Class Period."

E. **Class Member.** "Class Member" means a person who falls within the definition of the Settlement Class and who fails to opt out within 45 days after the date of the Class Notice provided for in this Agreement.

F. **Court Disapproval.** If the Court does not approve this Agreement, then the Parties' stipulation for certification of the Settlement Class (and the Court's preliminary approval thereof, if any) will be vacated without prejudice to any Party's position on the issue of class certification, and the Parties will be returned to their positions status quo

ante as if this Agreement had not been entered into. In such event, none of the Parties will assert any doctrine of waiver, estoppel, or preclusion in any litigated certification proceedings in the Action based on their stipulation to class certification in this Agreement.

### **III. MONETARY SETTLEMENT RELIEF.**

**A. Restitution of Toll Evasion Penalties Paid.** OCTA and TCA, respectively, shall pay restitution of toll evasion penalties paid by eligible Class Members during the "Restitution Time Period," as provided below.

**1. Eligibility.** A Class Member is eligible for restitution only if the Class Member was assessed a total of more than \$1,000 in tolls and penalties by OCTA, and/or a total of more than \$1,000 in tolls and penalties by TCA, during the applicable "Restitution Time Period," as provided below.

**2. OCTA Restitution.** Subject to Section VII(C), OCTA shall pay \$700,000 (Seven Hundred Thousand Dollars) in restitution to all eligible Class Members, by allocating a portion of this restitution amount pro rata to each eligible Class Member, in proportion to the amount of OCTA toll evasion penalties paid by each eligible Class Members during the OCTA Restitution Time Period from May 31, 2003 to the Data Date (this amount includes the penalty portions of OCTA judgments entered on or after May 31, 2003, up to the Data Date, regardless of when the penalties associated with those judgments were assessed).

**3. TCA Restitution.** Subject to Section VII(C), TCA shall pay \$700,000 (Seven Hundred Thousand Dollars) in restitution to all eligible Class Members, by allocating a portion of this restitution amount pro rata to each eligible Class Member, in proportion to the amount of TCA toll evasion penalties paid by each eligible Class Member during the TCA Restitution Time Period from January 1, 2003 to the Data Date (this amount includes the penalty portions of TCA judgments entered on or after January 1, 2003, up to the Data Date, regardless of when the penalties associated with those judgments were assessed).

**4. Restitution Percentage Calculations.** As promptly as possible, and in no event later than 10 days prior to the filing of a motion for a Preliminary Approval Order, Defendants shall provide Plaintiffs with information regarding the percentages calculated as set forth above, with the understanding that they may change slightly as of the Data Date.

**5. Payment of Restitution; Offsets.** All restitution shall be paid by check. Such check shall state that it will become null and void 180 days after issuance. OCTA and TCA may offset or otherwise apply restitution payments to any amounts (whether tolls or penalties) still owed to them by eligible Class Members after any penalty waiver is applied as provided in Paragraphs III(B) of this Agreement.

6. Except as otherwise provided in Section VI(E)(2), in no event shall either OCTA or TCA, respectively, be required to provide total restitution to the entire group of eligible Class Members of more than \$700,000.00 each.

7. **Additional Restitution.** Class Members shall be entitled to seek additional restitution pursuant to the "Administrative Review" provisions of this Agreement, as set forth below.

**B. Waiver of Toll Evasion Penalties Assessed But Not Paid.** OCTA and TCA, respectively, shall each waive 29% of the unpaid toll evasion penalties currently owed by each eligible Class Member who was assessed tolls and penalties during the "Penalties Time Period," as provided below.

1. **Eligibility.** A Class Member is eligible for waiver only if the Class Member was assessed a total of more than \$1,000 in tolls and penalties by OCTA, or a total of more than \$1,000 in tolls and penalties by TCA, during the applicable "Penalties Time Period," as provided below.

2. **OCTA Waiver.** OCTA shall waive 29% of the amount of unpaid OCTA toll evasion penalties assessed against each eligible Class Member during the OCTA Penalties Time Period from May 31, 2003 to the Data Date (including the amount of unpaid OCTA judgments entered on or after May 31, 2003, up to the Data Date, regardless of when the penalties associated with those judgments were assessed). Class Members who were assessed escalated penalties after May 31, 2003 for violations that occurred prior to May 31, 2003 may request a waiver of all or a portion of the penalties assessed against them in an administrative hearing requested pursuant to Section VI(E)(2), below, provided that said individual self-identifies (since OCTA does not have data regarding said individuals).

3. **TCA Waiver.** TCA shall waive 29% of the amount of unpaid TCA toll evasion penalties assessed against each eligible Class Member during the TCA Penalties Time Period from January 1, 2003 to the Data Date (including the amount of unpaid TCA judgments entered on or after January 1, 2003, regardless of when the penalties associated with those judgments were assessed).

4. **Additional Waiver.** Class Members shall be entitled to seek additional waiver of assessed and unpaid toll evasion penalties pursuant to the "Administrative Review" provisions of this Agreement, as set forth in Paragraph VI(E)2 below.

**C. Additional Settlement Relief for Named Plaintiffs.**

1. **Restitution.** Each Plaintiff named in the caption or body of the complaints in the Action shall receive the amount of restitution of paid toll evasion penalties he/she would receive as a Class Member eligible to receive restitution.

**2. Waiver.** Each Plaintiff named in the caption or body of the complaints in the Action shall receive the amount of waiver of assessed and unpaid toll evasion penalties he/she would receive as a Class Member eligible to receive waiver.

**Additional Consideration.** In exchange for payment of all outstanding tolls owed, and in addition to any restitution or waiver provided under paragraphs III(C) (1) and (2), each Plaintiff or group of Plaintiffs named in the Complaint shall also receive either payment or waiver, or both, as set forth in said Exhibit "A". Defendants claim that all penalties referred to in Exhibit "A" were properly imposed and either have been properly paid or are properly due and owing; Plaintiffs dispute the amounts that Defendants' claim are still owed and/or unpaid. As reflected in Exhibit A, all named Plaintiffs shall pay (to the extent not already paid) all toll amounts owed. No toll amounts will be repaid or waived.

**D. Claims Procedure.** Those Class Members who have not opted out in response to the Class Notice, and who qualify for restitution and/or waiver, shall be provided the appropriate restitution within 90 days of the Effective Date (as defined in Section XII below) and shall not be required to submit a claim in order to receive their restitution and/or waiver. OCTA and TCA shall immediately upon the Effective Date waive the amounts subject to waiver, though OCTA and TCA shall have up to 120 days following the Effective Date to complete and file appropriate documents reflecting such waiver amounts.

**E. Reversion of Restitution Funds.** Any restitution amount which is unclaimed more than 180 days following the date on which the check for such amount is issued shall first be applied to reimbursement of expenses incurred by OCTA and TCA in administering the settlement (including any cost associated with a third party administrator), and any remainder shall promptly be paid to a charitable organization reasonably selected by OCTA and TCA and reasonably approved by Plaintiffs.

#### **IV. Future Penalty Structure.**

The maximum penalty assessed by OCTA and TCA for any single toll violation (including any original notice of violation and any notice of delinquency) shall be no greater than 20 times the assessing agency's highest system toll in effect as of the date on which the violation occurs. Subject to the provisions set forth in Section VI(J) below, settlement does not limit future increases in tolls and penalties, provided the ratio between the penalty amount and the highest system toll does not exceed 20:1 for a single violation (i.e., all cumulative penalties for first violation notice and subsequent notices for that single violation shall not exceed said 20:1 ratio). Agreement to this provision is subject to formal approval by OCTA's and TCA's Boards of Directors, which staff shall recommend. In no event shall OCTA be required to reduce its maximum penalty per violation below \$150.00. These limitations on the future penalty structure shall expire on January 1, 2016, subject to the provisions of Section VI(J) below.

## **V. Claims Administration.**

**A. Administration by Defendants.** OCTA and TCA shall be financially responsible for all aspects of claims administration. To the greatest extent feasible, Defendants shall have the right to perform all work involved in administering claims under this settlement, including determining the eligibility of Class Members to receive restitution and/or waiver, determining address and other contact information for Class Members, notifying Class Members regarding the settlement, and awarding restitution and/or waiver as provided in this Agreement. Plaintiffs' counsel must be informed of the Defendants' work in administration. Any disputes regarding the adequacy of said administration, or Defendant's determination of the amount of restitution or waiver granted, may be resolved by the Parties pursuant to mediation/arbitration (if the parties mutually agree to do so with regard to a particular claim(s)), or by the Court.

**B. Claims Administrator.** OCTA and TCA shall retain a third party Claims Administrator (which will be one of the the following three firms, depending on the outcome of Requests for Proposals issued by TCA: Rosenthal & Company, LLC, Gilardi & Co. LLC, or Rust Consulting, Inc. for the purpose of answering Class Member inquiries regarding the settlement and working with the Parties to resolve any disputes that may arise regarding the administration of the settlement. Except as provided in Section III(E) above, said administrator shall be paid at OCTA's and TCA's shared expense (shared in proportion to the amount of work performed by the administrator with regard to each such Defendant) and not from any funds available to the Class or Plaintiffs' Counsel.

**C. Assistance for Class Members.** Any Class Member who claims to be entitled to restitution or waiver but does not receive such restitution or waiver shall be notified of the Plaintiffs' Counsel's contact information and the Claims Administrator's contact information for potential further action.

## **VI. PROCEDURAL SETTLEMENT RELIEF.**

### **A. Notice of Impending Account Suspension, and Notice of Account Suspension or Closure.**

**1. Notice of Impending Account Suspension.** Except as otherwise provided in subsection (A)(4), below, OCTA and TCA shall notify each of their respective toll account holders of the expiration of the account holder's payment card (or underfunded account balance for those who pay with cash) 30 days prior to the expiration date (or such lesser time in advance as may be left if the OCTA or TCA receives the payment card with less than 30 days left prior to expiration) , by each of the following methods: (a) U.S. mail at the most recent address provided for the account by the account holder; (b) e-mail to the most recent e-mail provided by the account holder (if any); and (c) automated phone call to the telephone number provided by the account holder (if any). Except as provided in subsection (A)(4), below, OCTA and TCA shall use the same methods to notify each of their respective toll account holders of an

underfunded account balance as soon as practicable once OCTA and/or TCA discover that said account balance is about to become underfunded.

**2. Encouragement of E-Mail.** Applications for FasTrak (or other similar commuter toll accounts which may develop in the future) will be altered to clearly indicate that providing an e-mail address is recommended for notification regarding problems with the account. Forms of applications are attached hereto as Exhibits B.

**3. Notice of Account Suspension or Closure.** Except as provided in subsection (A)(4), below, OCTA and TCA shall give at least 10 days' notice before toll account suspension or closure by each of the following means: (a) U.S. mail at the most recent address provided for the account by the account holder; (b) e-mail to the most recent e-mail, if any, provided by the account holder; and (c) automated phone call to the telephone number, if any, provided by the account holder.

**4. OCTA E-Mail Notification.** As for e-mail notice, OCTA will incorporate e-mail notification into the new computer software program OCTA is having prepared. The current target date for implementation of the new program is January 2011.

#### **B. Notice of Toll Evasion Violation.**

**1. Notice Requirement.** Except as provided in the second sentence of Section 40254(a) of the California Vehicle Code, and except for circumstances in which the vehicle is registered outside California, or in which accurate information concerning the identity and address of the registered owner is not available to OCTA or TCA within 5 days following the violation, OCTA and TCA shall mail the first notice of toll evasion violation within 10 days after the violation is determined by the agency in its normal course of business. OCTA and TCA shall be deemed to have satisfied the 10 day requirement as long as the first notice is mailed to the address provided by the DMV within that time period.

**2. Tolling of Notice.** The 10-day time period will not apply in the event of computer/systems failures, either within OCTA's or TCA's systems or externally (e.g., DMV). In the event of such failure, the time for mailing notice (and any accompanying escalation of penalties) will be tolled during the failure period. OCTA's and TCA's system logs will be kept to prove system failures associated with the exceptions.

**3. Holidays.** OCTA and TCA shall have an additional three days to mail first notices for violations occurring within three business days of a major holiday that results in office closures of more than two days that would otherwise be considered working days.

#### **C. Skip Trace.**

**1. TCA.** TCA shall use skip trace (or a comparable method) when any notice is returned undelivered or TCA has reason to believe that the notice did not



reach the person to whom it was sent, including without limitation instances in which more than 15 separate written communications have been sent and there has been no response. E-mail addresses shall be requested in application forms.

2. **OCTA.** OCTA or its agents (e.g., LES) will perform a basic skip trace (or comparable method) for each violation file forwarded to LES (or any other comparable company) for collections.

#### **D. Account Statements.**

1. **Warning Re: Different Addresses.** OCTA and TCA will insert language on all account statements notifying customers that account statements do not reflect violations, and that if a person's DMV address is different from the account address, or if the account holder is not the registered owner of the vehicle, then the DMV address and the address of the registered owner of the vehicle should be checked for violation notices.

2. **Warning Re: Different Toll Roads.** OCTA and TCA will also insert language on all account statements notifying customers that the statements do not reflect violations on other toll roads and that a customer can check for outstanding violations by: for the TCA, going to a designated web site, either for TCA or, if applicable, for any interoperable facility which the customer may have used; and for OCTA, by calling a telephone number provided or going to the designated web site, if any, of any interoperable facility which the customer may have used.

3. Forms of such statements are attached hereto as Exhibits C.

#### **E. Administrative Reviews.**

1. **Deposit in Hardship Cases.** OCTA and TCA shall provide a hardship exception (with a streamlined application form) to the requirement that the penalty be deposited prior to seeking second level administrative review. Hardship can be established by showing that the party seeking review cannot afford to pay the deposit amount set forth below.

a. For toll account patrons, the maximum amount of tolls plus penalties to be deposited, in order to obtain second level administrative review of toll violations or penalties arising out of the same set of operative facts, shall be \$250.

b. For non-patrons, the maximum amount of tolls plus penalties to be deposited, in order to obtain second level administrative review of toll violations or penalties arising out of the same set of operative facts, shall be the tolls, plus either (a) \$250 or (b) \$250 plus 10% of penalties above \$1,000.00, whichever is greater.

2. **Review for Class Members.** OCTA and TCA will allow all Class Members an opportunity to request second level administrative review, regardless of the amount of time that has passed since violation notices were sent, provided said review is requested within 180 days following final court approval of this settlement. (Class

Members are limited to one duly noticed second level administrative review for each violation, and failure to appear or otherwise provide testimony, e.g., via declaration or, when scheduled in advance, via telephonic hearing, on two separate occasions for a second level administrative review hearing for the same violation for which reasonable advance notice has been given, shall result in automatic denial of the review, provided the original notice of the hearing advised the class member of the consequence of failure to appear). If judgment has already been entered, a Class Member must deposit the greater of the total tolls and penalties or \$250, unless economic hardship is demonstrated pursuant to the streamlined application form described in Section 10(i) above. In the event that a Class Member seeking additional restitution has already paid penalty amounts in excess of \$250.00, that Class Member will not be required to deposit additional funds to obtain administrative review. Class Members seeking additional restitution who paid less than \$250.00 in penalties will be required to deposit the difference between \$250.00 and the amount already paid, subject to the hardship exception.

**3. Review of Both Tolls and Penalties.** Defendants confirm that at all times, present and future, administrative review can be sought for violations, tolls, and/or penalties – the alleged violator may present any evidence he/she wishes in order to dispute the violation, toll and/or penalty, and/or cumulative penalties. OCTA's and TCA's violation notices shall make clear that the alleged violator can challenge the imposition of penalties (including the cumulative amount of the penalties) as well as the underlying violation and toll.

**4. Availability of Administrative Review.** For all violations in the future, OCTA and TCA shall make administrative review available at all steps of the process, up until entry of judgment, except as provided below in Section VI(E)(5) for OCTA. (Violators shall be limited to one duly noticed administrative review for each violation(s), and failure to appear or otherwise provide testimony (e.g., via declaration or, when scheduled in advance, telephonic hearing) for a duly noticed administrative hearing on two occasions for the same violation shall result in automatic denial of the review, provided the original notice of the hearing advised the class member of the consequence of failure to appear, including the possibility of escalated penalties, if applicable.)

**5. Final Pre-Collection Notice.** For OCTA, the final LES notice will warn that the recipient has only 30 days to seek administrative review, and that the failure to contest the amounts set forth in the notice through administrative review may result in entry of a court judgment in the amount set forth in the notice, plus costs and possible escalated penalties. The TCA shall provide the same warning language (minus the reference to escalated penalties unless the TCA in the future assesses further escalated penalties, at which point it must include such language) in its comparable final pre-collection notices.

**6. DMV Hold.** If OCTA or TCA places a DMV hold on a purported violator's vehicle registration, and the violator seeks administrative review, that review

will be expedited and take place within 30 days, provided that the violator cooperates in setting a hearing within that time frame.

**7. FTB Intercept.** OCTA and TCA will provide a minimum of 45 days prior written notice of said Defendants' intent to file a Franchise Tax Board (FTB) intercept. The notice will advise violators of the right to seek administrative review. The notice will also advise violators that administrative review must be requested within 15 days of the date of the notice in order to ensure that an administrative hearing can be held before the FTB intercept is filed. If a violator does not request an administrative hearing within that time frame, or does not cooperate in the early setting of an administrative hearing, such violator may subsequently seek such hearing but OCTA and TCA may move forward with the intercept. If an intercept is placed, and the violator subsequently prevails in the administrative hearing process, any funds recovered through the intercept will be refunded to the extent required by the administrative decision.

**8. Standstill During Review.** If a violator seeks a administrative review, then until such review and any appeal therefrom is concluded and as long as review is pending, a notice of delinquent toll evasion violation (or subsequent violation notice) will not be sent for the violation being reviewed and no further penalties will accrue for the violation(s) at issue. This provision shall not apply if the violator requests an appeal but does not agree to a date for a hearing on the appeal that is within 60 days from the date of the request for such hearing, or if the violator fails to appear or otherwise participate in a scheduled hearing for the same violations on two occasions.

**9. Reviewing Discretion.** The independent administrative hearing officer(s) retained by OCTA and TCA to conduct administrative reviews will be advised that he/she should consider any fact which may tend to show that the violation was inadvertent; that the violation was the result of an innocent mistake; that multiple violations all arose from a single inadvertent cause, such as a lost, stolen, expired credit or debit or other payment card, or bank account that was cancelled by the customer; that under all of the circumstances, the penalties imposed will cause an undue hardship for the person requesting the review; or any other circumstance which may bear on the culpability of the person seeking review or the cumulative amount of the penalties imposed. (See also "Lost/Stolen/ Cancelled Credit Cards," Section VI(F).)

**F. Lost/Stolen/Cancelled Credit Cards.** OCTA and TCA shall add a box, or similar device, to the violation notices that can be checked if the violation arises out of lost or stolen payment cards, or a payment card that is expired or has been cancelled. Reasonable proof may be required. Defendants understand that the Plaintiffs do not expect this to be an automatic justification for waiver of a penalty but shall be taken into account. OCTA and TCA will add a provision to their guidelines that the first time a customer fails to notify OCTA or TCA of a lost or stolen, expired, or customer-cancelled credit/debit card, OCTA or TCA should consider waiving the associated penalties, absent extraordinary circumstances. OCTA and TCA may also consider such waiver on subsequent occasions at the reviewer's discretion. Forms of the notices are attached as Exhibits D.

**G. Notice of Intent to Enter Judgment.** For TCA, the notice will include a right to request administrative review. The notice will be sent via U.S. mail and e-mail (if known) to each address that can be reasonably located including addresses obtained through a skip trace or comparable process.

**H. Recordkeeping.** OCTA and TCA will use their best efforts to consistently maintain a complete and accurate paper and/or electronic trail of communications with commuters (violators or not) relating to violations, including the scanning or other storage of all written communications received from violators regarding violations, consistent with said Defendants' status as public agencies with limited financial resources. OCTA and TCA may adopt and implement documents retention schedules that allow for the destruction of documents relating to toll violations, provided that such documents are kept for a minimum of five years from the date of generation. For active violation files and those that go to judgment, documents will be maintained for a period of five years from the date of resolution of the violation.

**I. Bankruptcy.** Provided OCTA or TCA is listed as a creditor and advised of a violator's bankruptcy filing, OCTA or TCA shall file a proof of claim in the bankruptcy proceeding (if and when permitted, specifically advising the violator regarding said Defendant's position on the non-dischargeability of debts for toll evasion penalties and citing the code section they contend supports non-dischargeability. The form of such statement is attached hereto as Exhibit I.

#### **J. Time Limits on Procedural Settlement Relief.**

**1. Notice Requirements Prior to 2016.** Regarding the procedural settlement relief set forth in this Section VI, OCTA and TCA agree that for the period through January 1, 2016, neither of said Defendants shall make material modifications to such agreed-upon changes unless and until (1) the Defendant making the change implements measures that will afford at least the equivalent notice and opportunity for hearing to the procedure that has been modified; and (2) the Defendant making the change has notified Plaintiffs' Counsel of any such modification at least 20 business days prior to its implementation. Such notification shall set forth the specific changes which the TCA or OCTA intends to make. The notice is for notification purposes only – Plaintiffs' Counsel's consent to the modification is not required.

**2. Reservation of Rights.** Nothing in this Agreement limits or otherwise precludes Plaintiffs, Plaintiffs' Counsel or any other attorney or person from taking such action as they deem necessary to ensure the modified procedures and/or penalties made in accordance with Section VI(J)(1) comport with constitutional and California legal standards.

#### **VII ATTORNEY FEES.**

**A. OCTA and TCA.** Plaintiffs' Counsel shall collectively be paid, as attorneys' fees and costs for this Action, the sum of \$1,500,000 (One Million Five Hundred Thousand Dollars) from OCTA and TCA, owed jointly and severally, which the agencies may choose amongst themselves to split 50/50 between TCA and OCTA.

**B. LES.** In addition, Plaintiffs' Counsel shall collectively be paid, as attorneys' fees and costs for this Action, the sum of \$100,000 (One Hundred Thousand Dollars) from Defendant Law Enforcement Systems, Inc. ("LES"), which shall be LES' only payment or monetary liability under this Agreement.

**C. Additional Fees.** Plaintiffs' Counsel reserve the right to request that the Court award an additional amount in attorneys' fees, not to exceed 30%, off the top of the \$1,400,000 combined restitution pool of the TCA and OCTA (excluding any subsequent restitution awarded under Section VI(E)(2)), and Defendants agree not to oppose such request. Any restitution to Class Members (excluding any subsequent restitution awarded under Section VI(E)(2)) shall be commensurately reduced to the extent of any recovery of attorneys' fees pursuant to this provision.

**D. Verification.** The attorneys' fees and costs are to be verified by records provided by Plaintiffs' Counsel in redacted form to Defendants' Counsel within 25 days after preliminary approval of this settlement by the Court.

**E. Payment.** The payments described above shall constitute Defendants' payment in full of all attorneys' fees and costs incurred by Plaintiffs' Counsel in this Action through the Effective Date. Said attorneys' fees and costs shall be paid within 10 days following the Effective Date. Payment of said attorneys' fees and costs shall be made pursuant to written wire instructions to be provided by Plaintiffs' Counsel.

**F. Costs.** The fees set forth in this Section VII shall be inclusive of costs. Except as otherwise expressly provided in this Agreement, each Party shall bear its own fees and costs.

## **VIII. CLASS NOTICE.**

**A. Responsibility.** Defendants shall be financially and otherwise responsible for class notice, as provided herein.

**B. Notice.** Within 30 days of the entry of the Court's Preliminary Approval Order, OCTA and TCA shall cause the mailing of the Class Notice, by first class mail, to the last known addresses of those Class Members eligible for restitution and/or waiver ; all other Class Members shall be given notice by publication in the Orange County Register's and Los Angeles Times' Orange County Sunday editions, and in patron account statements. In addition, a website will be set up by OCTA and TCA regarding the settlement and related procedures, and shall remain open for a period of six months following the Court's Final Order and Judgment approving the settlement.

**C. Fairness Hearing.** A Fairness Hearing shall be scheduled for no later than 90 days after completion of the giving of initial notice.

## **IX. EXCLUSIONS FROM AND OBJECTIONS TO SETTLEMENT.**

**A. Opt Outs.** Each Class Member who wishes to opt out from the settlement must submit an appropriate written request for exclusion, including name, address, and

telephone number, to the Claims Administrator, as specified in the Class Notice, postmarked within 45 days of the date of the Class Notice. No Class Member, or any person acting on behalf of that Class Member, may exclude any other Class Member from the Settlement Class. The requests for exclusion shall be filed with the Court by Plaintiffs' Counsel at least five days before the Fairness Hearing.

**B. Objections.** Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness or adequacy of this proposed settlement, must file with the Court a statement of objection that is postmarked within 45 days following the date of Class Notice. That statement must include each and every specific reason, if any, for each objection, including any and all legal support and any and all evidence in support of the objection. A copy of the statement must also be mailed to Plaintiffs' Counsel and Defendants' Counsel. Class Members may object on their own or through an attorney hired at their own expense.

**C. Plaintiffs and Defendants.** Class Representative Plaintiffs will not request exclusion from the Settlement Class in this Action, will not object to the proposed settlement, and will not file an appeal from or seek review of any order approving the proposed settlement. Defendants will not object to the proposed settlement, and will not file an appeal from or seek review of any order approving the proposed settlement.

**D. Class Members and Parties Bound.** If the proposed settlement is approved, any and all Class Members who have not submitted a timely, written request for exclusion from the settlement shall be bound by all proceedings, orders and judgments in this Action. This Agreement shall be binding upon and inure to the benefit of these Class Members and the Parties.

## **X. RELEASE.**

As of the Effective Date, all Class Members who have not been properly excluded from the Settlement Class ("Releasers"), release Defendants ("Releasees") from any and all claims arising out, and that could have arisen out of, the matters that are alleged in the Action, which could have been asserted in the Action, and/or that are within the scope of this Agreement, in exchange for the benefits of this Agreement.

"Releasers" and "Releasees" include their respective officers, directors, employees, spouses, agents, representatives, attorneys, heirs, administrators, executors, assigns, affiliates, predecessors, and successors.

This release extends to all unknown or unsuspected claims arising out of the these matters. To this end, the rights provided under California Civil Code section 1542 are waived by Releasers with respect to the matters released herein. Section 1542 states:

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

**MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Each Releasor may hereafter discover facts other than or different from those known or believed to be true with respect to the Action and this Agreement, but each Releasor hereby waives, settles, and releases any known or unknown, suspected or unsuspected, contingent or non-contingent claims with respect to the matters released herein, whether or not concealed or hidden, without regard to the subsequent discovery or existence of such different or additional facts.

Nothing in this Agreement waives or releases the Parties' rights to enforce the terms of this Agreement, nor Class Members' rights to seek additional restitution or waiver of assessed penalties as set forth above in this Agreement.

**XI. PRELIMINARY APPROVAL AND FINAL ORDER AND JUDGMENT.**

**A. Court Approval And Changes to Existing Ordinances.** Settlement is contingent on approval by the Court. The OCTA and TCA shall conform their existing ordinances to the extent necessary to be consistent with the changes agreed to be made as a result of this settlement.

**B. Preliminary Approval.** After the execution of this Agreement, the Parties will promptly submit the Agreement to the Court and apply for a Preliminary Approval Order. The Parties agree that a joint or unopposed Motion for Preliminary Approval of Settlement will be noticed for the earliest available hearing date.

**C. Final Order and Judgment.** Upon final approval of this Agreement, the Parties shall be entitled to obtain entry of final judgment that includes a dismissal with prejudice, with all Parties bearing their own costs. It is a condition of the settlement that the Court enter a Final Order and Judgment that is consistent with this agreement.

**D. Court Determinations.** The parties will request that as part of the approval of the settlement, the Court adjudicate that 1) the penalties Defendants agree to follow in this Agreement; and 2) the procedures implemented by Defendants (including those procedures modified by this Agreement and other existing procedures not modified by this Agreement pertaining to the administration of tolls and penalties), without regard to any changes that Defendants might make to these procedures and penalties in the future, comply with state and federal constitutional requirements. The parties will also request that the Court's approval expressly state that all rights are reserved with regard to future changes that the Defendants may make to these procedures and penalties.

**XII. EFFECTIVE DATE.**

"Effective Date" means the date when each and all of the following conditions have occurred:

**A.** This Agreement has been signed by Plaintiffs, Defendants, Plaintiffs' Counsel, and Defendants' Counsel;

B. The Preliminary Approval Order has been entered;

C. The Court-approved Class Notice has been duly provided as ordered by the Court;

D. The Court has entered the Final Order and Judgment as provided in Section XI(C); and

E. The Final Order and Judgment in this Action has become "final," which means the later of: (1) the date on which the judgment entered by the Court in connection with this settlement becomes final, i.e., 61 days after notice of entry of judgment if no appeal by a Class Member is filed; (2) if an appeal is taken, the date of final affirmance of the judgment on such appeal, the rejection of any petition for review (including certiorari) or the expiration of the time for the filing of a petition for review or certiorari in the highest appellate court to which an appeal is or can be taken, and, if review is granted, the date of final affirmance following review; or (3) the final dismissal or filing of a notice of abandonment of any such appeal or of any proceedings on review or certiorari to the highest appellate court to which an appeal is or can be taken. However, any appeal relating solely to Plaintiffs' consideration or Plaintiffs' Counsels' attorneys' fees shall not affect finality.

### **XIII. SCOPE AND ENFORCEABILITY OF AGREEMENT.**

**A. Governing Law.** This Agreement and any other documents referred to herein shall be governed by, construed, and enforced in accordance with the law of the State of California, exclusive of its choice of law principles. This Agreement shall be enforceable pursuant to Code of Civil Procedure section 664.6.

**B. Construction.** All Parties and their counsel have reviewed and revised this Agreement, and the rule of construction providing that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. This Agreement shall be construed as prepared jointly by the Parties.

**C. Continuing Jurisdiction.** The Orange County Superior Court will have continuing jurisdiction over this Action and this Agreement.

**D. Entire Agreement.** All agreements, covenants, representations and warranties, express and implied, oral and written, of the Parties hereto concerning the subject matter hereof are contained herein. No other agreements, covenants, representations or warranties, express or implied, oral or written, have been made by any Party hereto to any other Party concerning the subject matter hereof. All prior and contemporaneous conversations, negotiations, possible and alleged agreements, representations, covenants and warranties concerning the subject matter hereof other than those referred to herein are merged herein.

**E. Public Statement.** Defendants and Plaintiffs shall cooperate and agree on a joint press release upon settlement and no statement shall be made by any party or counsel that contradicts or otherwise goes beyond the contents of the joint release,



other than to accurately describe the terms of the agreement. In the case of an entity party, the term "party" shall mean the chair of the board of directors of the entity and those acting as managing agents of the entity. The joint public statement is attached hereto as Exhibit F.

#### **F. Modification and Termination.**

1. The terms of this Agreement may be amended or modified only by written agreement of the Parties.
2. If, for any reason, this Agreement fails to become effective, the Parties will be returned to their positions status quo ante with respect to the Action as if this Agreement had never been entered into.
3. To the extent that the Court makes immaterial changes to the terms of the settlement and/or related documentation, the Parties shall nonetheless be bound to proceed with the settlement. To the extent that the Court makes material changes, each of the Parties shall have the right to withdraw from this Agreement. In such event, the Parties will be returned to their positions status quo ante as if this Agreement had not been entered into.
4. In the event that 10% of Class Members or 15% of the aggregate of either restitution or waiver of penalties have excluded themselves from the settlement, either Party may terminate the Agreement by written notice to Opposing Counsel no later than 30 days following notice of the total exclusions.
5. The terminating Party must exercise the option to withdraw from and terminate the Agreement by written notice no later than 30 days after receiving notice of the event prompting the termination.
6. If an option to withdraw from and terminate the Agreement arises, neither Defendants nor Plaintiffs are required for any reason or under any circumstances to exercise their option.
7. If this Agreement is terminated, then: (a) this Agreement shall be null and void and shall have no force or effect, and no Party to this Agreement shall be bound by any of its terms; (b) this Agreement, all of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Defendants, Plaintiffs, or any other Class Member, all of whom shall be restored to their respective positions status quo ante; and (c) neither this Agreement, nor the fact of its having been made, nor any evidence of any negotiations, statements or proceedings relating to this Agreement shall be admissible or entered into evidence for any purpose whatsoever. If the settlement is terminated, then Defendants shall give notice of termination to all Class Members in the same manner as they were given notice of the settlement under this Agreement

## **G. Representations and Warranties.**

1. Subject to approval by the Court, Plaintiffs and Plaintiffs' Counsel represent and warrant that they are authorized to enter into this Agreement on behalf of Plaintiffs and all Class Members, that the settlement herein fully resolves all claims that were or could have been made on behalf of Class Members in this Action, and that the Agreement is fair, reasonable, and adequate, and in the best interests of Plaintiffs and the Class Members.

2. Those signing below for Defendants and Defendants' Counsel represent and warrant that they are authorized to enter into this Agreement.

**H. Verification and Monitoring.** Defendants shall provide to Plaintiffs, upon written request, verification of reasonably available non-privileged information used or developed by Defendants in administering the settlement. Beginning 90 days following the Court's final approval of the settlement, and every 60 days thereafter, Defendants shall provide a report to Plaintiffs' Counsel regarding the amounts of restitution and waiver provided to eligible Class Members, the names and addresses and phone numbers of the eligible Class Members, and the amounts of restitution and waiver actually given. Defendants shall also provide to Plaintiffs' Counsel a list of all individuals (with contact information) who have claimed entitlement to restitution or waiver but have been denied. This verification and monitoring period shall end on the 270<sup>th</sup> day following Defendants' commencement of instituting the restitution/waiver.

**I. Cooperation.** The Parties agree to cooperate and execute any documents or take any action to effectuate this settlement in a timely and expeditious manner. The Parties agree to cooperate in obtaining Court approval of the settlement, giving Class Notice of the settlement to the Settlement Class and completing the terms of this Agreement in a timely and expeditious manner.

**J. Independent Advice of Counsel.** The Parties represent and declare that in executing the Agreement they relied solely upon their own judgment, belief and knowledge, and the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and that they have not been influenced to any extent whatsoever in executing the Agreement by any representations or statements not expressly contained or referred to in the Agreement.

**K. Sole Consideration.** The Parties agree that the consideration recited in the Agreement is the sole and only consideration for this Agreement, and no representations, promises or inducements have been made by the Parties, other than the terms of the Agreement.

**L. Taxes.** All Parties, Class Members, and Plaintiffs' Counsel shall bear their own tax consequences of the settlement.

**M. Counterparts.** This Agreement may be executed in counterparts. Counterparts may be made by facsimile or pdf attachment to e-mail. When each Party

has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and the counterparts taken together shall constitute one and the same Agreement. The Agreement shall be deemed duly executed, effective, and binding, upon the signing and delivery of the counterparts by all signatories hereto.

**SIGNATURES OF PLAINTIFFS**

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
PAMELA MATHEWS AVERY

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
YOLANDA EDMONDSON

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
JEFFREY EDMONDSON

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
RACHELLE GEACH

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
MARIA GONZALEZ

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
PABLO GONZALEZ

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
STAN MURRY, on behalf of RUTH

ARLENE MURRAY, deceased.

Dated: August \_\_\_\_, 2009

---

JEFF MURRAY

Dated: August \_\_\_\_, 2009

---

MICHAEL ROLDAN

Dated: August \_\_\_\_, 2009

---

CYNTHIA ROLDAN

Dated: August \_\_\_\_, 2009

---

BILL SEMPERTEGUI

Dated: August \_\_\_\_, 2009

---

JENNIFER SEMPERTEGUI

Dated: August \_\_\_\_, 2009

---

BRIAN YOUNG

Dated: August \_\_\_\_, 2009

---

STEPHANIE YOUNG

Dated: August \_\_\_\_, 2009

---

JOCELYN WOODS

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
ROSEMARIE SEPEDA

**SIGNATURES OF OCTA DEFENDANTS**

Dated: August 24, 2009

ORANGE COUNTY TRANSPORTATION  
AUTHORITY

By: \_\_\_\_\_  
PETER BUFFA

Its: Chairman, Board of Directors

Dated: August 24, 2009

\_\_\_\_\_  
WILL KEMPTON, in his official capacity  
as Chief Executive Officer

**SIGNATURES OF LES DEFENDANTS**

Dated: August \_\_\_\_, 2009

LAW ENFORCEMENT SYSTEMS, INC.

By: \_\_\_\_\_  
[Name]

Its: \_\_\_\_\_

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
RICHARD K. CARRIER

**SIGNATURES OF TCA DEFENDANTS**

Dated: August \_\_\_\_, 2009

**SAN JOAQUIN HILLS TRANSPORTATION  
CORRIDOR AGENCY**

By: \_\_\_\_\_  
[Name]

Its: \_\_\_\_\_

Dated: August \_\_\_\_, 2009

\_\_\_\_\_

**JIM DAHL**

Dated: August \_\_\_\_, 2009

**FOOTHILL/EASTERN TRANSPORTATION  
CORRIDOR AGENCY**

By: \_\_\_\_\_  
[Name]

Its: \_\_\_\_\_

Dated: August \_\_\_\_, 2009

\_\_\_\_\_

**LANCE MACLEAN**

Dated: August \_\_\_\_, 2009

**VESYSTEMS, LLC**

By: \_\_\_\_\_  
[Name]

Its: \_\_\_\_\_

Dated: August \_\_\_\_, 2009

\_\_\_\_\_  
MANFRED RIETSCH

**APPROVED AS TO FORM**

Dated: August \_\_\_\_, 2009

NOSSAMAN LLP  
E. GEORGE JOSEPH  
SCOTT N. YAMAGUCHI

By: \_\_\_\_\_  
E. George Joseph

Attorneys for Defendants,  
San Joaquin Hills Transportation  
Corridor Agency,  
Foothill/Eastern Transportation  
Corridor Agency,  
Jim Dahl,  
Lance MacLean,  
VESystems, LLC, and  
Manfred Rietsch

Dated: August 24, 2009

WOODRUFF, SPRADLIN & SMART  
M. LOIS BOBAK  
MAGDALENA LONA-WIANT

By: \_\_\_\_\_  
M. Lois Bobak

Attorneys for Defendants,  
Orange County Transportation Authority, and  
Arthur T. Leahy

Dated: August \_\_\_\_, 2009

HADSELL STORMER KEENY RICHARDSON  
& RENICK, LLP

By: \_\_\_\_\_  
Anne Richardson

Attorneys for Plaintiffs

Dated: August \_\_\_\_, 2009

SCHONBRUN, DESIMONE, SEFLOW,  
HARRIS & HOFFMAN, LLP  
BENJAMIN SCHONBRUN  
MICHAEL MORRISON

By: \_\_\_\_\_  
Michael Morrison

Attorneys for Plaintiffs

Dated: August \_\_\_\_, 2009

ANAT LEVY & ASSOCIATES, P.C.

By: \_\_\_\_\_  
Anat R. Levy

Attorneys for Plaintiffs

Dated: August \_\_\_\_, 2009

LAW OFFICES OF DONALD M. BARKER

By: \_\_\_\_\_  
Donald M. Barker

Attorneys for Defendants,  
Law Enforcement Systems, Inc., and  
Richard Carrier

Dated: August \_\_\_\_, 2009

MARRONE, ROBINSON, FREDERICK &  
FOSTER

By: \_\_\_\_\_  
J. Alan Frederick

Attorneys for Defendant,  
Law Enforcement Systems, Inc.



**EXHIBIT A TO SETTLEMENT AGREEMENT  
TREATMENT OF NAMED PLAINTIFFS  
UNDER SECTION III(C)**

Plaintiffs named in the Complaint will receive the following additional compensation in the form of payments or waivers of penalties in consideration for their participation and expenditure of time in the lawsuit. Overall, for TCA plaintiffs, they will receive \$5,000 if no tolls or penalties are currently due, or forgiveness of their outstanding tolls and penalties up to \$25,000. For the OCTA, plaintiffs will be relieved of all penalties owed, but not tolls. For clarity, all amounts to be paid or forgiven are set forth herein.

**TREATMENT OF NAMED TCA PLAINTIFFS**

**Yolanda and Jeffrey Edmondson**

The Edmondsons paid a total of \$808 through tax intercepts. They have a total outstanding balance of \$1,697.25, \$47.25 of which is tolls and \$1,650 of which is penalties.

The Edmondsons will receive one check for \$5,356.75, plus restitution equal to \$404 multiplied by the percentage resulting from the calculation under Section 1 of the Term Sheet, plus waiver of the entire \$1,650 of outstanding penalties.

**Michael and Cyndi Roldan**

The Roldans paid a total of \$759.45, \$79.45 of which was tolls and \$680 of which was penalties. They have a zero outstanding balance.

The Roldans will receive one check for \$5,000, plus restitution equal to \$680 multiplied by the percentage resulting from the calculation under Section 1 of the Term Sheet.

**Rachelle Geach and RKJ Technologies**

Geach paid a total of \$15,484, \$409 of which was tolls and \$15,075 of which was penalties. RKJ paid a total of \$13,450, \$335.75 of which was tolls and \$13,114.25 of which was penalties. Neither has any outstanding balance.

Geach/RKJ will receive one check for \$5,000, plus restitution equal to \$28,189.25 (\$15,075 + \$13,114.25) multiplied by the percentage resulting from the calculation under Section 1 of the Term Sheet.

**TREATMENT OF NAMED OCTA PLAINTIFFS**

**Pamela Avery**

In exchange for payment of tolls owed in the amount of \$316.75, OCTA will waive all penalties currently owed by Avery, which OCTA claims is \$47,850.

**Maria and Pablo Gonzalez**

In exchange for payment of tolls owed in the amount of \$60.14, OCTA will waive all penalties currently owed by the Gonzalezs, which OCTA claims is \$78,780.00.

**Jennifer and Bill Sempertegui**

OCTA will waive all penalties the Semperteguis currently owe, which OCTA claims to be \$13,500.

**Stephanie and Brian Young**

In exchange for payment of tolls owed in the amount of \$634.99, OCTA will waive all penalties currently owed by the Youngs, which OCTA claims is \$61,580.00.

**Ruth Murray, deceased, represented by Stan Murray**

In exchange for payment of tolls owed in the amount of \$197.15, OCTA will waive all penalties currently owed by Murray, which OCTA claims is \$38,400.00.

**Rosemarie Sepeda**

In exchange for payment of tolls owed in the amount of \$1,195.85, OCTA will waive all penalties currently owed by Sepeda, which OCTA claims is \$132,895.85.

**Jocelyn Woods**

In exchange for payment of tolls owed in the amount of \$464.40, OCTA will waive all penalties currently owed by Woods, which OCTA claims is \$48,850.00.

**EXHIBIT B TO SETTLEMENT AGREEMENT  
OCTA APPLICATION STATEMENT RE E-MAIL ADDRESSES**

OCTA shall add the following statement to the information provided to all new account holders when those individuals open new accounts:

“You are encouraged to provide an e-mail address so that information regarding your account can be sent to you via e-mail. Beginning in approximately November of 2010, the e-mail address you give us will be used to provide you with automated notices relating to your account, including but not limited to notice of impending expiration of the credit card associated with the account, notice of underpayment of a cash account, and/or notice of impending account closure due to under or non-payment. Please note that notices relating to any toll violation associated with your account will not be sent to you via e-mail. Those notices are sent to the registered owner of the vehicle in question at the address of that owner on file with the California Department of Motor Vehicles.”

# The Toll Roads

DRIVE LESS. LIVE MORE.

## Application and License Agreement

Please mail or fax this FasTrak® application to:  
 P.O. Box 50190, Irvine, CA 92619-0190 / Fax (949) 454-2245 / 1-800-378-TRAK (8725)

| For office use only |       |
|---------------------|-------|
| Acct. No.           | Tab 1 |
| Auth. Code          | Tab 2 |
| CSR I.D.            | Tab 3 |

### Step 1 Please print all information clearly.

First Name \_\_\_\_\_ Middle Initial \_\_\_\_\_ Last Name \_\_\_\_\_  
 Mailing Address \_\_\_\_\_  
 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_  
 Day Phone ( ) \_\_\_\_\_ Evening Phone( ) \_\_\_\_\_  
 Email Address \_\_\_\_\_ To sign up for e-statements, check here

### Step 2 Please select a payment option.

| Option One - Credit Card / Automatic Withdrawal |      |    |      | Option Two - Check or Money Order |       |
|---|------|----|------|-----------------------------------|-------|
| Prepaid toll balance                            | \$30 | or | \$60 | or                                | \$100 |
| Transponder deposit                             | NC   |    | NC   |                                   | NC    |
| Total charge to your card/account               | \$30 | or | \$60 | or                                | \$100 |

By checking one of the boxes below and completing the information, I authorize TCA to use the indicated credit card or bank account to replenish my account according to the terms of the FasTrak® license agreement.

Select type:

Credit Card

American Express  
  Visa  
  MasterCard  
  Discover

Credit Card Number: \_\_\_\_\_ Expiration (Month/Year): \_\_\_\_\_

\_\_\_\_\_

Automatic Withdrawal

Account Info: Bank Name: \_\_\_\_\_

ABA/Routing Number: \_\_\_\_\_

Account Number: \_\_\_\_\_

If selecting automatic withdrawal, please supply copy of a voided check.

Total amount due \_\_\_\_\_ \$

By selecting the check or money order option, I agree to make additional prepaid toll payments equal to \$45 or the average of my monthly toll usage, whichever is greater, when my prepaid toll balance drops below my required minimum balance.

Number of transponders requested: \_\_\_\_\_ x \$30 = \$ \_\_\_\_\_

Make check or money order payable to FasTrak®

Do not send cash.

### Step 3 Vehicle Information

Complete the information for all vehicles in which the transponder will be used. It is not necessary to have a transponder for each vehicle since they can be moved from vehicle to vehicle. Please check the box to indicate any vehicle that will require its own transponder.

| Transponder              | Vehicle | License Plate | State | Make/Model | Year  | Color |
|--------------------------|---------|---------------|-------|------------|-------|-------|
| <input type="checkbox"/> | 1       | _____         | _____ | _____      | _____ | _____ |
| <input type="checkbox"/> | 2       | _____         | _____ | _____      | _____ | _____ |
| <input type="checkbox"/> | 3       | _____         | _____ | _____      | _____ | _____ |
| <input type="checkbox"/> | 4       | _____         | _____ | _____      | _____ | _____ |

### Step 4 Authorization

I have read and reviewed the information on both sides of this Application and License Agreement. By signing below, I indicate my acceptance and consent to the terms and conditions of this Application and License Agreement.

Signature \_\_\_\_\_ Date \_\_\_\_\_

Please read this Application and License agreement carefully. By submitting this application you agree to the following terms:

**General:**

This FasTrak® License Agreement (Agreement), with the Transportation Corridor Agencies (TCA) allows you to use the FasTrak® Transponder to enter or exit toll lanes of the Foothill Transportation Corridor (FTC); Eastern Transportation Corridor (ETC) and the San Joaquin Hills Transportation Corridor (SJHTC). This Agreement accompanies and is part of your FasTrak® Application. Your submittal of a FasTrak® Application constitutes your acknowledgment and consent to this Agreement. This Agreement is a license only; the Transponder is the property of TCA. FasTrak® will not issue a Transponder to any applicant until any and all outstanding violations have been paid.

**You agree to:**

- Pay tolls and fees charged to your FasTrak® account.
- Mount and use the Transponder in accordance with instructions provided to you in your Transponder package.
- Obey all applicable laws and regulations.
- Promptly review your statement and notify the FasTrak® Service Center if you have questions regarding any charges. Charges not questioned within 30 days of the statement date will be deemed valid.
- Report any changes to your name, mailing and email address, telephone numbers, vehicles, license plates and if applicable, credit card number and expiration or automatic withdrawal information when this information is made available to you.
- Allow the California Highway Patrol to make reports of incidents on the FTC, ETC, and SJHTC available to TCA.
- Be held responsible to TCA for any charges, which may arise from using your Transponder(s). (See "Interoperability - FasTrak® System," below.)

**Minimum Account Balances, Fees and Charges:**

You agree to maintain your prepaid toll account balance.

- If you selected the credit card or automatic withdrawal payment option, you authorize us to replenish your account by charging the amount you indicated or the average of your monthly charges, whichever is greater, each time your account falls below the minimum balance. The minimum balance is equal to your average charges for a ten-day period as calculated by FasTrak® or \$10, whichever is greater.
- If you selected the check or money order option, you agree to make a check or money order payment of \$45 or the average of your monthly charges, whichever is greater, each time your account falls below the minimum balance. The minimum balance is equal to your average charges for a ten-day period as calculated by FasTrak® or \$15, whichever is greater.
- You agree that FasTrak® may determine your average monthly usage based on your actual usage over a period of time, as defined at the sole discretion of FasTrak®.
- You agree that FasTrak® may charge you a fee for maintaining your account should you not incur a specified level of toll usage each month, as defined at the sole discretion of FasTrak®.
- You agree that FasTrak® may charge you a fee for providing a statement.
- You agree that FasTrak® may charge you a fee for checks or automatic withdrawal payments returned by your bank or financial institution.
- You agree that FasTrak® may charge you a fee for image-based transactions.
- You agree that FasTrak® may charge you a fee for account suspension.
- You agree that FasTrak® toll rates are subject to change without notice.

Failure to maintain the required balance or properly maintain your account will result in transactions being processed as violations that are subject to penalties as provided by law.

**Interoperability - FasTrak® System:**

Your Transponder may be used to pay at any toll facility or other location cooperating with TCA and bearing the FasTrak® logo. These presently include the Foothill, Eastern and San Joaquin Toll Roads and California toll facilities or other locations bearing the FasTrak® logo. It is not necessary to obtain a separate Transponder to pay electronically for FasTrak® transactions. If you drive in a

vehicle with your Transponder, your Transponder may be read by the electronic processing equipment and a record of your transaction may be created. Such transactions may be charged in accordance with the rules, regulations and procedures of Toll Facilities or other locations. If you use your Transponder on another Toll Facility or other location, you agree that TCA and/or the operator may bill you for any charges arising from such use, and that you will be responsible to TCA and/or the other operator for all such charges. You further agree that TCA may share with the operator any information contained in your application and license agreement for purposes of processing and collecting tolls, charges and violations.

**Transponders:**

- You agree to pay a deposit of \$30 for each Transponder licensed to you, which TCA will refund without interest if you return the Transponder(s) in good condition. If you choose credit card or automatic withdrawal as your replenishment method, you agree that TCA may charge your credit card or automatic withdrawal account for the amount of the Transponder deposit(s) should you fail to return the Transponder(s) in good condition.
- If your Transponder fails to operate for reasons other than abuse or improper use and is returned to the FasTrak® Service Center, we will replace the Transponder at no extra charge.
- If your Transponder is lost or stolen and you immediately call the Service Center by telephone at 1-800-378-TRAK, you will not be liable for any unauthorized use of your Transponder(s) occurring after such notification. However, you will be charged \$30 for the Transponder.

**Termination:**

TCA may terminate this Agreement any time. If TCA requests, or if you wish to terminate this Agreement, return the Transponder(s) to the FasTrak® Service Center. Upon termination and return of your Transponder(s), your toll account balance and Transponder deposit(s) (if paid in advance) will be refunded to you, less any amounts owed to TCA after fifteen (15) business days. Following termination, you will remain responsible for payment of amounts you owe under this Agreement. If your toll account balance is insufficient to cover charges payable by you, you will remain liable for all such amounts. If such unpaid charges are not promptly remitted, you may become liable for additional service charges, fines, or penalties, in accordance with applicable law.

**Changes:**

TCA reserves the right to change the terms of this Agreement and our policies, deposits and minimum toll account balances at any time by providing written notice to you. You will be deemed to have received such notice ten (10) days after deposited in the U.S. Mail. You agree to all changes when you use your Transponder after that date.

**Release and indemnity:**

You hereby release TCA from all loss, damage, or injury whatsoever, known or unknown, arising out of or in any manner connected with the use or performance of the Transponder. Neither TCA nor its agents will have any obligation or liability with respect to your use or the performance of the Transponder. Your sole and exclusive remedy from TCA and its agents will be replacement of any defective Transponder(s). You agree to indemnify, protect, and hold harmless TCA and its agents from all liability for any loss, damage or injury to persons or property arising from or related to the Transponder.

**Failure to comply:**

Failure to comply with any portion of this Agreement may result in your transactions being processed as violations under California Vehicle Code §4770 and any other applicable law. If violations occur, you will be subject to all fees, fines, and penalties as provided by law. TCA reserves the right to debit your account for all unpaid violations including fees, fines and penalties.

**Communications: Please address all correspondence to:**

The Toll Roads Service Center  
P.O. Box 50190, Irvine, CA 92619-0190  
Telephone: 1-800-378-TRAK

Printed Application

A.

Recommended for prompt notification of important information or problems with your account.

**EXHIBIT B**

**EXHIBIT C TO SETTLEMENT AGREEMENT  
ACCOUNT STATEMENT WARNINGS RE VIOLATION NOTICES**

OCTA shall include the following language to the bottom of each account statement mailed to a 91 Express Lanes customer:

**“This statement does not reflect any toll violations that might be associated with this account. Toll violation notices are mailed to the registered owner of the vehicle in question at the address of that owner on file with the California Department of Motor Vehicles. If the address used for account purposes is different that the address you have on file with the DMV for any vehicles associated with this account, please check that address for any mailed violation notices. You may also check for outstanding penalties associated with the 91 Express Lanes by calling 800-600-9191. If you have used toll roads operated by other toll agencies, you may be able to check for violations associated with those other toll roads by going to the web site of the relevant toll road, or contacting the relevant toll road operator.**

# Statement

# The Toll Roads

If you have any questions, please call:  
 1-800-378-TRAK(8725) or (949) 727-4800  
 Visit our website - [www.thetollroads.com](http://www.thetollroads.com)

The Toll Roads Service Center  
 125 Pacifica, Irvine, CA 92618

Statement Date: 06/08/2009  
 Statement Activity Period: 05/08/2009 - 06/07/2009  
 FASTRAK® ACCOUNT NUMBER: 6000001285547

This statement does not reflect toll violations you may have with The Toll Roads or other toll agencies. Please see note below.

\*\*AUTO\*\*SCH 9-DIGIT 926 7 PSE 53653AA22-1-1  
 1583 1 AT 0-357

Send payment to:  
 The Toll Roads  
 PO Box 50190  
 Irvine, CA 92619-0190



TRANSPORTATION CORRIDOR AGY  
 GIFT CERTIFICATE ACCT  
 125 PACIFICA SUITE 120  
 ATTN: JOYCE HILL  
 IRVINE CA 92618-3324

Replenishment Method: Check  
 To change your payment method to credit card or ACH (direct charge to your bank checking or savings account), please visit [www.TheTollRoads.com](http://www.TheTollRoads.com) or check here and complete the Payment Method Update section on the reverse side of this statement.

Page 1  
 of 2

| Beginning Balance | Payments | Credits | Toll & Fees | Ending Balance | Replenishment Amount | Replenishment Threshold |   |            |         |         |
|-------------------|----------|---------|-------------|----------------|----------------------|-------------------------|---|------------|---------|---------|
| \$4,050.00        | +        | \$0.00  | +           | \$0.00         | -                    | \$0.00                  | = | \$4,050.00 | \$30.00 | \$10.00 |

| DATE                     | TIME | ROAD | LOCATION | TOLL     | DISCOUNT |  |
|--------------------------|------|------|----------|----------|----------|--|
| TOTAL                    |      |      |          |          | 0.00     |  |
| ENDING STATEMENT BALANCE |      |      |          | 4,050.00 |          |  |

Thank you for driving The Toll Roads

This statement does not reflect any toll violations associated with this account. Toll violation notices are mailed to the registered owner of the vehicle in question at the address on file with the California—or other relevant state—Department of Motor Vehicles (DMV). If the address used for this account is different than the address you have on file with the DMV for any vehicles associated with this account, please check that address for violation notices. You may also check for outstanding penalties associated with The Toll Roads by contacting us. If you used toll facilities operated by other toll agencies, check with those agencies for possible violations. Visit our website [www.thetollroads.com](http://www.thetollroads.com) for contact information.

85-0027-0005 - DataProc. by: www.staples.com/EPS/MQ25.1.08/1.2

## EXHIBIT C

Thank you for driving The Toll Roads!



# Notice of Toll Evasion Violation

Notice Mailing Date:

NTEV1103C1342674V575084  
 Registered Owner Name  
 Address 1  
 Address 2  
 City, State Zip1+4

|                       |  |
|-----------------------|--|
| Violation Number      |  |
| Vehicle License Plate |  |
| Year and Make         |  |
| Date                  |  |
| Time                  |  |

Our records indicate that on the date, time and location listed above, the vehicle identified above was traveling on the **91 Express Lanes** with no transponder reading detected. While we appreciate your choice to use the 91 Express Lanes, the California Vehicle Code section 23302(b) requires that all vehicles, including carpools with three or more passengers, have a valid **FASTRAK™** account in order to use the lanes.

**91 EXPRESS LANES CUSTOMERS:** If you are a customer in good standing and have failed to update your account with the vehicle listed above, your payment card has been cancelled, lost, stolen or expired, or if you believe you received this violation notice in error, contact the Customer Service Center at (951) 280-9191 or provide the updated information on the certificate below.

**NONCUSTOMERS:** Now that you have discovered the timesaving benefits the 91 Express Lanes provide, we encourage you to become a customer. Opening an account is easy - call us at (951) 280-9191. Sign-up within 15 days from the Notice Mailing Date and we will apply the \$20.00 non-refundable penalty towards prepaid tolls on your new account.

**IN ORDER TO AVOID FURTHER NOTICES AND PENALTIES, IT IS IMPORTANT TO DO ONE OF THE FOLLOWING:**

- Provide a valid 91 Express Lanes account number, and/or updated payment card information to an active account in good standing, or;
- Complete and return Section A (Affidavit of Non-Liability) or Section B (Request for Administrative Investigation) located on the back of this form **WITHIN 30 DAYS** from the Notice Mailing Date printed above, or;
- **Pay the amount listed below. Payments should be sent through the mail to the 91 Express Lanes, P.O Box 68039, Anaheim, California, 92817 and must be received by 5:00 p.m. on the due date.**

|                   |                   |                    |
|-------------------|-------------------|--------------------|
|                   | 00/00/0000        | 00/00/0000         |
| Toll              |                   |                    |
| Penalty           |                   |                    |
| <b>Total Due.</b> |                   |                    |
| <b>Due Date</b>   | <b>00/00/0000</b> | <b>00/00/0000*</b> |

\*If not paid by this due date, the penalty will escalate up to \$100 for the first violation and up to \$150.00, or more for each additional violation within one year. In addition to monetary penalties, if you use the 91 Express Lanes without a valid account and a properly mounted transponder, you may also be subject to a citation from the California Highway Patrol. You may also be responsible for court costs if these penalties are collected through the courts.

We recommend that you retain a copy of all correspondence with our agency.

91 Express Lanes is a trademark of Orange County Transportation Authority  
 FasTrak is a trademark of the Transportation Corridor Agencies. © 2004 OCTA

**PAYMENT CERTIFICATE**

Registered Owner Name  
 Address 1  
 Address 2  
 City, State Zip1+4  
NTEV1103C1342674V575084

|                          |  |                  |  |
|--------------------------|--|------------------|--|
| Violation #              |  | Vehicle License: |  |
| Amount Due by 00/00/0000 |  | Year / Model:    |  |

Make check or money order payable to 91 Express Lanes. **DO NOT MAIL CASH.**

- Please charge \$\_\_\_\_\_ to my credit card below: (Check One)  American Express  Visa  MasterCard  Discover
- Please update my account with the credit card below:  Add as my primary default credit card  Add as an additional credit card

Credit Card Number:  /  Expiration (Month/Year):  /

- I have a valid **FASTRAK™** account with another California toll facility operator and the vehicle referenced above is listed on my account: (Check One)  **The Toll Roads**,  Golden Gate Bridge  Bay Area,  I-15,  Other \_\_\_\_\_).

**Please Note:** If your account was not in good standing on the date/time of this violation, and this license plate is not listed on your FASTRAK™ account, we cannot adjust this transaction, and the full penalty plus the toll amount is due. Toll Road customers may contact a Toll Road representative by calling (800) 378-8725.

- I have a valid **91 Express Lanes** account. Add this vehicle to my account! Account Holder's signature and Account Number are required.  
**Please Note:** A discrepancy in the account holder's name and the registered owner of the license plate may result in the continued enforcement of the violation.

Printed Name of Account Holder

Account Holder Signature Required

Account Number

Date

## EXHIBIT D

**Affidavit of Non-Liability and Request for Administrative Investigation**

**Section A - Affidavit of Non-Liability**

If you are no longer the registered owner of the vehicle indicated on the reverse side, or if the vehicle was stolen, or if you are the lessor or an authorized rental agency, please complete the information below. According to California Vehicle Code section 40250, the registered owner, driver, rentee or lessee of a vehicle is liable for the violation indicated on the reverse side. At the time of the violation, the Department of Motor Vehicles (DMV) provided your name as the registered owner. Please mail this form, with the proper documentation, to the 91 Express Lanes, P.O. Box 68039, Anaheim, California 92817.\*

*I declare that on the date of the violation the vehicle bearing the license plate number on the reverse side was:*

(Check only one)     Sold/Transferred     Rented     Leased     Reported Stolen

**Declaration of Non-Liability**

Name and address of responsible party

Name \_\_\_\_\_ Driver's License Number \_\_\_\_\_

Street Address \_\_\_\_\_ Telephone # \_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Date of sale/transfer, rental, or theft \_\_\_\_\_

*I declare under penalty of perjury that the above information is true and correct:*

Print Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

**IMPORTANT!**

\*You must include one of the following documents with the above declaration of non-liability: (1) proof of a bona fide sale or transfer of the vehicle filed with the DMV, (2) copy of the lease or rental agreement providing the rentee/lessee information above and the term of the agreement or, (3) a police report or insurance claim citing the date of the theft.

*If all the information is not accurately completed and verified by the DMV, the affidavit will be disregarded and you will be held responsible for the violation.*

**Section B - Request for an Administrative Investigation**

If you do not believe you are responsible for the violation indicated on the reverse side, or wish to challenge the penalty, or accumulated penalties assessed, you may contest this violation and/or penalty. Please provide a written explanation of reasons for contesting the toll violation/penalty. Please complete the information below and mail this form, with your written explanation, to: 91 Express Lanes, P.O. Box 68039, Anaheim, California 92817.

*I do not believe I owe, or should owe, the amount indicated on the reverse side of this notice. I am requesting an administrative investigation of the items that constitute my defense against liability of the violation/penalty. I have included a written explanation of the reason(s) I am contesting the violation/penalty.*

Print Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_ Phone \_\_\_\_\_

The circumstances of the toll violation and the penalty assessed will be investigated and the results will be sent to you via mail. If the investigation indicates that you are still responsible for the violation/penalty, you may request a second level Administrative Review. You will have fifteen (15) days from the day the Administrative Investigation results are mailed, to make the required deposit and submit your written request for a second level Administrative Review. Generally, we will schedule a review hearing to be held within ninety (90) days of our receipt of your request. If the hearing officer finds you not responsible, your deposit will be refunded to you (California Vehicle Code section 40255).

If the hearing officer finds you are responsible for the violation and/or penalty, and you still wish to contest the Toll Evasion Violation, you have within twenty (20) days after the mailing of the final decision to Appeal to Municipal Court (or Superior Court in a County in which there is no Municipal Court). The filing fee for the Notice of Appeal is twenty-five dollars and must be paid directly to the court at the time you file your appeal. If the court finds you not responsible, your deposit plus any fees, will be refunded to you (California Vehicle Code section 40256).

# Notice of Delinquent Toll Evasion Violation

Notice Mailing Date:

NDTEV1103C1342674V575084

Registered Owner Name  
Address 1  
Address 2  
City, State Zip1+4

|                       |  |
|-----------------------|--|
| Violation Number      |  |
| Vehicle License Plate |  |
| Year and Make         |  |
| Date                  |  |
| Time                  |  |

In a *Notice of Toll Evasion Violation* letter dated Month Date, Year, you were informed that a vehicle registered in your name was detected traveling in the **91 Express Lanes** with no transponder reading detected. You were also informed that you had 30 days to respond to the notice but we have not yet received a response. California Vehicle Code section 23302(b) requires that all vehicles, including carpools with three or more passengers, have a valid **FASTRAK™** transponder account in order to use the 91 Express Lanes.

**91 EXPRESS LANES CUSTOMERS:** If you are a customer in good standing and have failed to update your account with the vehicle listed above, your payment card has been cancelled, lost, stolen or expired, or if you believe you received this violation notice in error, contact the Customer Service Center at (951) 280-9191 or provide the updated information on the certificate below.

**NON-CUSTOMERS:** Now that you have discovered and appreciate the timesaving benefits the 91 Express Lanes provide, we encourage you to become a customer. Opening an account is easy - just call us at (951) 280-9191.

**IN ORDER TO AVOID FURTHER NOTICES AND PENALTIES, IT IS IMPORTANT TO COMPLETE ONE OF THE FOLLOWING:**

- Provide a valid 91 Express Lanes account number, and/or updated payment card information, to an active account in good standing, or;
- Complete and return Section A (Affidavit of Non-Liability) or Section B (Request for Administrative Investigation) located on the back of this form **WITHIN 60 DAYS** from the Notice Mailing Date printed above, or;
- **Pay the amount listed below. Payments should be sent through the mail to the 91 Express Lanes, P.O. Box 68039, Anaheim, California, 92817 and must be received by 5:00 p.m. on the due date.**

| Description      | Date            | Amount (\$/00/00/000) |
|------------------|-----------------|-----------------------|
| Toll             |                 |                       |
| Penalty          |                 |                       |
| <b>Total Due</b> |                 |                       |
| <b>Due Date</b>  | <b>00/00/00</b> | <b>00/00/0000</b>     |

\* If not paid by this due date, the matter will be assigned to collections and the penalty will escalate up to \$100 for the first violation and up to \$150.00, or more, for each additional violation within one year. In addition to monetary penalties, if you use the 91 Express Lanes without a valid account and a properly mounted transponder, you may also be subject to a citation from the California Highway Patrol. You may also be responsible for court costs if these penalties are collected through the courts.

We recommend that you retain a copy of all correspondence with our agency.

91 Express Lanes is a trademark of Orange County Transportation Authority  
FastTrak is a trademark of the Transportation Corridor Agencies. © 2004 OCTA

**PAYMENT CERTIFICATE**

Registered Owner Name  
Address 1  
Address 2  
City, State Zip1+4  
NTEV1103C1342674V575084  
*(Please correct name and address if necessary.)*

|  |                                       |  |
|--|---------------------------------------|--|
| Violation #:                           | Vehicle Info:                         |  |
| <b>TOTAL DUE<br/>BEFORE 00/00/0000</b> | <b>TOTAL DUE<br/>AFTER 00/00/0000</b> |  |

**Make check or money order payable to 91 Express Lanes. DO NOT MAIL CASH**

Please charge \$\_\_\_\_\_ to my credit card below: (Check One)  American Express  Visa  MasterCard  Discover

Please update my account with the credit card below:  Add as my primary default credit card  Add as an additional credit card

Credit Card Number:  Expiration (Month/Year):  /

I have a valid **FASTRAK™** account with another California toll facility operator and the vehicle referenced above is listed on my account: (Check One)  **The Toll Roads**,  Golden Gate Bridge,  Bay Area,  I-15,  Other \_\_\_\_\_.

*Please Note: If your account was not in good standing on the date/time of this violation, and this license plate is not listed on your FASTRAK™ account, we cannot adjust this transaction, and the full penalty plus the toll amount is due. Toll Road customers may contact a Toll Road representative by calling (800) 378-8725.*

I have a valid **91 Express Lanes** account. Add this vehicle to my account! Account Holder's signature and Account Number are required.

*Please Note: A discrepancy in the account holder's name and the registered owner of the license plate may result in the continued enforcement of the violation.*

Printed Name of Account Holder \_\_\_\_\_

Account Holder Signature Required \_\_\_\_\_

Account Number \_\_\_\_\_

Date \_\_\_\_\_

**EXHIBIT D**

Notice of Toll Evasion  
xx/xx/xx

Our records show that on the below date(s), time(s) and location(s) the vehicle identified was travelling on The Toll Roads without making the proper toll payment or having a valid FasTrak® transponder. Driving on The Toll Roads without making the proper toll payment violates California Vehicle Code (CVC) §23302 and 23302.5. Such violations are subject to a civil penalty under CVC §40250.

Information concerning the violation(s), including amounts due and important dates, is set forth in the schedule below. Be advised that failure to pay the amount due or submit the completed form on this notice may result in additional penalties, including attachment of the violation amounts to the registration of the vehicle (DMV registration lien), a civil judgment for the violation amounts and associated costs, and other collection procedures as set forth in CVC §40267 and as allowed by law.

| Violation Number | Date and Time           | Location             | License Plate | Amount of Toll Due | Amount of Penalty Due | Total Amount Due By xx/xx/xx | Total Amount Due After xx/xx/xx | Subject to Vehicle Registration Lien On |
|------------------|-------------------------|----------------------|---------------|--------------------|-----------------------|------------------------------|---------------------------------|---|
| ####             | xx/xx/xx<br>xx:xx<br>PM | Plaza/Direction/Lane | ####          | \$xx.xx            | \$55.00               | xx/xx/xx                     | \$xx.xx                         | xx/xx/xx                                |

To avoid escalation of penalties or initiation of collection activities, it is important that you respond to the notice within 21 days of the notice date. You must respond in the one of the following manners:

**Open a FasTrak® Account**- If you would like to open a FasTrak account with The Toll Roads, your penalties will be reduced to a single \$55.00 penalty of which \$15 will be applied to your new FasTrak® account. This offer is only valid for 30 days from the date of this notice. To open an account, complete the enclosed application and remit the \$55.00.

**Update Your Existing Toll Roads Account**- If you are a current account holder with The Toll Roads you received this notice because either your vehicle was not listed on your account and the transponder was not read or your account was suspended. If your account was valid at the time of the transaction, please provide the following information and the vehicle will be added to the account and the toll(s) for the violations will be paid to the account. If your account number does not begin with a "6" your account is not with The Toll Roads. You need to update your vehicle and check the status of your account with the agency maintaining your account.

Account Number 6\*□□□□□□□□ Date I became responsible for vehicle □□/ □□/ □□

Account Holder's Name \_\_\_\_\_

**Notify of Lost, Stolen or Expired Credit Card**- I believe the toll violations listed above are the result of my FasTrak account suspension. My account was suspended because my credit card was lost, stolen or expired. I request that you review my account and related violations. I am providing proof to support my claim and ask that you reconsider the assessment of the violations based on the proof I am submitting.

**Pay the Violation (s)**- Payments may be made by mail to the address listed below or on-line by visiting [www.payviolation.com](http://www.payviolation.com)

**Complete the Affidavit of Non-Liability**- Section A on the reverse side of this notice should be completed if you did not have ownership of the vehicle at the time of the violations.

**EXHIBIT D**

**Affidavit of Non-Liability and Request for Administrative Investigation**  
*The Toll Roads Violations Department P.O. Box 50310, Irvine, CA 92619-0310*  
*thetollroads.com or 949 727-4800*

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**Section A-Affidavit of Non-Liability**

The Department of Motor Vehicles (DMV) provided the name and address on the reverse side of this notice as the registered owner of the vehicle at the time of the transaction(s). Under California Vehicle Code (CVC) §40250, the registered owner of the vehicle is responsible for toll violations. If the vehicle was sold, transferred, stolen, leased or rented at the time of the violations please complete the declaration below and return it to the address above.

The vehicle bearing the license number on the reverse side of this notice was:

(Check only one)       Sold/Transferred       Stolen       Leased/Rented

Name and address of responsible party:

Name \_\_\_\_\_ Driver's License Number \_\_\_\_\_  
Street Address \_\_\_\_\_ Telephone Number \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Date of Sale/Transfer, Rental or Theft \_\_\_\_\_

You must include one of the following documents: (1) copy of the bill of release of liability filed with the DMV, (2) copy of the lease or rental agreement naming the person above and the terms of the agreement, or (3) police report citing the date of the theft.

**I declare under penalty of perjury that the foregoing information is true and correct:**

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Contact Phone Number \_\_\_\_\_

**Section B-Request for an Administrative Investigation (may be completed on-line at thetollroads.com)**

If you do not believe you are responsible for the violation(s) indicated on the reverse side of this notice, or you wish to challenge the amount of the penalty assessed, you may contest the violation(s) and/or penalty. Please provide a written explanation of the reason(s) for contesting the violation(s)/penalty. You can submit this completed form or provide the information on line at thetollroads.com.

*I do not believe I owe, or should owe, the amount indicated on the reverse side of this notice. I am requesting an Administrative Investigation of the items that constitute my defense against liability of the violation and/or penalty. I have included a written explanation of the reason(s) I am contesting the violation and/or penalty.*

Name \_\_\_\_\_ Signature \_\_\_\_\_ Date \_\_\_\_\_

Contact Phone Number \_\_\_\_\_

The circumstances will be investigated and written results mailed to you. If you are not satisfied with the results of the Administrative Investigation, you may request an Administrative Review Hearing anytime prior to the entry of a civil judgment. Further instructions for requesting an Administrative Review Hearing can be found at \_\_\_\_\_ or by calling 949-727-4800. If you are not satisfied with the results of the administrative review you may file an appeal with the municipal court. The procedures for administrative review and appeals are set forth in the CVC §40255 and 40256.

xx/xx/xx

Name  
Address  
City, State Zip

Transportation Corridor Agencies (TCA )Debtor, Vehicle Plate #####

Dear xxxx:

It has come to our attention that you/your client filed for Chapter 7 bankruptcy relief on or about xx/xx/xx (Case No. ##-#####). Please be advised that it is the TCA's position that penalties owed to the TCA are not discharged in Chapter 7 Bankruptcy.

On April 16, 2004, the United States Bankruptcy Court, Central District of California, Santa Ana Division, ruled that pursuant to 11 U.S.C. Sec. 523 (a) (7) toll evasion penalties owed to the TCA are non-dischargeable in Chapter 7 Bankruptcy proceedings. (See case number Adv. SA 03 1641 JB)

The TCA will honor the automatic stay during the course of the bankruptcy proceedings and file a proof of claim with the court, if permitted. Subsequent to the stay being lifted, the TCA will discharge any tolls due and seek payment of the penalties owed. If a civil judgment has not been entered, you may dispute the violations. Information regarding the dispute process may be obtained by visiting [thetollroads.com](http://thetollroads.com) or by calling 949 727-4900.

Sincerely,

Joyce Hill  
The Toll Roads

**EXHIBIT E**

## **PROPOSED PUBLIC STATEMENT – EXHIBIT TO SETTLEMENT AGREEMENT**

The parties to the lawsuit entitled Pamela Matthews Avery, et al. v. Orange County Transportation Authority, et al. are pleased to announce that they have agreed to a settlement of the case.

The suit was brought by a group of individuals who incurred toll violations while travelling on the SR-91 Express Lanes, which are operated by the Orange County Transportation Authority, or OCTA, and the SR-73, SR-241, SR-261 and SR-133 toll roads, which are operated by the Transportation Corridor Agencies, TCA. Plaintiffs alleged, on behalf of themselves and all others similarly situated, that the policies and procedures of the OCTA and TCA, in assessing and enforcing toll violation penalties, as well as the state laws under which toll violations are enforced, denied plaintiffs' right to due process of law and were excessive, and therefore unconstitutional. It is the position of the OCTA and TCA that the statutes, policies and procedures under which toll violation penalties are assessed and enforced are in full compliance with all applicable laws.

According to the terms of the settlement, as set forth in a written agreement signed by the parties, OCTA and TCA will make changes to their policies and procedures to provide increased notice and hearing opportunities to those who receive notices of toll violations, and will also agree to limits on the amounts of penalties which can be imposed. In addition, OCTA and TCA will provide those who incurred violations over a certain minimum amount during the past four years with refunds of a portion of penalties they have paid, and waiver of a portion of penalties they have yet to pay.

Notice of the settlement will be provided to those who are impacted by it. The settlement is also subject to approval by the Court, which the parties anticipate will occur during the fall or winter of 2009.