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Attorneys for Defendant CONDUENT STATE &
LOCAL SOLUTIONS, INC f/k/a XEROX STATE
& LOCAL SOLUTIONS, INC., erroneously sued as
XEROX STATE AND LOCAL SOLUTIONS, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

WILLIAM MONTGOMERY, individually and
on behalf those similarly situated,

Plaintiff,

v.

BAY AREA TOLL AUTHORITY; GOLDEN
GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT; XEROX
STATE AND LOCAL SOLUTIONS, INC.;
and DOES 1 - 100,

Defendants.

Case No. _____

**NOTICE OF REMOVAL OF CIVIL
ACTION TO FEDERAL COURT**

[Class Action Fairness Act of 2005]

Action filed: July 13, 2018

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1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that pursuant to 28 U.S.C. §§ 1441(a) and 1446, Defendant
3 CONDUENT STATE & LOCAL SOLUTIONS, INC., formerly known as XEROX STATE &
4 LOCAL SOLUTIONS, INC. and erroneously sued as XEROX STATE AND LOCAL
5 SOLUTIONS, INC.¹ (“Conduent”) hereby removes to this Court the state court action pending in
6 the Superior Court of the State of California, County of San Francisco, titled *William*
7 *Montgomery, individually and on behalf of those similarly situated v. Bay Area Toll Authority,*
8 *Golden Gate Bridge, Highway and Transportation District, Xerox State and Local Solutions, Inc.,*
9 *and Does 1-100*, Case No. CGC-18-568084 (the “Action”).

10 **PROCEDURAL BACKGROUND AND GROUNDS FOR REMOVAL**

11 1. Plaintiff WILLIAM MONTGOMERY (“Plaintiff”) commenced the Action in the
12 Superior Court of the State of California, County of San Francisco, on or about July 13, 2018, by
13 filing a Class Action Complaint (the “Complaint”).

14 2. As shown herein, the Action is a civil action of which this Court has original
15 jurisdiction pursuant to the Class Action Fairness Act of 2005 (“CAFA”), codified in part at 28
16 U.S.C. § 1332(d), and is one which may be removed to this Court by Conduent pursuant to 28
17 U.S.C. § 1441(a).

18 **TIMELINESS OF REMOVAL**

19 3. Conduent was served with the Summons and Complaint in the Action on August
20 10, 2018. True and correct copies of the Summons, Complaint and related case documents served
21 upon AA are attached hereto collectively as **Exhibit A**. A true and correct copy of the Proof of
22 Service on Conduent, filed with the San Francisco Superior Court on August 23, 2018, is attached
23 hereto as **Exhibit E**. Conduent has not filed any pleadings or other papers in the Action, nor does
24 it know of any other Defendant having filed any responsive pleading or papers.

25
26
27 ¹ Plaintiff’s Complaint erroneously identifies Conduent as “Xerox State and Local Solutions,
28 Inc.” However, there is only one entity—Conduent State & Local Solutions, Inc. The former
entity, Xerox State & Local Solutions, Inc., changed its name to Conduent State & Local
Solutions, Inc. in 2017. (Declaration of Jeff Frank, ¶ 2, attached as Exhibit B.)

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1 4. This Notice of Removal has been filed within thirty (30) days after Conduent was
2 served with Summons and Complaint and is therefore timely under 28 U.S.C. §1446(b)(1).

3 5. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies a copy of
4 this Notice of Removal and all supporting pleadings will be promptly served on Plaintiff’s counsel
5 and filed with the Clerk of the San Francisco Superior Court. Therefore, all procedural
6 requirements under 28 U.S.C. § 1446 will be satisfied.

7 **ORIGINAL JURISDICTION**

8 **UNDER THE CLASS ACTION FAIRNESS ACT**

9 6. CAFA vests a district court with original jurisdiction of a class action where: (a)
10 “the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest or costs”
11 (28 U.S.C. § 1332(d)(2)); and (b) “any member of a class of Plaintiffs is a citizen of a State
12 different from any Defendant (28 U.S.C. § 1332(d)(2)(A); see *Luther v. Countrywide Home Loans*
13 *Servicing LP*, 553 F.3d 1031, 1033-1034 (9th Cir. 2008) (“complete diversity is not required”));
14 (c) the primary defendants are not “States, State officials, or other governmental entities against
15 whom the district court may be foreclosed from ordering relief (28 U.S.C. § 1332(d)(5)(A)); and
16 (d) “the number of members of all proposed plaintiff classes is in the aggregate” at least 100 (28
17 U.S.C. § 1332(d)(5)(B)). The Action satisfies all four criteria for CAFA removal of a class action.

18 **A. Class Action.**

19 7. The Complaint concerns collections of tolls and penalties on San Francisco Bay
20 Area Toll Bridges. (Complaint (Exh. A), ¶ 2 at 2:17-21, ¶ 18 at 6:14-17 (defining “Toll Bridges”
21 to include “the San Francisco Ba Area’s seven states-owned toll bridges – Antioch, Benecia-
22 Martinez, Carquinez, Dumbarton, Richmond-San Rafael, San Francisco – Oakland, and San
23 Mateo – Hayward”).) Plaintiff alleges that Defendants have improperly disseminated motorists’
24 personally identifiable information in that connection. Plaintiff alleges that Conduent and other
25 defendants violated Article I, §§ 1, 7 and 17 of the California Constitution, California Streets and
26 Highway Code § 31490, California’s Unfair Competition Law (Cal. Bus. & Prof. Code §§ 17200,
27 *et seq.*), and the California Consumer Legal Remedies Act (Cal. Civ. Code §§ 1750 *et seq.*). In
28 addition, Plaintiff asserts a common law negligence claim.

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1 8. Plaintiff expressly sues under Federal Rule of Civil Procedure 23(b)(2) and (c)
2 (Complaint (Exh. A), ¶ 68 at 17:4-5.)

3 9. Plaintiff alleges two proposed classes:
4 Excessive Fines Class: All consumers who between July 12, 2014 and the present,
5 were assessed and/or paid a penalty amount, or where charged with a toll evasion
6 violation in connection with using the Toll Bridges.

7 PII Class: All consumers who between July 12, 2014 and the present, had their PII
8 provided to any person who was not authorized to receive the PII pursuant to
9 California Streets and Highways Code § 31490, under California’s Constitutional
10 right to privacy, in violation of the Defendants’ privacy policy and/or transponder
11 agreements.

12 (Complaint (Exh. A), ¶ 69 at 17:6-14.)

13 **B. Class Size.**

14 10. Plaintiff defines his proposed classes as “consumers” using one of the several Bay
15 Area toll bridges since July 12, 2014 who: (a) were charged with a toll evasion, or were assessed
16 and/or paid a penalty; or (b) had their personally identifying information provided to an
17 unauthorized person. (Complaint (Exh. A), ¶ 69 at 17:6-14).

18 11. By Plaintiff’s own estimate, there would be “hundreds of thousands (if not
19 millions) of Class Members” (Complaint (Exh. A), ¶ 70(a) at 17:17-19.)

20 12. Based on the foregoing, the number of members of all proposed classes in the
21 aggregate is at least 100, and the Action meets CAFA’s numerosity requirement. 28 U.S.C. §
22 1332(d)(5).

23 **C. Amount in Controversy.**

24 13. The alleged amount in controversy in this putative class action exceeds, in the
25 aggregate, \$5,000,000, exclusive of interest and costs. Plaintiff alleges that for each of the
26 hundreds of thousands of putative class members, they are entitled to “statutory damages in the
27 amount of no less than \$2,500 or \$4,000 (as applicable)” as well as “actual damages, restitution,
28 and all other appropriate legal and equitable relief.” (Complaint (Exh. A), Prayer for Relief, ¶ B at

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1 40:16-17; see also *id.*, ¶ 117 at 26:7-13 and ¶ 125 at 27:23-28:2 (alleging Plaintiff’s and the
2 individual class members’ per violation remedies under California Streets and Highways Code §
3 31490 [providing for the greater of (a) actual damages or (b) depending on the number of
4 violations, either \$2,500 or \$4,000, plus attorneys’ fees and costs] (Cal. Sts. & High. Code §
5 31490(q)), ¶ 170 at 36:5-7 (alleging entitlement to In addition, alleging entitlement to up to an
6 additional \$5,000 for each Class Member who is a senior citizens or a person with a disability
7 under the Consumer Legal Remedies Act (Cal. Civ. Code §§ 1780(b)(1)) and 1781(f) and (g).)
8 Plaintiffs also seek attorneys’ fees and costs pursuant California Code of Civil Procedure § 1021.5,
9 California Civil Code §§1788.17 and 1788.30(c), and California Streets and Highways Code §
10 31490. (Complaint (Exh. A), Prayer for Relief, ¶ E at 40:23-24). Those fees are part of the amount
11 in controversy for 28 U.S.C. § 1332(c)(2) purposes. *See Campbell v. Vitran Exp., Inc.*, 471 Fed.
12 Appx. 646, 649 (9th Cir. 2012) (“[W]here an underlying statute authorizes an award of attorneys’
13 fees, either with mandatory or discretionary language, such fees may be included in the amount in
14 controversy.”); *see also Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) (“25%
15 recovery is the ‘benchmark’ level for reasonable attorney's fees in class action cases.”)

16 **D. CAFA Diversity.**

17 14. Diversity exists under 28 U.S.C. § 1332(d)(2)(A) where “any member of a class of
18 plaintiffs is a citizen of a State different from any defendant.”

19 15. Plaintiffs’ Citizenship. Plaintiff Montgomery is a Texas citizen. (Complaint (Exh.
20 A), ¶ 3 at 2:24-25.) The class of plaintiffs Montgomery seeks to represent includes class members
21 from throughout the state of California and elsewhere, as he does not limit his class definition to
22 Californians. (Complaint (Exh. A), ¶ 69 at 17:6-14.)

23 16. Defendants’ Citizenship. Under 28 U.S.C. § 1332(c), “a corporation shall be
24 deemed to be a citizen of any State by which it has been incorporated and of the State where it has
25 its principal place of business.” Conduent is a New York corporation (Complaint ¶ 6 at 3:23-25;²
26 Frank Decl. (Exh. F), ¶ 3), with its principal place of business in New Jersey (*id.*, ¶ 4). Therefore,
27

28 ² As noted, Xerox State & Local Solutions, Inc. changed its name to Conduent State & Local Solutions, Inc. (Frank Decl. (Exh. F), ¶ 2.)

1 Conduent is a citizen of a different state than much of the putative class, including California
2 citizens, as well as Plaintiff Montgomery.

3 17. Defendant Bay Area Toll Authority (“BATA”) is a government agency of the State
4 of California with its principal place of business in San Francisco, California. (Complaint (Exh.
5 A), ¶ 4 at 3:11-16).

6 18. Defendant Golden Gate Bridge, Highway and Transportation District (“GGB”) is a
7 government agency of the State of California with its principal place of business in San Francisco,
8 California. (Complaint (Exh. A), ¶ 5 at 3:17-22).

9 19. Diversity of citizenship also exists under 28 U.S.C. § 1332(d)(2)(A) inasmuch as
10 Plaintiff Montgomery is a citizen of Texas and both Defendant BATA and Defendant GGB are
11 citizens of California.

12 **C. Conduent, a Primary Defendant, is Not a Governmental Entity.**

13 20. CAFA jurisdiction does not exist if “the primary defendants are States, State
14 officials, or other governmental entities against whom the district court may be foreclosed from
15 ordering relief.” 28 U.S.C. § 1332(d)(5).

16 21. Conduent is not a State or State official, nor does Plaintiff so allege.

17 22. Conduent is a private corporation, and not an “other governmental entity from
18 whom the district court is foreclosed from granting relief” for 28 U.S.C. § 1332(d)(5)(a) purposes.
19 (Complaint ¶ 6 at 3:23-25; Frank Decl. (Exh. F), ¶¶ 6-12.)

20 23. For CAFA jurisdictional purposes, a “primary defendant” is “anyone ‘who has a
21 substantial exposure to a significant portion of the proposed class in the action.’” *Chalian v. CVS*
22 *Pharmacy, Inc.*, No. CV1608979ABAGRX, 2017 WL 1377589, at *3 (C.D. Cal. Apr. 11, 2017)
23 (holding that “Because CVS is domiciled in Rhode Island and RX Services is domiciled in New
24 York, the primary defendants are not California citizens and the home-state exception does not
25 apply.”); *see also Sanchez v. Aviva Life and Annuity Company, et al.*, No. CV S-09-1454
26 FCD/DAD, 2009 WL 10694222, at *4 (E.D. Cal. July 16, 2009) (explaining that a “primary
27 defendant” is a defendant who is directly liable to the plaintiff).

28 ///

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1 24. The “primary defendant” exception to CAFA jurisdiction only applies when *all*
2 primary defendants are State or other government entities. *Frazier v. Pioneer Americas LLC*, 455
3 F.3d 542, 546 (5th Cir. 2006) (explaining that Section 1332(d)(5) “is not meant to create a
4 loophole whereby plaintiffs can avoid CAFA jurisdiction by naming a state as a primary
5 defendant”); *Woods v. Standard Ins. Co.*, 771 F.3d 1257, 1263 (10th Cir. 2014) (holding there was
6 “no doubt Congress intended the state action provision to preclude CAFA jurisdiction only when
7 all of the primary defendants are states, state officials, or state entities”).

8 25. Conduent is a named defendant from whom Plaintiff seeks direct relief. Indeed,
9 Plaintiff *only* alleges his Count V (California Consumer Legal Remedies Act) (Complaint (Exh.
10 A), ¶¶ 161-170 at 34:17-36:7) against Conduent. The same is true of Plaintiff’s Count VI (Unfair
11 Competition Law); Conduent is the *only* defendant against whom Plaintiff asserts that claim. (*Id.*,
12 ¶¶ 171-183 at 36:8-38:5.) Conduent is therefore a primary defendant.

13 26. Causes of action Plaintiff has asserted against Conduent depend on it being a
14 private, not governmental, entity. California’s Consumers Legal Remedies Act (Cal. Civ. Code §
15 1750-1784) (the “CLRA”) is a consumer protection statute. The CLRA makes unlawful “unfair
16 methods of competition and unfair or deceptive acts or practices undertaken by any person in a
17 *transaction* intended to result or that results in the sale or lease of goods or services *to a*
18 *consumer.*” (Cal. Civ. Code § 1770(a) (emphasis added).) The CLRA defines a “person” as “an
19 individual, partnership, corporation, limited liability company, association, or other group,
20 however organized”—rather than the State. (Cal. Civ. Code § 1750.).

21 27. California’s Unfair Competition Law is codified within Division 7 of California’s
22 Business and Professions Code, “General Business Regulations.” (Cal. Bus. & Prof. Code §§
23 16000-18001 17200). The UCL prohibits “unfair competition,” which it defines as a person’s
24 “unlawful, unfair, or fraudulent business act or practice.” Cal. Bus. & Prof. Code § 17200
25 (emphasis added). The UCL’s definition of “person” (“natural persons, corporations, firms,
26 partnerships, joint stock companies, associations and other organizations of persons”) includes
27 private actors, not public entities. Cal. Bus. & Prof. Code § 17201; *In re Cell Tower Litig.*, 807
28

1 F.Supp.2d 928 (2011); *see Wells v. One2One Learning Foundation*, 39 Cal.4th 1164, 1203 (2006)
2 (“government entities are not ‘persons’ who may be sued under the UCL” (citations omitted)).

3 28. California law specifically permits a private vendor to serve as a processing agency.
4 Cal. Veh. Code § 40252. Therefore, Plaintiff’s allegation that Conduent is a “processing agency”
5 (Complaint (Exh. A), ¶ 6 at 4:3-5) is not an allegation that Conduent is an “other governmental
6 entity against whom the district court is foreclosed from ordering relief.” 28 U.S.C. § 1332(d)(5).

7 29. As Conduent *is* a primary defendant, and as Conduent is *not* a State, State official,
8 or “other governmental entit[y] against whom the district court may be foreclosed from ordering
9 relief”, 28 U.S.C. § 1332(d)(5)(A) does not bar this Court’s exercise of original jurisdiction under
10 CAFA.

11 **VENUE AND INTRADISTRICT ASSIGNMENT**

12 30. Venue of this action lies in the United States District Court for the Northern District
13 of California pursuant to 28 U.S.C. § 1446(a), because the State court from which the Action is
14 removed is located in this District.

15 31. Assignment to the San Francisco Division is appropriate under Civil Local Rule 3-
16 2(c), because a substantial part of the events or omissions which give rise to the claim allegedly
17 occurred in the County of San Francisco. (Complaint (Exh. A), ¶¶ 11-12 at 5:12-18.)

18 **JOINDER**

19 32. Plaintiff named additional Defendants, BATA and GGB. Pursuant to 28 U.S.C. §
20 1453(b), all defendants do not need to consent or join in removal under CAFA.

21 **STATE COURT DOCUMENTS**

22 33. In accordance with 28 U.S.C. § 1446(a), Conduent attaches to this Notice the
23 following documents, which are all the process, pleadings, and orders served upon Conduent in
24 the Action:

- 25 a) **Exhibit A** – Class Action Complaint.
- 26 b) **Exhibit B** – Summons.
- 27 c) **Exhibit C** – Application for Complex Designation.

- d) **Exhibit D** –Declaration of Helen Zeldes in Support of Application for Complex Designation.
- e) **Exhibit E** - Proof of Service on Conduent.

SERVICE OF NOTICE OF REMOVAL

34. In accordance with 28 U.S.C. § 1446(d), the undersigned counsel certifies that a copy of this Notice of Removal and all supporting pleadings will be promptly served on Plaintiff’s counsel and other Defendants not joining in this removal and filed with the Clerk of the San Francisco Superior Court. Therefore, all procedural requirements under 28 U.S.C. § 1446 will be satisfied.

WHEREFORE, Conduent removes the above action, now pending in the Superior Court of the State of California for the County of San Francisco, to this Court.

Dated: September 7, 2018.

LAFAYETTE & KUMAGAI LLP

By: /s/ Gary T. Lafayette
Gary T. Lafayette

Attorneys for Defendant CONDUENT STATE & LOCAL SOLUTIONS, INC f/k/a XEROX STATE & LOCAL SOLUTIONS, INC., erroneously sued as XEROX STATE AND LOCAL SOLUTIONS, INC.

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EXHIBIT "A"

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ENDORSED
FILED
San Francisco County Superior Court
JUL 13 2018
CLERK OF THE COURT
BY ROSALY DE LA VEGA
Deputy Clerk

12 Attorneys for PLAINTIFF AND THE PUTATIVE CLASS

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CGC-18-568084

WILLIAM MONTGOMERY, individually and
on behalf of those similarly situated,

Plaintiff,

v.

BAY AREA TOLL AUTHORITY; GOLDEN
GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT; XEROX
STATE AND LOCAL SOLUTIONS, INC., and
DOES 1-100,

Defendants.

Case No.

CLASS ACTION

CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
BASED ON:

- 1) VIOLATION OF ARTICLE I, §17 OF
THE CALIFORNIA CONSTITUTION
(EXCESSIVE FINES)
- 2) VIOLATION OF ARTICLE I, §7 OF
THE CALIFORNIA CONSTITUTION
(DUE PROCESS)
- 3) VIOLATION OF CALIFORNIA
STREETS AND HIGHWAYS CODE
§31490
- 4) VIOLATION OF ARTICLE I, §1 OF
THE CALIFORNIA CONSTITUTION
(RIGHT TO PRIVACY)
- 5) VIOLATION OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT,
CIVIL CODE §§1750, *ET SEQ.*

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- 6) VIOLATION OF THE UNFAIR COMPETITION LAW, BUS. & PROF. CODE §§17200, *ET SEQ.*
- 7) NEGLIGENCE

DEMAND FOR JURY TRIAL

Plaintiff William Montgomery (“Plaintiff”), on behalf of themselves and all others similarly situated, allege as follows based on investigation of counsel and information and belief:

NATURE OF THE CASE

1. This class action seeks redress for defendants’ violations of Plaintiff’s and class members’ rights to privacy and protection of personally identifiable information (“PII”) including the California Streets and Highways Code § 31490; and Article I, Section 1 of the California Constitution. The Defendants transmit the Class’ PII in direct violation of § 31490 to the Department of Motor Vehicles, the Franchise Tax Board, law enforcement agencies, and a host of other unauthorized third persons that entitles Plaintiff to damages and injunctive relief.

2. This action also seeks damages and declaratory and injunctive relief for violations by Defendants of the Excessive Fines and Due Process Clauses of the California Constitution arising from the Defendants’ assessment, enforcement and collection of tolls and disproportionately excessive civil penalties for alleged toll road payment violations by a class of persons that commuted (or were alleged to have commuted) on the Toll Bridges (as hereinafter defined) from July of 2012 to the present date.

THE PARTIES

3. Plaintiff William Montgomery is an individual residing in the State of Texas and a sergeant in the U.S. Army. While stationed on military duty with the Army in Monterrey, California in 2014, Plaintiff Montgomery’s vehicle allegedly crossed the Benicia-Martinez Bridge in the northbound direction on or about May 2, 2014. Plaintiff Montgomery has no recollection of ever crossing the Benicia-Martinez Bridge in his vehicle. Over three years later, on August 18, 2017,

1 Plaintiff Montgomery learned for the first time that his vehicle was issued a violation when he received
2 a Notice of Assignment to a Collection Agency from Professional Account Management, LLC
3 (“PAM”) at his home address in Grand Prairie, Texas. The Notice of Assignment stated that he owed
4 \$75 in tolls and penalties related to his vehicle’s passage over the Benicia-Martinez Bridge on or about
5 May 2, 2014. The Notice of Assignment also indicates that defendants shared Plaintiff Montgomery’s
6 PII, including travel pattern data, with third parties. Plaintiff Montgomery attempted to dispute the
7 penalty with both BATA and PAM. Plaintiff Montgomery also sent a letter disputing the violation via
8 certified mail to Bay Area FasTrak on or about October 2, 2017. Bay Area FasTrak refused to
9 recognize Plaintiff Montgomery’s dispute. Plaintiff Montgomery has security clearance with the U.S.
10 Army which requires him to report any collections matters as part of a security clearance application.

11 4. Defendant, the Bay Area Toll Authority (“BATA”), is a government agency
12 responsible for operating and managing toll collection on the Golden Gate Bridge and Benicia-
13 Martinez Bridge (including the FasTrak Program), sending invoices, and assessing and processing toll
14 evasion violations and penalties. BATA is an “issuing agent” within the meaning of California Vehicle
15 Code §§ 40250, *et seq.* BATA, at all times alleged herein, conducted its principal business within the
16 State of California, located in the City and County of San Francisco.

17 5. Defendant the Golden Gate Bridge, Highway and Transportation District (the
18 “District” or “GGB”) is also a government agency responsible for operating and managing toll
19 collection on the GGB (including the FasTrak Program), sending invoices, and assessing and
20 processing toll evasion violations and penalties. The District, at all relevant times hereto, conducted
21 business in California, with its headquarters located in the City and County of San Francisco. The
22 District is an “issuing agency” within the meaning of California Vehicle Code §§ 40250, *et seq.*

23 6. Defendant Xerox State and Local Solutions, Inc. (“Xerox”) formerly ACS State and
24 Local Solutions, Inc. is a private corporation headquartered in New York, and authorized to conduct
25 business in California. On April 2, 2012, ACS State and Local Solutions, Inc. filed a certificate of
26 amendment to its Articles of Incorporation, changing its name to Xerox State & Local Solutions, Inc.
27 Since 2002, Xerox had operated and maintained the FasTrak Program. In January of 2013, BATA
28 and the District contracted with Xerox pursuant to Government Code section 40252 to administer the

1 Fast Trak program through June 30, 2019. Xerox provides and administers the FasTrak and Pay-By-
2 Plate programs and manages the assessment, notification, and collection of fines and penalties
3 pertaining to toll invoices and toll evasion violations on the GCB. Accordingly, pursuant to
4 Government Code Section 40253, Xerox is a “processing agency” within the meaning California
5 Vehicle Code 40250 *et. seq.* Xerox has accordingly been delegated a public function by BATA and
6 the District. Xerox is also thereby entwined with BATA and the District’s government policies, and
7 BATA and the District are entwined in the management and control of Xerox. Finally, Xerox is a
8 knowing and willful participant in a joint action, along with the BATA and the District, in the various
9 acts and omissions set forth in this injury, which caused injury to Plaintiff and the Class Members.

10 7. Plaintiff is ignorant of the true identities and capacities of fictitiously named defendants
11 designated as Does 1-100, but will amend this complaint or any subsequent pleading when their
12 identities and capacities have been ascertained according to proof. On information and belief, every
13 Doe defendant is in some manner responsible for the acts and conduct of the other defendants herein,
14 and each Doe was, and is, responsible for the injuries, damages, and harm incurred by Plaintiff. Each
15 reference in this complaint to “defendant,” “defendants,” or a specifically named defendant, refers also
16 to all the named defendants and those unknown parties sued under fictitious names.

17 8. Plaintiff is informed and believe and thereon alleges that, at all times relevant hereto,
18 all the defendants together were members of a single unincorporated association, with each member
19 exercising control over the operations of the association. Plaintiff is informed and believes and thereon
20 alleges that, at all times relevant hereto, each of the defendants was the agent, associate, employee and
21 or representative of each of the remaining defendants, and in doing the things hereinafter alleged, was
22 acting within the authorized course and scope of this agency, association and employment with the
23 full knowledge and consent of the remaining defendants. Plaintiff is further informed and believes
24 and thereon alleges that each and all the acts herein alleged as to each defendant was authorized and
25 directed by the remaining defendants, who ratified, adopted, condoned and approved said acts with
26 full knowledge of the consequences thereof, and memorialized the authority of the agent in a writing
27 subscribed by the principal.

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1 need to actually give commuters due process by obtaining a judgment, and is instead an unfair profit
2 center exacting a windfall through penalties coerced from unsuspecting drivers.

3 **HOW THE TOLL BRIDGES WORK**

4 20. California Vehicle Code §23301, is applicable to all vehicle crossings and Toll Bridges
5 in California. Section 23301 provides that “each vehicle that enters into or upon a vehicular crossing
6 immediately becomes liable for those tolls and other charges as may from time to time be prescribed
7 by the California Transportation Commission.”

8 21. Vehicle Code §40250(b) makes the registered owner of the vehicle involved in the
9 violation jointly and severally liable with the driver of such vehicle.

10 22. The tolling agencies in California accept payment for tolls by either offering an
11 electronic toll collection system (*e.g.*, FasTrak) and/or implementing a pay-by-license-plate method
12 of payment, or both.

13 23. “FasTrak” is an electronic toll collection system, where people establish a FasTrak
14 account with a tolling agency and then receive a transponder, which they then place on their vehicle.
15 When traveling through the toll zone, the transponder is read by an overhead antenna on the road, and
16 the posted toll amount is then automatically deducted from the customer’s account. While people are
17 allowed to use their FasTrak transponders throughout the state, they are encouraged to obtain a
18 transponder from the agency that operates the road, lane, or bridge that they will use the most.

19 24. Vehicle Code §23302(e) defines a pay-by-plate payment as “an issuing agency’s use
20 of on-road vehicle license plate identification recognition technology to accept payment of tolls in
21 accordance with policies adopted by the issuing agency.”

22 25. Vehicle Code §23301.8 regulates pay-by-plate programs as follows:

23
24 Where an issuing agency permits pay-by-plate toll payment as described in
25 subdivision (e) of Section 23302, it shall communicate, as practicable, the
26 pay-by-plate toll amount in the same manner as it communicates other toll
27 payment methods. The issuing agency shall provide publicly available
28 information on how pay-by-plate toll payment works, including the toll

1 amount, process for payment, and period of time a vehicle has to resolve the
2 payment before an issuing agency may process the trip as a violation under
3 Section 40255. Communication of this information may include the
4 Department of Transportation's approved signage, posting of information on
5 the issuing agency's Internet Web site, media advertising, public meeting or
6 disclosure as required by the issuing agency's policies, or other methods of
7 communication. Except where the issuing agency has an agreement with a
8 vehicle owner that specifies in advance any administrative fees that will be
9 imposed on the owner for pay-by-plate toll payment, administrative costs
10 shall be incorporated into the pay-by-plate toll amount, and no additional
11 administrative costs shall be added above the posted pay-by-plate toll
12 amount.
13

14 26. Vehicle Code §23301.8 requires BATA to communicate to the public both the toll
15 payment and how the pay-by-plate toll payment program works. Additionally, any additional
16 administrative costs must be paid by the BATA and cannot be added to the pay-by-plate toll amount.

17 27. The BATA outsourced the Toll Bridges administrative functions to Defendant Xerox
18 (the "Private Defendant" or "Xerox"). Defendant Xerox provided the Toll Bridges with customer
19 service and toll compliance services.

20 **STATE ACTION**

21 28. The BATA and the District are "state actors" who have gone to great lengths to hold
22 themselves out as such by:

23 (a) Not disclosing their identity as private contractors in communications with the
24 public, but instead acting as if they are, and representing themselves as, government agencies through
25 the Toll Bridges website, its office, and all its customer service materials;

26 (b) Sending out "Notice of Toll Evasion" violations to Class Members appearing
27 to be from the BATA;
28

1 (c) Threatening to place liens on Class Members' vehicle registrations in the Notice
2 letters;

3 (d) Threatening to impose civil judgments and other collection efforts on Class
4 Members if they do not pay the fines set forth in the Notice letters;

5 (e) Entering into contracts with Xerox and willingly agreeing to become
6 "processing agenc[ies]" as that term is used and defined in Vehicle Code §§ 40252 and 40253;

7 (f) Entering into contracts with Xerox and becoming willing participants in a joint
8 venture with a state actor – *i.e.*, BATA; and

9 (g) Processing, reviewing, and collecting toll evasion violation penalties, resulting
10 from their exercise of the coercive power of the State of California.

11 29. The BATA and District Defendants' willing operation of the toll collections, and their
12 processing of the Notices of Toll Evasion and Notices of Delinquent Toll Evasion along with Xerox,
13 leaves them entwined with governmental policy.

14 30. The BATA and District Defendants' willing participation in a joint venture with state
15 actors as "processing agenc[ies]" under the Vehicle Code, Xerox is obligated to comply with Vehicle
16 Code §40250, *et. seq.* and the California Constitution.

17 31. The BATA and District were entwined with, and directly managed, Xerox's activities
18 that are challenged in this Complaint.

19 32. Through these activities, collecting penalties authorized by state statute, and
20 threatening vehicle registration holds by the DMV, the private entities are commanding the power of
21 the state.

22 **XEROX OPERATES THE TOLL BRIDGES**

23 33. From October of 2010 to the present, Defendant Xerox was responsible for providing
24 the following functions to BATA and the District and in fact operated the Toll Bridges for BATA and
25 GGB:

26 (a) Customer service/call center operation (staff to hand enrollment, respond to calls,
27 complaints, resolve violations, payment processing);
28

1 (b) Account maintenance (update accounts, research new accounts to resolve unpaid violations,
2 suspend accounts, reinstate or revoke accounts, prepare and mail customer notices, investigate
3 accounts);

4 (c) Inventory (transponders and supplies related to transponders);

5 (d) Mail room;

6 (e) Payment processing;

7 (f) Reports (aging, FasTrak revenue and activity reports, financial reporting);

8 (g) Special projects;

9 (h) Toll enforcement processing including actually conducting and/or overseeing any initial
10 internal administrative review proceeding conducted concerning a toll violation by BATA,
11 actually conducting any administrative review (the second tier of the three tier review process)
12 image review services, maintenance of electronic data exchange with the DMV, electronically
13 produce file to mail, process violation inquiries, process affidavits of non-liability, place
14 registration holds, resolve customer violation issues, perform judgment recovery services;

15 34. (i) SOP's configuration Control & Documentation (library catalog, training manuals,
16 system software changes tracking, update software source code, test, maintain and schedule software
17 changes as required, test configuration platform, develop and maintains disaster recovery plan,
18 document security audits);

19 35. (j) System support (provide complete system administrative and support service for the
20 operation of the customer service system, violation, imaging, reporting, webs services and other
21 FasTrak related software system – including generating account statements, processing auto debiting,
22 posting all tolls, penalties, and charges and credits, maintain compliance with interoperability transfer,
23 archive account and image data, ensure the daily transfer of violations for the image processing
24 systems and more);

25 (k) Program Management (provide overall program management for each item in the
26 contract between the parties). ((a) through (k), are collectively referred to as the "Functions.")
27
28

1 36. From October of 2010 to present date, Xerox participated with the District and BATA
2 in determining the amount of the penalties assessed, collected, and charged against Plaintiff and the
3 Class Members.

4 37. From October of 2010 to present date, Xerox actually provided PII of Class Members
5 to Other Unauthorized Parties.

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10 **DEFENDANTS' ADMINISTRATIVE PROCESS IS FATALLY FLAWED AND**
11 **UNCONSTITUTIONAL AND THUS PLAINTIFF IS NOT REQUIRED TO**
12 **EXHAUST ANY ADMINISTRATIVE PROCEDURES**

13
14 38. Exhaustion is excused as to Plaintiff's Counts I, II and IV because exhaustion would
15 be futile, idle or useless. Plaintiff's pursuit of the administrative process would be "futile" because
16 nothing in the administrative proceeding would decide whether Defendants should be enjoined from
17 issuing unconstitutional penalties, which they seek in this action, or whether they should be entitled to
18 restitution damages for tolls they may have already paid, or whether penalties were excessive. *See,*
19 *e.g., California Constitution, article III, §3.5.10 132.*¹ Exhaustion is excused based on futility when
20 no findings of fact will be made by the "administrative review" process. The entire review process
21 does not involve a fact-finding mission, and singularly addresses whether somebody traveled on the
22 Toll Bridges. If they did and did not pay, for whatever reason, there is no consideration as to factual
23 questions concerning the penalties.

24
25 ¹ "An administrative agency, including an administrative agency created by the Constitution or an
26 initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute,
27 on the basis of it being unconstitutional unless an appellate court has made a determination that such
28 statute is unconstitutional; (b) To declare a statute unconstitutional; (c) To declare a statute
unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations
prohibit the enforcement of such statute unless an appellate court has made a determination that the
enforcement of such statute is prohibited by federal law or federal regulations."

1 39. Exceptional circumstances also excuse exhaustion because alleged violators were
2 precluded them from exhausting this administrative scheme, because they were unaware not only of
3 its existence, but that they were implicated as toll violators, until after they were foreclosed from
4 invoking its provisions.

5 40. The administrative scheme itself, conditioned on payment in advance of penalties
6 Plaintiff could not afford, were they to have been aware of them in the first place, is preclusive. It is,
7 thus, not only evincing of Constitutional due process violations, it presents exceptional circumstances
8 to relieve the Plaintiff of any requisite of administrative exhaustion.

9 41. The entire administrative scheme set forth in the California Vehicle Code is
10 unconstitutional, as its delegation to BATA and GGB (and to processing agencies) of the appointment
11 of adjudicative persons that constitute inferior officers, and their undertaking of judicial functions,
12 violate the separation of powers doctrines and appointments clauses of article III, section 3, and article
13 VI, section 1, of the California Constitution, and article II, section 2 of the United States Constitution.

14 42. Finally, Plaintiff is not required to exhaust the administrative process in the California
15 Vehicle Code because Defendants' administrative procedures are the very source of the asserted
16 injury. Plaintiff challenges the constitutionality of the tolls and penalties as being excessive and
17 assessed by the Defendants in violation of due process on their face, and as applied, pursuant to Counts
18 I and II of this Complaint. Thus, the Defendants' administrative procedures are the very source of their
19 injury, and Plaintiff cannot attack the excessive penalties, and whether they were given notice they
20 were entering a toll road before a toll was being imposed, which are wrapped into the notices of toll
21 violations.

22 43. The administrative process provides an inadequate venue, excusing Plaintiff's
23 requirement to exhaust Defendants' review process before asserting Counts I, II, and IV in this lawsuit.
24 The administrative process does not afford Plaintiff and absent Class Members the fair procedural
25 rights, including rights to be heard.

26 44. The review process is inadequate to require Plaintiff to exhaust before asserting Counts
27 I, II, and IV because an alleged violator has only "15 days to initiate an investigation from mailing."
28 Here, Plaintiff, and others similarly situated, did not receive the notice of violation before the 15 days

1 had expired for them to request an investigation. But even if the 15 days had not expired, Plaintiff
2 could not invoke the second tier, because he did not have funds to invoke the second-tier review, and
3 in the alternative, requiring him to do so is unconstitutional.

4 45. GGB and BATA's remedy is also "inadequate" as to Plaintiff because the second tier
5 contradictorily promises a hearing, but then indicates that the review may be conducted by "mail."
6 Moreover, the review process is inadequate, because a "commissioner" may preside over the matter
7 at the third tier and may only evaluate the rulings under the California Vehicle Code *de novo*, and
8 without consideration as to whether any "factual" findings are clearly erroneous. Also, the review
9 process is inadequate because it is not conducted with "fairness and impartiality" as required by the
10 California Vehicle Code. Instead, in practice, no investigation takes place and the processing agency
11 serves as prosecutor, arbiter, and executioner. The processing agency for the GGB/BATA (Xerox)
12 also fails to hire a person who is not compensated based on penalties to conduct the second tier of the
13 review.

14 46. The remedies Plaintiff seeks are unavailable in the administrative process, excusing
15 Plaintiff's requirement to exhaust the Defendants' review process before asserting claims in this
16 lawsuit. Plaintiff can only challenge whether there was a system error, and not the constitutionality of
17 the actual amount of the penalties incurred under the "review" system. This is signified in many ways
18 from the required contours of the investigation (tier one), the minimal documents to create a "prima
19 facie" case (tier two), and that review can only be conducted *de novo* (tier three) and not based on
20 "questions of fact" considering whether the extent by which the penalties are assessed is
21 disproportionate to the toll assessed. The remedy is also unavailable because the administrative
22 proceedings do not permit Plaintiff to challenge that he did not get adequate notice of the cashless,
23 man-less system when the toll roads were rolled out.

24 47. Plaintiff's privacy claims were not required to be exhausted by administrative
25 proceedings because these causes involve wrongful transmission of PII, and not the assessment of a
26 toll under the California Vehicle Code.

27 **CIVIL PENALTIES ARE ASSESSED WITHOUT FAIR HEARINGS**

28

1 48. Under the guise of Vehicle Code §40250, BATA and the District also assess millions
2 of dollars in civil penalties against commuters that are excessive, without proper notice and without a
3 fair hearing.

4 49. Under Vehicle Code §§40250, *et seq.*, the District may assess civil penalties for “toll
5 evasion” violations for a variety of reasons, including inadvertent mistakes, such as if the commuter’s
6 card has expired, if the credit card was declined, or the transponder was not properly placed on the
7 windshield.

8 50. Under Vehicle Code §40254(e), “[t]he processing agent shall use its best efforts to
9 obtain accurate information concerning the identity and address of the registered owner for the purpose
10 of forwarding a notice of toll evasion violation pursuant to subdivision (a).” Despite the clear intent
11 of the Legislature to use all means necessary to provide notice to commuters, the District and BATA
12 fail and/or refuse to send any notices by e-mail or telephone after months of no contact with the
13 commuter. Meanwhile, the commuter racks up thousands of dollars in civil penalties and unwittingly
14 waives due process rights by failing to timely submit an affidavit to contest the violations. Plaintiff is
15 informed and believes the failure of District and BATA to use “best efforts” is, and has been, a willful
16 and deliberate scheme to generate greater penalty assessments and judgments against commuters.

17 51. Under Vehicle Code §40254, the District has between 21 to 90 days to serve notices of
18 the toll violations. However, within this time, many commuters have already passed through the Toll
19 Bridges and incurred enormous civil penalties without any notice of the toll violations. For example,
20 even if notice is sent within one week after the violation, the commuter could potentially be assessed
21 several thousands of dollars in one week. This 21-to-90 day notice window encourages BATA to
22 delay sending notices in a conscious effort to increase penalties and generate a financial return.

23 52. The notices are also deliberately vague and ambiguous as to what law the commuter
24 violated, further denying due process.
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1 **THE ASSESSMENT OF TOLLS AND PENALTIES AGAINST**
2 **CLASS MEMBERS LACKS DUE PROCESS AND**
3 **PROVIDES NO NOTICE OF INFRACTION**

4 53. The Toll Bridges’ system of toll collection and enforcement lacks key procedural and
5 substantive constitutional protections and violates consumer protection laws.

6 54. The abuse of BATA and GGB has been well chronicled in the news. John Goodwin of
7 BATA has claimed he is only interested in tolls, but this belies his dogged attempt at collecting
8 hundreds of millions, if not billions in penalties. <http://www.ktvu.com/news/4612222-story> (2
9 INVESTIGATES; difficult to clear name after FasTrak errors).

10 55. Goodwin states in that same video: “in order to keep costs down, we rely so much on
11 automated systems. Sometimes things like this will happen.”

12 56. If Class Members cannot pay the outrageous tolls, BATA and GGB having shockingly
13 recommended the individual file a bankruptcy.

14 57. BATA and GGB have even been fined by the Transit Authorities \$330,000 for bad
15 customers service, which just scratched the surface of what “7 On Your Side”, uncovered.
16 [http://abc7news.com/technology/7-on-your-side-fastrak-customers-unfairly-hit-with-](http://abc7news.com/technology/7-on-your-side-fastrak-customers-unfairly-hit-with-penalties/515536/)
17 [penalties/515536/](http://abc7news.com/technology/7-on-your-side-fastrak-customers-unfairly-hit-with-penalties/515536/) (February 12, 2015). As stated in the story “the fact that a private corporation,
18 Xerox, can put a hold on the DMV –my registration – seems wrong.” (*Id.*)

19 58. FasTrak has a deplorable 1.5 star ranking on YELP [https://www.yelp.com/biz/fastrak-](https://www.yelp.com/biz/fastrak-san-francisco-2)
20 [san-francisco-2](https://www.yelp.com/biz/fastrak-san-francisco-2), and 100% negative reviews on ripoffreport.com/ Better Business Bureau.

21 59. Yelp features hundreds of negative reviews from normal consumers outraged by the
22 manner the Toll Bridges are operated. Specifically, many persons receive “notices of toll violations”
23 even though the license plate image captured does not even match with the number on file with the
24 toll authorities.
25

26 60. The signage warning Class Members (defined *infra*) that they are travelling on the Toll
27 Bridges is wholly inadequate and inconspicuous. Signage locations and language on the Toll Bridges
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1 do not provide adequate advance notice to Class Members of the Toll Bridges, nor any notice
2 whatsoever of the amount of tolls to be assessed to Class Members for entering the Toll Bridges.

3 61. Once a Class Member enters the Toll Bridge, even inadvertently, a toll is electronically
4 assessed, and there is no reasonable means by which a Class Member can mitigate or avoid the toll,
5 exit the Toll Bridge, or contest the assessment. Specifically, the District and BATA prey on
6 unsuspecting travelers who traverse the Golden Gate Bridge in their rental cars.

7 62. Further, when passing through the unmanned cashless areas, there is no indication by
8 Defendants (or their agents) that a toll and/or penalty has been assessed against the Class Member, or
9 that there has been an infraction.

10 63. Defendants' unmanned cashless systems are designed to eliminate their costs of
11 manning Toll Bridges and shift the burden and penalty to the unwitting Class Members. Moreover,
12 Defendants' systems are designed to reap an unjust windfall to Defendants and their private investors
13 through collection of massive penalties.

14 **THE AUTOMATED ENFORCEMENT SYSTEM**
15 **LEADS TO ADDITIONAL PENALTIES**

16 64. Even though many Class Members are unaware that they may have incurred a toll, they
17 are tasked under the law to proactively contact Defendants, to make payment.

18 65. Phone calls to Defendants to inquire in good faith as to alleged toll violations frequently
19 go unanswered and unreturned.

20 66. If a Class Member does not know of the alleged violation and cannot locate the BATA
21 website in five days from the alleged violation, and pay the toll in full, Defendants: (a) assess excessive
22 penalties disproportionate to the amount of the original toll; (b) obtain *ex parte* judgments against the
23 commuter for the total toll plus unconscionable and/or excessive penalties; and/or (c) place liens on
24 vehicle registration renewals with the DMV if those excessive penalties are not paid within 30 days.

25 67. Defendants' operation of the Toll Bridges has become an unconscionable profit center,
26 unfairly rewarding them and their private investors at an oppressive cost to consumers, generating,
27 directly and indirectly, billions of dollars in returns. Defendants' executive staff realize substantial
28

1 salaries and other benefits while consumers' vehicle registrations can be put on hold – or worse – over
2 as little as a \$2.00 toll fee.

3 **CLASS ACTION ALLEGATIONS**

4 68. Plaintiff bring this action on behalf of himself and all others similarly situated, pursuant
5 to Federal Rule of Civil Procedure Rule 23(b)(3) and Rule 23(b)(2).

6 69. The proposed class consists of the following two Classes:

7 **Excessive Fines Class: All consumers who, between July 12, 2014 and the present,**
8 **were assessed and/or paid a penalty amount, or were charged with a toll evasion**
9 **violation in connection with using the Toll Bridges.**

10 **PII Class: All consumers who between July 12, 2014 and the present, had their**
11 **PII provided to any person who was not authorized to receive the PII pursuant to**
12 **California Streets and Highways Code §31490, under California's Constitutional**
13 **right to privacy, in violation of the Defendants' privacy policy and/or transponder**
14 **agreements.**

15 70. This action is properly brought as a class action for the following reasons:

16 (a) The proposed class is so numerous that the joinder of all Class Members is
17 impracticable. While Plaintiff does not know the exact number and identities of all Class Members,
18 Plaintiff is informed and believes that there are hundreds of thousands (if not millions) of Class
19 Members. The precise number of Class Members can be ascertained through discovery, which will
20 include Defendants' business records;

21 (b) The disposition of Plaintiff's and the Class Members' claims in a class action
22 will provide substantial benefits to both the parties and the Court;

23 (c) The proposed class is ascertainable and there is a well-defined community of
24 interest in the questions of law or fact alleged herein since the rights of each proposed class member
25 were infringed or violated in the same fashion;

26 (d) There are questions of law and fact common to the proposed class which
27 predominate over any questions that may affect particular Class Members. Such common questions of
28 law and fact include, but are not limited to:

1 (1) Whether the tolls and Toll Bridge penalties, as assessed by Defendants,
2 constitute an unconstitutional penalty;

3 (2) Whether the tolls and Toll Bridge penalties, as assessed by Defendants,
4 constitute “excessive fines” under the United States and California Constitutions;

5 (3) Whether Defendants transmitted or sold personally identifiable
6 information as a practice, policy, or pattern including, but not limited to, as part and parcel of their
7 collection activity;

8 (4) Whether Defendants violated California’s Unfair Competition Law,
9 Business & Professions Code §§17200, *et seq.* (“UCL”);

10 (5) Whether Defendants violated California’s Consumer Legal Remedies
11 Act, Civil Code §§1750, *et seq.* (“CLRA”);

12 (6) Whether Defendants have received funds from Plaintiff and Class
13 Members that they unjustly received;

14 (7) Whether Plaintiff and Class Members have been harmed and the proper
15 measure of relief;

16 (8) Whether Plaintiff and Class Members is entitled to an award of punitive
17 damages, attorneys’ fees, and expenses against Defendants; and

18 (9) Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to
19 equitable relief, and if so, the nature of such relief.

20 (e) Plaintiff’s claims are typical of the claims of the Class Members. Plaintiff and
21 all Class Members have been injured by the same wrongful practices of Defendants. Plaintiff’s claims
22 arise from the same practices and conduct that give rise to the claims of all Class Members and are
23 based on the same legal theories;

24 (f) Plaintiff will fairly and adequately protect the interests of the proposed class in
25 that they have no interests antagonistic to those of the other proposed Class Members, and Plaintiff
26 has retained attorneys experienced in consumer class actions and complex litigation as counsel;

27 (g) A class action is superior to other available methods for the fair and efficient
28 adjudication of this controversy for at least the following reasons:

1 (1) Given the size of Class Member's claims and the expense of litigating
2 those claims, few, if any, Class Members could afford to or would seek legal redress individually for
3 the wrongs Defendant committed against them, and absent Class Members have no substantial interest
4 in individually controlling the prosecution of individual actions;

5 (2) This action will promote an orderly and expeditious administration and
6 adjudication of the proposed class claims, and economies of time, effort and resources will be fostered
7 and uniformity of decisions will be insured;

8 (3) Absent class certification of Plaintiff's claims, Class Members will
9 continue to suffer damages, and Defendants' violations of law will proceed without remedy while
10 Defendant continues to reap and retain the substantial proceeds of its wrongful conduct; and

11 (4) Plaintiff knows of no difficulty that will be encountered in the
12 management of this litigation which would preclude its maintenance as a class action.

13 71. Defendants have, or have access to, address information for Class Members which may
14 be used for the purpose of providing notice of the pendency of this class action.

15 72. Plaintiff seeks damages and equitable relief on behalf of the proposed class on grounds
16 generally applicable to the entire proposed class.

17 **CAUSES OF ACTION**

18 **COUNT I**

19 **VIOLATION OF ARTICLE I, §17 OF THE CALIFORNIA CONSTITUTION**

20 **(EXCESSIVE FINES)**

21 **(By Plaintiff, Individually and on Behalf of All Class Members, Against All**
22 **Defendants)**

23 73. Plaintiff hereby refers to and incorporates by reference each and every allegation
24 contained in the preceding paragraphs of this Complaint.

25 74. This claim for relief is brought under the California Constitution and under California
26 Civil Code ("Civil Code") §52.1(b).

27 75. The dollar amount and enforcement of these penalties constitute violations of the
28 prohibition in Article 1, §17 of the California Constitution against the imposition of excessive fines.

1 The Vehicle Code permitting penalties to be charged by GGB and BATA of up to 20 times the toll
2 either expressly or implicitly, constitute excessive fines, and are thus, unconstitutional. As applied,
3 BATA and GGB routinely charged putative Class Members (including the named class
4 representatives) penalties in excess of 10 times the amount of the toll, or 1,000%.

5 76. As a direct result of these constitutional violations on the part of Defendants, Plaintiff
6 and the Class Members have been damaged and are entitled to damages, including restitution of the
7 amounts of any penalties and collection fees paid to Defendants or assessed by Defendants.

8 77. Plaintiff and the Class Members will suffer immediate and irreparable injury for which
9 there is no adequate remedy at law if the aforementioned penalties and policies to enforce them are
10 allowed to continue. Plaintiff and the Class Members seek injunctive relief, both preliminary and
11 permanent, to stop Defendants' unlawful conduct described above.

12 78. There is a real and actual controversy between the parties as to whether the toll penalties
13 described above violate the prohibition in Article 1, §17 of the California Constitution against the
14 imposition of excessive fines. This imposition of, and continued effort to collect, penalties constitute
15 a legal injury which is concrete and particularized. It is likely that these injuries will be fairly addressed
16 by a favorable Court ruling. Plaintiff and the Class Members therefore seek declaratory relief declaring
17 that the toll and penalty scheme are unconstitutional and that they did not and do not owe and need
18 not pay the tolls, penalties, and attendant collection fees.

19 79.. Plaintiff is informed and believes and thereon alleges that the acts of the Defendants
20 were willful, malicious, intentional, reckless and/or were done in willful and conscious disregard of
21 Plaintiff's rights, justifying the awarding of punitive and exemplary damages in an amount to be
22 determined at the time of trial.

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COUNT II
VIOLATION OF ARTICLE I, §7 OF THE CALIFORNIA CONSTITUTION
(DUE PROCESS)
(By Plaintiff, Individually and on Behalf of All Class Members, Against All
Defendants)

80. Plaintiff hereby refers to and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

81. Article 1, §7(a) of the California Constitution provides that a person may not be deprived of life, liberty, or property without due process of law. Defendants' excessive penalties scheme and their enforcement, as above alleged, have deprived Plaintiff and the Class Members of property without due process.

82. There is inadequate (if any) notice of the entry to the Toll Bridges or the incurring of tolls and penalties thereon.

83. The civil penalty scheme of California Vehicle Code §§40250, et seq., on its face and as applied by Defendants against Plaintiff and the Class Members, violates the Due Process Clause of the California Constitution for the following reasons, among others set forth in this Complaint: (a) Defendants failed to provide adequate notice to Plaintiff and Class Members of the manner in which toll charges must be paid and the consequences of non-payment; (b) Defendants failed to inform Plaintiff and Class Members promptly and reliably about alleged toll violations in time for them to avoid large penalties; (c) Defendants failed to provide Plaintiff and the Class Members with an adequate amount of time to be heard on the amount of the civil penalty assessments; (d) Defendants prevented Plaintiff and Class Members from challenging tolls and penalties by the use of inadequate time periods in which to make such challenges; (e) Defendants failed to take into account the inadequacy of DMV records to locate Plaintiff and Class Members reliably; (f) Defendants failed to adequately inform Plaintiff and Class Members of the electronic means by which they must pay their tolls and failed to take into account the needs of persons without easy access to computers; (g) Defendants allowed for ex parte judgments to be entered against Plaintiff and Class Members without

1 giving them notice and based on the other due process violations listed above; (h) California Vehicle
2 Code §40267 states that, in any case in which unpaid penalties exceed \$400 (essentially, any round
3 trip's unpaid fines and penalties), the processing agency may file with the court proof of the fact that
4 the penalties exceed \$400 and that such filing shall have the same effect as a civil judgment, which is
5 subject to execution. This entry of judgment occurs without any hearing on the issue of penalties
6 incurred. The entry of judgment is final and may not be contested.

7 84. Defendants' enforcement system, as authorized and set forth in California Vehicle
8 Code §§40250, *et seq.*, results in widespread due process violations against motorists alleged to have
9 failed to pay their tolls. These violations and the injuries suffered by the Plaintiff and class can be
10 avoided or substantially limited by modifying Defendants' systems without undue cost or
11 inconvenience to Defendants.

12 85. Plaintiff and the Class Members will suffer immediate and irreparable injury for which
13 there is no adequate remedy at law if the aforementioned policies, procedures, practices, and/or
14 customs of Defendants are allowed to continue. Henceforth, Plaintiff and the Class Members seek
15 injunctive relief, both preliminary and permanent, to enjoin Defendants' unlawful policies, procedures,
16 practices and/or customs described above.

17 86. In addition, there is a real dispute between the parties as to whether Vehicle Code
18 §§40250, *et seq.* and Defendants' practices violate Article I, §7 of the California Constitution. Plaintiff
19 maintains that the penalty scheme of Vehicle Code §§40250, *et seq.*, on its face and as applied by
20 Defendants, violates Article I, §7 of the California Constitution. Defendants claim that the penalty
21 scheme and their actions do not violate the due process clause of Article I, §7 of the California
22 Constitution and are constitutional. Plaintiff and the Class Members therefore seek declaratory relief
23 to declare the penalty scheme of Vehicle Code §§40250, *et seq.*, on its face and as applied by
24 Defendants, as unconstitutional.

25 87. By engaging in the herein-mentioned acts and omissions, Defendants interfered by
26 threat, intimidation, and coercion, and attempted to interfere by threat, intimidation, and coercion, with
27 the exercise and enjoyment by Plaintiff and each Class Members of their rights secured by the
28

1 Constitution or laws of the United States, and of the rights secured by the Constitution or laws of the
2 State of California, entitling them to damages under, *inter alia*, Civil Code §52.1(b) These coercive
3 acts include, without limitation, the imposition of arbitrary, inadequate deadlines and grossly
4 disproportionate penalties, as well as the threatened or actual placement of liens on motorists' DMV
5 vehicle registrations.

6 **COUNT III**

7 **VIOLATION OF CALIFORNIA STREETS AND**
8 **HIGHWAYS CODE §31490**

9 **(By Plaintiff, Individually and on Behalf of All Class Members, Against All**
10 **Defendants)**

11 88. Plaintiff hereby refers to and incorporates by reference each and every allegation
12 contained in the preceding paragraphs of this Complaint.

13 89. California Streets and Highways Code §31490 provides that:

14 (a) Except as otherwise provided in this section, a transportation agency may not sell or
15 otherwise provide to any other person or entity personally identifiable information of any person who
16 subscribes to an electronic toll or electronic transit fare collection system or who uses a toll bridge,
17 toll lane, or toll highway that employs an electronic toll collection system.

18 90. The Plaintiff and the Class Members are either "subscribers" or "users" of Defendants
19 Toll Bridges pursuant to California Streets and Highways Code §31490(a).

20 91. California Streets and Highways Code §31490(h) provides that:

21 This section, with respect to an electronic toll collection system, does not prohibit a
22 transportation agency from sharing data with another transportation agency solely to comply with
23 interoperability specifications and standards adopted pursuant to Section 37565 regarding electronic
24 toll collection devices and technologies. A third-party vendor may not use personally identifiable
25 information obtained under this subdivision for a purpose other than described in this subdivision.

26 92. California Streets and Highways Code §31490(l) provides: For purposes of this section,
27 "transportation agency" means the Department of Transportation, the Bay Area Toll Authority, any
28 entity operating a toll bridge, toll lane, or toll highway within the state, any entity administering an

1 electronic transit fare collection system and any transit operator participating in that system, or any
2 entity under contract with any of the above entities.

3 93. California Streets and Highways Code §31490(o) provides that: For purposes of this
4 section, “personally identifiable information” means any information that identifies or describes a
5 person including, but not limited to, travel pattern data, address, telephone number, email address,
6 license plate number, photograph, bank account information or credit card number.

7 94. California Streets and Highways Code §31490(p) provides that: For purposes of this
8 section, “interoperability” means the sharing of data, including personally identifiable information,
9 across multiple transportation agencies for the sole purpose of creating an integrated transit fare
10 payment system, integrated toll payment system, or both.

11 95. Defendants operate an “electronic toll collection system” within the meaning of
12 California Streets and Highways Code §31490(m).

13 96. Defendants BATA, GGB, and Xerox provided Plaintiff’s and Class Members’ PII,
14 within the meaning of California Streets and Highways Code §31490(o), to the following
15 Unauthorized Parties: Law Enforcement Agencies, including the DMV, the FTB, the San Francisco
16 Police Department and other city, state, county, and federal Law Enforcement Agencies located in the
17 State of California; Banking Institutions, including, without limitation, Wells Fargo Bank, N.A., JP
18 Morgan Chase Bank, Bank American, N.A.; Car Rental Agencies, including without limitation Ace
19 Rent-A-Car, Advantage, Alamo, Avis, Budget, Dollar, Economy, Enterprise, Europcar, Rent-a-car,
20 Firefly, Fox; out-of-state collection agencies, credit buereaus (including Experian, Transunion, and
21 Equifax) and other unauthorized third persons and entities to be ascertained through discovery (Other
22 Unauthorized Parties).

23 97. *Ad nauseum*, the BATA provided to TCA, BRiC, 3M, Cofiroute, OCTA, LA Metro
24 Express, South Bay Expressway, SANDAG, the PII of Plaintiff and the Class Members (i.e., their
25 plate images) for non-interoperability purposes.

26 98. *Ad nauseum*, the GGB provided to TCA, BRiC, 3M, Cofiroute, OCTA, LA Metro
27 Express, South Bay Expressway, SANDAG, the PII of Plaintiff and the Class Members (i.e., their
28 plate images) for non-interoperability purposes.

1 99. *Ad nauseum*, the Xerox provided to TCA, BRiC, 3M, Cofiroute, OCTA, LA Metro
2 Express, South Bay Expressway, SANDAG, the PII of Plaintiff and the Class Members (i.e., their
3 plate images) for non-interoperability purposes.

4 100. Such PII of Plaintiff and Class Members included, without limitation, information that
5 identified or described Plaintiff and Class Members as Toll Bridge toll violators, data of their travel
6 patterns on the Toll Bridges, and images of license plates of vehicles they owned or were driving.

7 111. California Streets and Highways Code §31490(i) is not a defense or excuse of liability
8 pursuant to §31490(a) or (h) because §31490(i) refers to, incorporates, and implicates subsection (d)
9 which contemplates purging that may take place under the California Streets and Highways Code,
10 which has nothing to do with the “providing” of PII. In other words, the statute contemplates that
11 collection may still occur even if the transportation agency has purged documents, but this is no
12 defense to the Defendants’ express violation of §31490(a) and (h).

13 112. By providing the Unauthorized Parties with the PII of Plaintiff and the Class Members,
14 Defendants’ purpose was to track Plaintiff’s and Class Members’ comings and goings, and to interfere
15 with Plaintiff’s and Class Members’ rights to use their vehicles.

16 113. Defendants did not receive a search warrant from any law enforcement agency under
17 California Streets and Highways Code §31490 prior to making any of the above-referenced
18 transmissions of PII.

19 114. Defendants did not have authorization under the transponder agreements with
20 commuters to make any of the above transmissions of PII.

21 115. GGB, BATA, and XEROX completed separate forms with the DMV prior to
22 transmitting PII for different purposes – albeit both were illegal. GGB, BATA, and XEROX would
23 first file requests (in certain circumstances only) to provide plate images to the DMV to obtain
24 information about commuters, even though the named Defendants already had the information of
25 commuters based on their completed transponder agreements, the availability of public information
26 and databases that indicate information for registration of car owners, private investigation, the right
27 to subpoena under California Streets and Highways Code, the right of publication, and other means to
28 obtain information.

1 116. Based on DMV procedures and practices, the DMV did not maintain a database of the
2 images of Class Members GGB, BATA, and XEROX would then provide plate images subsequently
3 thereto to the DMV to place a hold on commuters' registration, which was an entirely independent
4 request and function from providing plate images to obtain information about commuters. In other
5 words, the Defendants did not need to make subsequent transmission of image files and PII to obtain
6 the address of a commuter.

7 117. Based on the fact that GGB, BATA, and XEROX provided PII of Plaintiff and Class
8 Members to the Unauthorized Persons in violation of California Streets and Highways Code §31490(a),
9 pursuant to §31490(p)(1), Plaintiff and Class Members are entitled to \$2,500 for each individual
10 violation, attorney's fees, reasonable costs from GGB, BATA, and XEROX, and for Plaintiff and those
11 Class Members who had their information provided three or more times, \$4,000 for each individual
12 violation, attorney's fees, and reasonable costs from GGB, BATA, and XEROX. California Streets
13 and Highways Code §31490(p)(2).

14
15

16 **DEFENDANTS ARE LIABLE BECAUSE THE PURPOSE BY WHICH PII**
17 **WAS PROVIDED TO UNAUTHORIZED PARTIES WAS NOT FOR**
18 **“INTEROPERABILITY PURPOSES”**

19 118. When Plaintiff and each of the Class Members drove on the Toll Bridges, each of them
20 was a “user” of the Toll Bridges pursuant to §31490(a).

21 119. Each of the named Defendants is independently a “transportation agency” pursuant to
22 California Streets and Highways Code §31490(l).

23 120. GGB, BATA, and XEROX are each independently “entities” operating a toll bridge,
24 toll lane or toll highway within the state of California based on their contractual and actual roles in the
25 operations of the joint enterprise.

26 121. Each of the Toll Bridges (as previously defined) is a “Toll Highway” and/or “Toll
27 Lane” under §31490(n).

28

1 122. Defendants provided to the Unauthorized Parties PII for purposes that were not, and
2 could not have been, for “interoperability purposes” in that none of the transmittals were for the “sole
3 purpose of creating an integrated transit fare payment system, integrated toll payment system, or both.”
4 In fact, none of Defendants’ providing PII to Unauthorized Parties alleged hereinabove had anything
5 to do with creating any system, much less an “integrated transit fare payment system, integrated toll
6 payment system, or both,” but were instead meant to place holds on commuters’ vehicle registrations
7 as an illicit collection device.

8 123. As defined in §31490(m), for purposes of this section: “[E]lectronic toll collection
9 system” is a system where a transponder, camera-based vehicle identification system, or other
10 electronic medium is used to deduct payment of a toll from a subscriber’s account or to establish an
11 obligation to pay a toll, and “electronic transit fare collection system” means a system for issuing an
12 electronic transit pass that enables a transit passenger subscriber to use the transit systems of one or
13 more participating transit operators without having to pay individual fares, where fares are instead
14 deducted from the subscriber’s account as loaded onto the electronic transit pass. The transmissions
15 described above were not provided pursuant to a collection system of interoperability, but were instead
16 disseminated to unlawfully implement impermissible collection devices, place holds through the
17 DMV, interfere with property rights, and to track commuters’ comings and goings. See, Streets and
18 Highways Code §27565.

19 124. Thus, regardless of whether any of the Unauthorized Parties are themselves
20 “transportation agencies,” the named Defendants are liable for violations of California Streets and
21 Highways Code §31490(a), (h), and (l) because their provisions of Plaintiff’s and Class Members’ PII
22 were not for “interoperability purposes.”

23 125. Based on the fact that GGB, BATA, and XEROX provided PII of the Plaintiff and
24 Class Members to the Unauthorized Persons in violation of California Streets and Highways Code
25 §31490(a), pursuant to §31490(p)(1), Plaintiff and Class Members are entitled to \$2,500 for each
26 individual violation, attorney’s fees, reasonable costs from GGB, BATA, and XEROX, and for
27 Plaintiff and those Class Members who had their information provided three or more times, \$4,000
28

1 for each individual violation, attorney's fees, and reasonable costs from GGB, BATA, and XEROX.
2 California Streets and Highways Code §31490(p)(2).

3 **DEFENDANTS ARE ALTERNATIVELY LIABLE BECAUSE THE UNAUTHORIZED**
4 **PARTIES WERE NOT PERMITTED RECIPIENTS OF PLAINTIFF'S AND CLASS**
5 **MEMBERS' PII REGARDLESS OF THE PURPOSE**

6 126. Plaintiff is informed and believes, and on that basis alleges, that neither GGB, BATA,
7 and XEROX, was under contract with any of the Unauthorized Third Parties, within the meaning and
8 purpose of California Streets and Highways Code §31490(l), at the time they provided Plaintiff's and
9 Class Members' PII to the Unauthorized Persons, with the exception of contracts by and between
10 Xerox and BATA/GGB.

11 127. Specifically, Plaintiff is informed and believes, and based thereon alleges that neither
12 GGB, BATA, and XEROX executed any contract with the DMV at all.

13 128. The DMV is not a "transportation agency." Specifically, the GGB and BATA were not
14 "under contract" with the DMV for the purposes of California Streets and Highways Code §31490(l).
15 The DMV has not been a signatory to any writing with BATA and GGB concerning BATA and/or
16 GGB providing PII under the unlawful transmissions described above. The DMV has no continuing
17 contractual obligation with any party such that it would be said to be "under contract."

18 129. Xerox is not under contract with the DMV.

19 130. The DMV is a law enforcement agency within the meaning of the California Streets
20 and Highways Code and thus, cannot be a "transportation agency" thereunder.

21 131. None of the Law Enforcement Agencies are "under contract" with GGB, BATA, and
22 XEROX pursuant to California Streets and Highways Code §31490(l).

23 132. The FTB is not "under contract" with GGB, BATA, and XEROX under California
24 Streets and Highways Code §31490(l).

25 133. None of the Banking Institutions are "under contract" with GGB, BATA, and XEROX
26 pursuant to California Streets and Highways Code §31490(l).

27 134. None of the Other Unauthorized Parties are "under contract" with GGB, BATA, and
28 XEROX pursuant to California Streets and Highways Code §31490(l).

1 135. None of the Credit Bureaus are “under contract” with GGB, BATA, and XEROX.

2 136. None of the Car Rental Agencies are “under contract” with GGB, BATA, and XEROX
3 pursuant to California Streets and Highways Code §31490(l).

4 137. Thus, none of the Unauthorized Parties was a “transportation agency” within the
5 meaning of California Streets and Highways Code §31490(l).

6 138. Consequently, Defendants’ provision of PII to the Unauthorized Parties was in
7 violation of California Streets and Highways Code §31490 for this independent reason, irrespective of
8 whether providing the PII was provided for interoperability purposes.

9 **DEFENDANTS ARE INDEPENDENTLY LIABLE BECAUSE THEY PROVIDED PII**
10 **TO LAW ENFORCEMENT AGENCIES WITHOUT A SEARCH WARRANT**

11 139. California Streets and Highways Code §31490(e)(1) provides: A transportation agency
12 may make personally identifiable information of a person available to a law enforcement agency only
13 pursuant to a search warrant. Absent a provision in the search warrant to the contrary, the law
14 enforcement agency shall immediately, but in any event within no more than five days, notify the
15 person that his or her records have been obtained and shall provide the person with a copy of the search
16 warrant and the identity of the law enforcement agency or peace officer to whom the records were
17 provided.

18 140. Each of the DMV and San Francisco Police Department, and other Law Enforcement
19 Agencies in the State of California, is a law enforcement agency within the meaning of California
20 Streets and Highways Code §31490(e)(1).

21 141. Plaintiff is informed and believes, and on that basis alleges, that none of the Defendants
22 obtained a search warrant and otherwise complied with California Streets and Highways Code
23 §31490(e)(1) when providing Plaintiff’s and Class Members’ PII to the DMV, the San Francisco
24 Police Department, and other Law Enforcement Agencies.

25 142. Consequently, Defendants’ provision to the DMV, other Law Enforcement Agencies,
26 and San Francisco Police Department of Plaintiff’s and Class Members’ PII was in violation of
27 California Streets and Highways Code §31490.

28

1 143. Plaintiff is informed and believes, and thereon alleges, that Defendants have violated,
2 and conspired to violate, California Streets and Highways Code §31490 by unlawfully transmitting
3 Plaintiff's and the Class Members' PII, within the meaning of California Streets and Highways Code
4 §31490(o), to other agencies and individuals including, but not limited to, the Unauthorized Parties.
5 Further, Defendants ratified, authorized, directed, and approved that the DMV place a hold on
6 Plaintiff's and Class Members' vehicles and that the DMV transfer Plaintiff's and Class Members' PII
7 to other Law Enforcement Agencies, and that the San Francisco Police Department do the same,
8 thereby intentionally and illicitly circumventing the law.

9 144. Specifically, on at least two occasions per week, Defendants have transmitted and
10 continue to transmit to Unauthorized Parties a list of all users and subscribers, that contains PII of each
11 user and subscriber, whose registration should be placed on hold.

12 **DEFENDANTS ARE INDEPENDENTLY AND ADDITIONALLY LIABLE BASED**
13 **ON THEIR NON-COMPLIANT PRIVACY POLICIES IN VIOLATION OF CALIFORNIA**
14 **STREETS AND HIGHWAYS CODE §31490(B) AND (P)**

15 145. California Streets and Highways Code §31490(b) provides that: (b) A transportation agency that
16 employs an electronic toll collection system shall establish a privacy policy regarding the collection
17 and use of personally identifiable information and provide to subscribers of that system a copy of the
18 privacy policy in a manner that is conspicuous and meaningful, such as by providing a copy to the
19 subscriber with the transponder or other device used as an electronic toll collection mechanism, or, if
20 the system does not use a mechanism, with the application materials. A transportation agency shall
21 conspicuously post its privacy policy on its Internet Web site. For purposes of this subdivision,
22 "conspicuously post" has the same meaning as that term is defined in paragraphs (1) to (4), inclusive,
23 of subdivision (b) of Section 22577 of the Business and Professions Code. The policy shall include,
24 but need not be limited to, a description of the following:

25 (1) The types of personally identifiable information that is collected by the agency.

26 (2) The categories of third-party persons or entities with whom the agency may share
27 personally identifiable information.
28

1 (3) The process by which a transportation agency notifies subscribers of material changes to
2 its privacy policy.

3 (4) The effective date of the privacy policy.

4 (5) The process by which a subscriber may review and request changes to any of his or her
5 personally identifiable information.

6 146. Each of the named Defendants are transportation agencies that employ an electronic
7 toll collection system under Streets & Highways Code Section 31490.

8 147. The “FasTrak Privacy Policy,” set forth in a back-page footer of BATA’s website at
9 <https://www.bayareafastrak.org/en/support/privacy.shtml>, fails to comply with California Streets and
10 Highways Code §31490(b)(1). The policy fails to completely and accurately identify the who BATA,
11 GGB, and XEROX will be sharing personally identifiable information with as required by
12 §31490(b)(1).

13 148. The Defendants’ privacy policy provides: “BATA may share PII with GGBHTD,
14 ACTC, and VTA for the purpose of managing FasTrak® and other electronic toll collection operations
15 (i.e. License Plate Accounts, One-Time Payment Accounts and Invoices). BATA may also share PII
16 with other toll agencies within the State of California for the purpose of managing
17 FasTrak® operations. If you participate in the SFO Parking Program to pay parking fees, BATA will
18 share your FasTrak® toll tag number with SFO for the purpose of operating the SFO Parking Program.
19 In addition, BATA may share PII with SFO as necessary to resolve customer disputes.”

20 21 149. Further, the Policy provides: “[i]n addition, BATA hires third-party service providers
22 for the purpose of operating the FasTrak® and other electronic toll collection programs referenced
23 above, such as managing Accounts, collecting revenues due, and providing remote walk-in locations
24 at which FasTrak®, License Plate Account, One-time Payment Account, and Invoices customers can
25 pay tolls in cash. The CSC Contractor, Xerox, which may need to share PII with subcontractors to
26 enable credit card processing and mailing services, is one such service provider. These contractors are
27 provided only with the PII they need to deliver the services. BATA requires the service providers to
28

1 maintain the confidentiality of the information and to use it only as necessary to carry out their duties
2 under the FasTrak® and other electronic toll collection programs mentioned in this Privacy Policy.”

3 150. The Policy violates §31490(b)(1) because BATA, GGB and Xerox actually provide PII
4 to a host of other unauthorized persons: Car Rental Agencies, Law Enforcement Agencies without a
5 search warrant (including the DMV), the Credit Bureaus, Banking Institutions, the FTB and the Other
6 Unauthorized Persons.

7 151. Further, BATA, GGB and XEROX have violated California Streets and Highways
8 Code §31490(b) because even though BATA, GGB and XEROX “shall” establish a privacy policy
9 regarding the “collection and use” of PII, BATA, GGB and XEROX failed to do so. Specifically, the
10 privacy policy fails to state that PII (the license plate images of Class Members and other PII of Class
11 Members), as previously alleged, is provided by BATA, GGB and XEROX to a multitude of persons
12 and entities to place holds on Class Members’ registration, to collect debts, to monitor movements,
13 and for other purposes. The privacy policy does not reference that BATA, GGB and XEROX will use
14 the PII to place holds on Plaintiff’s and Class Members’ vehicles.
15

16 152. Based on the fact that BATA, GGB and XEROX failed to comply with §31490(b) in
17 regards to the requirements of the privacy policy (which each party had authority and control over
18 drafting, implementing, and publishing) before BATA, GGB and XEROX provided Class Members’
19 PII to any third person, the BATA, GGB and XEROX have “otherwise provided information in
20 violation of this section” pursuant to California Streets and Highways Code §31490(p). Thus, Plaintiff
21 and Class Members are entitled to \$2,500 for each individual violation, attorney’s fees, reasonable
22 costs from BATA, GGB and XEROX, and for Plaintiff and those Class Members who had their
23 information provided three or more times, \$4,000 for each individual violation, attorney’s fees, and
24 reasonable costs from BATA, GGB and XEROX.

25 153. Besides these entities, PII will not be disclosed to any other third party without express
26 customer consent, except as required to comply with laws or legal processes served on BATA. In fact,
27 the privacy policy does not identify anything about the “personally identifiable information” that is
28 collected.

1 not reduce from the reasonable expectation of privacy of vehicle owners and operators who do not
2 expect driving down a street to expose their PII to unbridled dissemination.

3 158. Plaintiff and Class Members had a reasonable expectation of privacy that, when a
4 vehicle is merely driven down the road, its owner's PII (including travel pattern data) will not be
5 captured for broad dissemination to third parties, including but not limited to Unauthorized Parties,
6 for the purposes of obtaining DMV registration liens and ex parte judgments against them.

7 159. The privacy rights of Plaintiff and Class Members, in and to their PII, are serious,
8 underscored by statute, the active participation in relevant Legislative proceedings by the American
9 Civil Liberties Union, the Privacy Rights Clearinghouse, the Consumer Federation of California,
10 CALPIRG and the enactment of laws to reflect such concerns about the collection and dissemination
11 of this data. By their conduct described above, these established, serious privacy rights were seriously
12 invaded by the Defendants.

13 160. By the aforementioned acts and omissions, Defendants have violated the privacy rights
14 of Plaintiff and other Class Members. As a consequence, Plaintiff and the Class Members have
15 suffered, and seek hereby from Defendants, their actual damages. Plaintiff and Class Members
16 additionally seek attorneys' fees, and costs, as may be allowed.

17 **COUNT V**

18 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**

19 **CIVIL CODE §§1750, *ET SEQ.***

20 **(Against Xerox & DOES 1-10)**

21 161. Plaintiff hereby refers to and incorporates by reference each and every allegation
22 contained in the preceding paragraphs of this Complaint.

23 162. Defendant Xerox is a "person" as defined by Civil Code §1761(c). Plaintiff and the
24 Class Members are consumers within the meaning of Civil Code §1761(d).

25 163. The CLRA applies to Defendant Xerox's conduct because it extends to transactions
26 that are intended to result in the sale or lease of goods or services to consumers or do result in such
27 sales or leases. The use of the Toll Bridges constitutes such sale or lease of goods or services.
28

1 164. Defendant Xerox had a duty to truthfully disclose how they truly intended to operate
2 Toll Bridges and their related charges and payments, use and disclose personally identifiable
3 information of Plaintiff and the Class Members, and disclose the omitted facts regarding such use and
4 disclosure. Defendant Xerox had exclusive knowledge of material facts not known to Plaintiff and the
5 Class Members. Specifically, Defendant Xerox operate Toll Bridges and related charges and payments
6 in a manner that defrauds the Plaintiff and the Class Members, unjustly enriches Defendants, and uses
7 and discloses personally identifiable information of Plaintiff and the Class Members contrary to law
8 and for improper purposes. Defendant Xerox, however, actively concealed material facts and did not
9 provide Plaintiff or the Class Members proper notice of their actual intentions for use and disclosure
10 of Plaintiff's or Class Members' personally identifiable information.

11 165. The facts, which Defendant Xerox misrepresented and concealed as alleged in the
12 preceding paragraphs, were material to Plaintiff's and the Class Members' decisions about whether to
13 use the Toll Bridges (when such use was known) and pay bills rendered by or for Defendant Xerox.
14 Defendant Xerox are liable under the CLRA for these material misrepresentations and omissions.

15 166. In violation of Civil Code §1770(a)(16), Defendant Xerox represented that the subject
16 of a Toll Bridges transaction was supplied in accordance with a previous representation when it was
17 not. Defendant Xerox have failed to disclose material facts to Plaintiff and the Class Members by
18 billing them for services that were not in fact provided, by billing them at rates higher than were
19 disclosed or allowed by law, and/or through billing errors.

20 167. Additionally, by their conduct described in this Complaint, Defendant Xerox have
21 violated Civil Code §1770(a)(5), (7), (9), (13), (14), (17), and (19).

22 168. Defendant Xerox had a duty to disclose the omitted facts because it had exclusive
23 knowledge of material facts not known to Plaintiff and the Class Members (that they were billing for
24 services that they did not in fact provide and/or that they were billing at rates higher than disclosed or
25 permitted by law), because they actively concealed material facts, and because they did not provide
26 Plaintiff and the Class Members proper notice of the Toll Bridges, toll charges, penalties, the processes
27 by which charges and penalties could be assessed and contested, and because they otherwise
28 suppressed true material facts.

1 176. The unlawful conduct of Defendant Xerox, alleged herein, are acts of unfair
2 competition under Bus. & Prof. Code §§17200, *et seq.*, for which Defendant Xerox is liable and for
3 which this Court should issue equitable and injunctive relief, including restitution, pursuant to Bus. &
4 Prof. Code §17203.

5 177. Through its conduct, Defendant Xerox has engaged in unfair business practices in
6 California by employing and utilizing the practices complained of herein. Defendant Xerox's use of
7 such unfair business practices constitute unfair competition that has provided and continues to provide
8 Defendants with an unfair advantage over their competitors.

9 178. Defendant Xerox's conduct as alleged herein is unlawful, unfair, and fraudulent.

10 179. Defendant Xerox's conduct as alleged herein is "unlawful" in that, among other things,
11 it violates the duties they owe to Plaintiff and the Class Members.

12 180. Defendant Xerox's conduct as alleged herein is also "unfair" because, among other
13 things, it was designed to deprive Plaintiff and the Class Members of their constitutionally protected
14 rights and their property for less than adequate consideration and to unjustly punish and penalize
15 Plaintiff and the Class.

16 181. Defendant Xerox's scheme, as alleged herein, is also "fraudulent," in that it is
17 knowingly calculated and likely to mislead. Defendant Xerox had actual knowledge of the egregious
18 penalties being charged by BATA, GGB and XERXO, the means by which its sought to conceal and
19 apply them, the coercive judgments and liens they were placing on Plaintiff and Class Members'
20 assets, and the illicit and reckless plans they possessed and concealed from Plaintiff and the Class
21 Members to obtain and misuse their personal and private information. Defendant Xerox has continued
22 to take steps to perpetuate these deceitful practices against the Plaintiff and the Class Members and
23 other members of the public at large.

24 182. Unless enjoined, Defendant Xerox will continue to harm the Plaintiff, the other Class
25 Members, and the general public. Plaintiff and the Class Members have suffered injuries in fact and
26 lost money as a result of Defendants' conduct, as more specifically alleged above.

27 183. As a result of Defendant Xerox's unfair business practices, it has reaped unfair benefits
28 and illegal profits at the expense of the Plaintiff and the Class Members. Defendant Xerox should be

1 made to disgorge its ill-gotten gains and restore such monies to Plaintiff and the Class Members.
2 Defendant Xerox's unfair business practices furthermore entitle Plaintiff and the Class Members
3 herein to obtain preliminary and permanent injunctive relief, including, but not limited to, orders that
4 Defendant Xerox cease its complained-of practices and account for, disgorge, and restore to Plaintiff
5 and the Class Members the compensation unlawfully obtained from them.

6 **COUNT VII**

7 **NEGLIGENCE**

8 **(By Plaintiff, Individually and On Behalf of All Class Members, Against All**

9 **Defendants)**

10 184. Plaintiff hereby refers to and incorporates by reference each and every allegation
11 contained in the preceding paragraphs of this Complaint.

12 185. Defendants owed a duty to Plaintiff and the Class Members to exercise due care in their
13 own actions so as not to create an unreasonable risk of injury to them.

14 186. Defendants also owe Plaintiff and Class Members duties that arose from *inter alia*: (1)
15 the contracts and associated documents between them and the BATA/District Defendants pursuant to
16 which Xerox accepted responsibility for the operation of the all-electronic tolling system of the Toll
17 Bridges, including all associated duties to send toll invoices and notices of toll evasions and to process,
18 collect, and review disputes of such invoices and notices; (2) their role as a Processing Agency, as
19 defined in Vehicle Code §§40252-40253; (3) the provisions of Civil Code §52.1 precluding them from
20 using threats or coercion (such as fines, loss of property, or loss of use of vehicles) to interfere with
21 the exercise and enjoyment of Plaintiff's and Class Members' statutory and constitutional rights; and
22 (4) the duty of ordinary persons not to collect or attempt collection of funds to which they are not
23 legally entitled, through coercive or unfair process.

24 187. Defendants owed a duty to Plaintiff and Class Members because: (1) they were
25 processing toll violations and notices of violations that were intended to affect Plaintiff and Class
26 Members; (2) it was easily foreseeable that if such invoices and notices were processed incorrectly or
27 unfairly, Plaintiff and the Class Members would suffer harm including the loss of their automobiles;
28 (3) there is a high degree of certainty that Plaintiff and Class Members suffered harm alleged, because

1 fines and DMV holds were imposed on them; (4) Defendants' conduct is closely connected to, and
2 indeed proximately caused, the injuries; (5) a high degree of moral blame attaches to Defendants'
3 conduct because it acted arbitrarily, capriciously, unfairly, and in violation of public policy as
4 described in the Complaint; and (6) there is need to prevent future harm to Plaintiff and the Class
5 Members.

6 188. Defendants breached these duties of care by negligently failing to train their employees;
7 adequately staff themselves; or develop, maintain, and enforce policies, systems, procedures and
8 guidelines, including, without limitation, as follows:

9 (a) To provide meaningful toll evasion citation review and to effectively resolve
10 complaints;

11 (b) To use "best efforts" to "obtain" accurate information concerning the identity
12 and address of the registered owner for the sending of toll invoices and notice of toll evasion violations;

13 (c) To provide vehicle owners with notice of toll violations within 21 days of the
14 violation, the facts associated with the violation, and all required disclosures, including the process for
15 contesting the violation and appealing an adverse decision;

16 (d) To provide vehicle owners with notice of delinquency toll evasion violations,
17 including all required disclosures, and the process for contesting the violation and appealing an adverse
18 decision;

19 (e) To provide fair, neutral, and adequate administrative review of toll evasion
20 violations and delinquency toll evasion violations in which vehicle owners are permitted to submit
21 evidence; and

22 (f) To correct or update their system and databases in a reasonable fashion.

23 189. Defendants owed a duty when rolling out a cashless toll system to give adequate notice
24 to consumers of violations. This is particularly true since many persons who use these Toll Bridges
25 are out-of-state tourists on vacation.

26 190. Defendants have engaged in a pattern and practice of acts of unfair competition in
27 violation of California's UCL, including the practices alleged herein.
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J. For such other and further relief as this Court may deem just and proper.

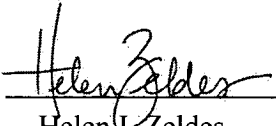
DEMAND FOR JURY TRIAL

Plaintiff and the Class Members hereby demand a trial by jury on all causes of action so triable.

Dated: July 13, 2018

Respectfully submitted,

COAST LAW GROUP LLP
HELEN I. ZELDES (220051)

By: 
Helen I. Zeldes

helen@coastlaw.com
225 Broadway, Suite 2050
San Diego, CA 92101
Telephone: (760) 942-8505
Facsimile: (760) 942-8515

Attorneys For Plaintiff
WILLIAM MONTGOMERY AND THE
PUTATIVE CLASS

EXHIBIT "B"

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

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

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BAY AREA TOLL AUTHORITY;
[SEE ATTACHED]

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

WILLIAM MONTGOMERY, individually and on behalf of those
similarly situated,

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

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

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

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

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

The name and address of the court is:
(El nombre y dirección de la corte es): **SAN FRANCISCO SUPERIOR COURT**
400 McAllister Street
San Francisco, CA 94102

CASE NUMBER:
(Número del Caso): **09C-18-568084**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Helen I. Zeldes, Coast Law Group LLP, 1140 S. Coast Highway 101, Encinitas, CA 92024 Tel:(760) 942-8505

DATE:
(Fecha)

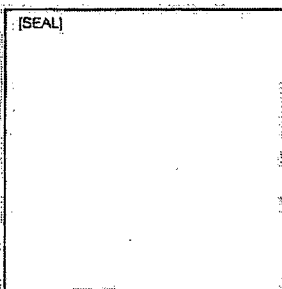
JUL 13 2018

CLERK OF THE COURT

Clerk, by
(Secretario)

Deputy
(Adjunto)
DE LA VEGA-NAVARRO, ROSSBY

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

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

3. on behalf of (specify): **XEROX STATE AND LOCAL SOLUTIONS, INC.**

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

4. by personal delivery on (date):

COPY FAXED

SUM-200(A)

SHORT TITLE:

William Montgomery v. Bay Area Toll Authority, et al.

CASE NUMBER:

INSTRUCTIONS FOR USE

- ➔ This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- ➔ If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

Plaintiff Defendant Cross-Complainant Cross-Defendant

GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT; XEROX STATE AND LOCAL SOLUTIONS, INC., and DOES 1-100,

EXHIBIT "C"

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COAST LAW GROUP LLP
HELEN I. ZELDES (220051)
ANDREW J. KUBIK (246902)
BEN TRAVIS (305641)
1140 S. Coast Highway 101
Encinitas, California 92024
Telephone: 760-942-8505
Facsimile: 760-942-8515
helen@coastlaw.com
andy@coastlaw.com
ben@coastlaw.com

Attorneys for PLAINTIFF AND THE PUTATIVE CLASS

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

WILLIAM MONTGOMERY, individually and
on behalf of those similarly situated,

Plaintiff,

v.

BAY AREA TOLL AUTHORITY; GOLDEN
GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT; XEROX
STATE AND LOCAL SOLUTIONS, INC., and
DOES 1-100,

Defendants.

Case No. **CGC-18-568084**

CLASS ACTION

**PLAINTIFF'S APPLICATION FOR
COMPLEX DESIGNATION**

Action Filed: July 13, 2018
Trial Date: Not Set

1 Pursuant to San Francisco Superior Court Rule 3.5, Plaintiff requests an order deeming this
2 action complex for the reasons stated below:

3 1. On July 13, 2018, Plaintiff filed this action against BAY AREA TOLL AUTHORITY;
4 GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT; XEROX STATE
5 AND LOCAL SOLUTIONS, INC., and DOES 1-100 (hereinafter "Defendants"). Zeldes Dec. Ex. A.

6 2. Plaintiff seeks redress for defendants' violations of Plaintiff's and class members'
7 rights to privacy and protection of personally identifiable information ("PII") including the California
8 Streets and Highways Code § 31490; and Article I, Section 1 of the California Constitution. The
9 Defendants transmit the Class' PII in direct violation of § 31490 to the Department of Motor Vehicles,
10 the Franchise Tax Board, law enforcement agencies, and a host of other unauthorized third persons
11 that entitles Plaintiff to damages and injunctive relief.

12 3. Plaintiff also seeks damages and declaratory and injunctive relief for violations by
13 Defendants of the Excessive Fines and Due Process Clauses of the California Constitution arising
14 from the Defendants' assessment, enforcement and collection of tolls and disproportionately excessive
15 civil penalties for alleged toll road payment violations by a class of persons that commuted (or were
16 alleged to have commuted) on the Toll Bridges (as hereinafter defined) from July of 2012 to the present
17 date.

18 4. Plaintiff brought this action on behalf of two classes:
19 **Excessive Fines Class:** All consumers who, between July 12, 2014 and the present,
20 were assessed and/or paid a penalty amount, or were charged with a toll evasion
21 violation in connection with using the Toll Bridges.

22 **PII Class:** All consumers who between July 12, 2014 and the present, had their PII
23 provided to any person who was not authorized to receive the PII pursuant to California
24 Streets and Highways Code §31490, under California's Constitutional right to privacy,
25 in violation of the Defendants' privacy policy and/or transponder agreements.

26 5. This action is provisionally complex pursuant to California Rules of Court 3.400(c)(6)
27 because this case is a class action.

28

1 6. This class action also satisfies the factors set forth in California Rules of Court 3.400(b)
2 for determining whether a case should be designated complex because the case will involve: (a)
3 Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to
4 resolve; (b) Management of a large number of witnesses or a substantial amount of documentary
5 evidence; and (c) Substantial postjudgment judicial supervision.

6 7. Plaintiff anticipates that the parties will file numerous pretrial motions involving
7 complicated factual and legal issues that will be time-consuming for the Court and the parties to
8 resolve. The motions will include discovery motions, class certification motions, and summary
9 judgment motions.

10 8. Since there are several defendants, several claims, and the action is on behalf of a
11 putative class, the action will likely require management of a large number of witnesses. Furthermore,
12 it is anticipated that there will be a substantial amount of documentary evidence related to the
13 Defendants' management and operation of the Toll Bridges.

14 9. Finally, this action will likely require substantial postjudgment judicial supervision.
15 Since Plaintiff is seeking injunctive relief, should a judgment be issued in this matter, the Court's
16 supervision will likely be necessary to ensure that the judgment is carried out pursuant to order.
17 Alternatively, should the case settle, the Court's supervision will be necessary throughout the
18 preliminary and final approval of the settlement agreement as well as the implementation of settlement
19 terms.
20

21 10. Based on the foregoing, Plaintiff requests that this class action be designated complex.

22
23 Dated: August 7, 2018

Respectfully submitted,

24 **COAST LAW GROUP LLP**
25 HELEN I. ZELDES (220051)

26 By: /s/ Helen I. Zeldes

27 Helen I. Zeldes
28 helen@coastlaw.com
 1140 S. Coast Highway 101

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Encinitas, California 92024
Telephone: (760) 942-8505
Facsimile: (760) 942-8515

Attorneys For Plaintiff
WILLIAM MONTGOMERY AND THE
PUTATIVE CLASS

EXHIBIT "D"

1 **COAST LAW GROUP LLP**
2 HELEN I. ZELDES (220051)
3 ANDREW J. KUBIK (246902)
4 BEN TRAVIS (305641)
5 1140 S. Coast Highway 101
6 Encinitas, California 92024
7 Telephone: 760-942-8505
8 Facsimile: 760-942-8515
9 helen@coastlaw.com
10 andy@coastlaw.com
11 ben@coastlaw.com

12 Attorneys for PLAINTIFF AND THE PUTATIVE CLASS

13
14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF SAN FRANCISCO**

16 WILLIAM MONTGOMERY, individually and
17 on behalf of those similarly situated,
18 Plaintiff,

19 v.

20 BAY AREA TOLL AUTHORITY; GOLDEN
21 GATE BRIDGE, HIGHWAY AND
22 TRANSPORTATION DISTRICT; XEROX
23 STATE AND LOCAL SOLUTIONS, INC., and
24 DOES 1-100,

25 Defendants.

Case No. **CGC-18-568084**

CLASS ACTION

**DECLARATION OF HELEN ZELDES IN
SUPPORT OF PLAINTIFF'S
APPLICATION FOR COMPLEX
DESIGNATION**

Action Filed: July 13, 2018
Trial Date: Not Set

1 I, Helen I. Zeldes declare as follows:

2 1. I am an attorney at law, duly licensed to practice before all courts of the State of
3 California. I am a partner at Coast Law Group, counsel of record for Plaintiff.

4 2. The facts stated in this declaration are true and based on my own personal knowledge
5 and, if called to testify to them, I would competently do so. I submit this declaration in support of
6 Plaintiff's Application for Complex Designation.

7 3. Attached hereto as **Exhibit A** is a true and correct copy of Plaintiff's complaint filed
8 on July 13, 2018.

9
10 Pursuant to 28 U.S.C. § 1746, I, Helen I. Zeldes, declare under penalty of perjury under the
11 laws of the United States of America that the foregoing is true and correct.

12
13 Executed this 7th day of August 2018 in Encinitas, California.

14
15 
16 _____
17 HELEN ZELDES

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Exhibit A

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
 Helen I. Zeldes (220051)
 COAST LAW GROUP LLP
 1140 S. Coast Highway 101
 Encinitas, California 92024
 TELEPHONE NO: 760-942-8505 FAX NO: 760-942-8515
 ATTORNEY FOR (Name): Plaintiff, William Montgomery

FOR COURT USE ONLY
ENDORSED FILED
 San Francisco County Superior Court
 JUL 13 2018
 CLERK OF THE COURT
 BY: ROSSALY DE LA VEGA
 Deputy Clerk

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO
 STREET ADDRESS: 400 McAllister Street
 MAILING ADDRESS:
 CITY AND ZIP CODE: San Francisco, CA 94102
 BRANCH NAME: Civil Center Courthouse

CASE NAME:
 William Montgomery v. Bay Area Toll Authority, et al.

CIVIL CASE COVER SHEET

Unlimited (Amount demanded exceeds \$25,000) **Limited** (Amount demanded is \$25,000 or less)

Complex Case Designation
 Counter **Joinder**
 Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER:
 JUDGE:
 DEST: **CGC-18-568084**

Items 1-6 below must be completed. (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<p>Auto Tort</p> <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <p>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</p> <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/PD/WD (23) <p>Non-PI/PD/WD (Other) Tort</p> <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/PD/WD tort (35) <p>Employment</p> <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<p>Contract</p> <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <p>Real Property</p> <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <p>Unlawful Detainer</p> <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <p>Judicial Review</p> <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<p>Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)</p> <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <p>Enforcement of Judgment</p> <input type="checkbox"/> Enforcement of judgment (20) <p>Miscellaneous Civil Complaint</p> <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <p>Miscellaneous Civil Petition</p> <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
--	---	--

2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|--|
| a. <input type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): 7
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: July 12, 2018
Helen I. Zeldes

(TYPE OR PRINT NAME)

Helen I. Zeldes
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

COPY FAXED

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Case Matter
Writ—Other Limited Court Case Review

Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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CLERK OF THE COURT
BY ROSALY DE LA VEGA
Deputy Clerk

12 Attorneys for PLAINTIFF AND THE PUTATIVE CLASS

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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CGC-18-568084

WILLIAM MONTGOMERY, individually and
on behalf of those similarly situated,

Plaintiff,

v.

BAY AREA TOLL AUTHORITY; GOLDEN
GATE BRIDGE, HIGHWAY AND
TRANSPORTATION DISTRICT; XEROX
STATE AND LOCAL SOLUTIONS, INC., and
DOES 1-100,

Defendants.

Case No.

CLASS ACTION

CLASS ACTION COMPLAINT FOR
DAMAGES AND INJUNCTIVE RELIEF
BASED ON:

- 1) VIOLATION OF ARTICLE I, §17 OF
THE CALIFORNIA CONSTITUTION
(EXCESSIVE FINES)
- 2) VIOLATION OF ARTICLE I, §7 OF
THE CALIFORNIA CONSTITUTION
(DUE PROCESS)
- 3) VIOLATION OF CALIFORNIA
STREETS AND HIGHWAYS CODE
§31490
- 4) VIOLATION OF ARTICLE I, §1 OF
THE CALIFORNIA CONSTITUTION
(RIGHT TO PRIVACY)
- 5) VIOLATION OF THE CALIFORNIA
CONSUMER LEGAL REMEDIES ACT,
CIVIL CODE §§1750, *ET SEQ.*

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- 6) VIOLATION OF THE UNFAIR COMPETITION LAW, BUS. & PROF. CODE §§17200, *ET SEQ.*
- 7) NEGLIGENCE

DEMAND FOR JURY TRIAL

Plaintiff William Montgomery (“Plaintiff”), on behalf of themselves and all others similarly situated, allege as follows based on investigation of counsel and information and belief:

NATURE OF THE CASE

1. This class action seeks redress for defendants’ violations of Plaintiff’s and class members’ rights to privacy and protection of personally identifiable information (“PII”) including the California Streets and Highways Code § 31490; and Article I, Section 1 of the California Constitution. The Defendants transmit the Class’ PII in direct violation of § 31490 to the Department of Motor Vehicles, the Franchise Tax Board, law enforcement agencies, and a host of other unauthorized third persons that entitles Plaintiff to damages and injunctive relief.

2. This action also seeks damages and declaratory and injunctive relief for violations by Defendants of the Excessive Fines and Due Process Clauses of the California Constitution arising from the Defendants’ assessment, enforcement and collection of tolls and disproportionately excessive civil penalties for alleged toll road payment violations by a class of persons that commuted (or were alleged to have commuted) on the Toll Bridges (as hereinafter defined) from July of 2012 to the present date.

THE PARTIES

3. Plaintiff William Montgomery is an individual residing in the State of Texas and a sergeant in the U.S. Army. While stationed on military duty with the Army in Monterrey, California in 2014, Plaintiff Montgomery’s vehicle allegedly crossed the Benicia-Martinez Bridge in the northbound direction on or about May 2, 2014. Plaintiff Montgomery has no recollection of ever crossing the Benicia-Martinez Bridge in his vehicle. Over three years later, on August 18, 2017,

1 Plaintiff Montgomery learned for the first time that his vehicle was issued a violation when he received
2 a Notice of Assignment to a Collection Agency from Professional Account Management, LLC
3 (“PAM”) at his home address in Grand Prairie, Texas. The Notice of Assignment stated that he owed
4 \$75 in tolls and penalties related to his vehicle’s passage over the Benicia-Martinez Bridge on or about
5 May 2, 2014. The Notice of Assignment also indicates that defendants shared Plaintiff Montgomery’s
6 PII, including travel pattern data, with third parties. Plaintiff Montgomery attempted to dispute the
7 penalty with both BATA and PAM. Plaintiff Montgomery also sent a letter disputing the violation via
8 certified mail to Bay Area FasTrak on or about October 2, 2017. Bay Area FasTrak refused to
9 recognize Plaintiff Montgomery’s dispute. Plaintiff Montgomery has security clearance with the U.S.
10 Army which requires him to report any collections matters as part of a security clearance application.

11 4. Defendant, the Bay Area Toll Authority (“BATA”), is a government agency
12 responsible for operating and managing toll collection on the Golden Gate Bridge and Benicia-
13 Martinez Bridge (including the FasTrak Program), sending invoices, and assessing and processing toll
14 evasion violations and penalties. BATA is an “issuing agent” within the meaning of California Vehicle
15 Code §§ 40250, *et seq.* BATA, at all times alleged herein, conducted its principal business within the
16 State of California, located in the City and County of San Francisco.

17 5. Defendant the Golden Gate Bridge, Highway and Transportation District (the
18 “District” or “GGB”) is also a government agency responsible for operating and managing toll
19 collection on the GGB (including the FasTrak Program), sending invoices, and assessing and
20 processing toll evasion violations and penalties. The District, at all relevant times hereto, conducted
21 business in California, with its headquarters located in the City and County of San Francisco. The
22 District is an “issuing agency” within the meaning of California Vehicle Code §§ 40250, *et seq.*

23 6. Defendant Xerox State and Local Solutions, Inc. (“Xerox”) formerly ACS State and
24 Local Solutions, Inc. is a private corporation headquartered in New York, and authorized to conduct
25 business in California. On April 2, 2012, ACS State and Local Solutions, Inc. filed a certificate of
26 amendment to its Articles of Incorporation, changing its name to Xerox State & Local Solutions, Inc.
27 Since 2002, Xerox had operated and maintained the FasTrak Program. In January of 2013, BATA
28 and the District contracted with Xerox pursuant to Government Code section 40252 to administer the

1 Fast Trak program through June 30, 2019. Xerox provides and administers the FasTrak and Pay-By-
2 Plate programs and manages the assessment, notification, and collection of fines and penalties
3 pertaining to toll invoices and toll evasion violations on the GCB. Accordingly, pursuant to
4 Government Code Section 40253, Xerox is a “processing agency” within the meaning California
5 Vehicle Code 40250 *et. seq.* Xerox has accordingly been delegated a public function by BATA and
6 the District. Xerox is also thereby entwined with BATA and the District’s government policies, and
7 BATA and the District are entwined in the management and control of Xerox. Finally, Xerox is a
8 knowing and willful participant in a joint action, along with the BATA and the District, in the various
9 acts and omissions set forth in this injury, which caused injury to Plaintiff and the Class Members.

10 7. Plaintiff is ignorant of the true identities and capacities of fictitiously named defendants
11 designated as Does 1-100, but will amend this complaint or any subsequent pleading when their
12 identities and capacities have been ascertained according to proof. On information and belief, every
13 Doe defendant is in some manner responsible for the acts and conduct of the other defendants herein,
14 and each Doe was, and is, responsible for the injuries, damages, and harm incurred by Plaintiff. Each
15 reference in this complaint to “defendant,” “defendants,” or a specifically named defendant, refers also
16 to all the named defendants and those unknown parties sued under fictitious names.

17 8. Plaintiff is informed and believe and thereon alleges that, at all times relevant hereto,
18 all the defendants together were members of a single unincorporated association, with each member
19 exercising control over the operations of the association. Plaintiff is informed and believes and thereon
20 alleges that, at all times relevant hereto, each of the defendants was the agent, associate, employee and
21 or representative of each of the remaining defendants, and in doing the things hereinafter alleged, was
22 acting within the authorized course and scope of this agency, association and employment with the
23 full knowledge and consent of the remaining defendants. Plaintiff is further informed and believes
24 and thereon alleges that each and all the acts herein alleged as to each defendant was authorized and
25 directed by the remaining defendants, who ratified, adopted, condoned and approved said acts with
26 full knowledge of the consequences thereof, and memorialized the authority of the agent in a writing
27 subscribed by the principal.

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1 need to actually give commuters due process by obtaining a judgment, and is instead an unfair profit
2 center exacting a windfall through penalties coerced from unsuspecting drivers.

3 **HOW THE TOLL BRIDGES WORK**

4 20. California Vehicle Code §23301, is applicable to all vehicle crossings and Toll Bridges
5 in California. Section 23301 provides that “each vehicle that enters into or upon a vehicular crossing
6 immediately becomes liable for those tolls and other charges as may from time to time be prescribed
7 by the California Transportation Commission.”

8 21. Vehicle Code §40250(b) makes the registered owner of the vehicle involved in the
9 violation jointly and severally liable with the driver of such vehicle.

10 22. The tolling agencies in California accept payment for tolls by either offering an
11 electronic toll collection system (*e.g.*, FasTrak) and/or implementing a pay-by-license-plate method
12 of payment, or both.

13 23. “FasTrak” is an electronic toll collection system, where people establish a FasTrak
14 account with a tolling agency and then receive a transponder, which they then place on their vehicle.
15 When traveling through the toll zone, the transponder is read by an overhead antenna on the road, and
16 the posted toll amount is then automatically deducted from the customer’s account. While people are
17 allowed to use their FasTrak transponders throughout the state, they are encouraged to obtain a
18 transponder from the agency that operates the road, lane, or bridge that they will use the most.

19 24. Vehicle Code §23302(e) defines a pay-by-plate payment as “an issuing agency’s use
20 of on-road vehicle license plate identification recognition technology to accept payment of tolls in
21 accordance with policies adopted by the issuing agency.”

22 25. Vehicle Code §23301.8 regulates pay-by-plate programs as follows:

23
24 Where an issuing agency permits pay-by-plate toll payment as described in
25 subdivision (e) of Section 23302, it shall communicate, as practicable, the
26 pay-by-plate toll amount in the same manner as it communicates other toll
27 payment methods. The issuing agency shall provide publicly available
28 information on how pay-by-plate toll payment works, including the toll

1 amount, process for payment, and period of time a vehicle has to resolve the
2 payment before an issuing agency may process the trip as a violation under
3 Section 40255. Communication of this information may include the
4 Department of Transportation's approved signage, posting of information on
5 the issuing agency's Internet Web site, media advertising, public meeting or
6 disclosure as required by the issuing agency's policies, or other methods of
7 communication. Except where the issuing agency has an agreement with a
8 vehicle owner that specifies in advance any administrative fees that will be
9 imposed on the owner for pay-by-plate toll payment, administrative costs
10 shall be incorporated into the pay-by-plate toll amount, and no additional
11 administrative costs shall be added above the posted pay-by-plate toll
12 amount.
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14 26. Vehicle Code §23301.8 requires BATA to communicate to the public both the toll
15 payment and how the pay-by-plate toll payment program works. Additionally, any additional
16 administrative costs must be paid by the BATA and cannot be added to the pay-by-plate toll amount.

17 27. The BATA outsourced the Toll Bridges administrative functions to Defendant Xerox
18 (the "Private Defendant" or "Xerox"). Defendant Xerox provided the Toll Bridges with customer
19 service and toll compliance services.

20 **STATE ACTION**

21 28. The BATA and the District are "state actors" who have gone to great lengths to hold
22 themselves out as such by:

23 (a) Not disclosing their identity as private contractors in communications with the
24 public, but instead acting as if they are, and representing themselves as, government agencies through
25 the Toll Bridges website, its office, and all its customer service materials;

26 (b) Sending out "Notice of Toll Evasion" violations to Class Members appearing
27 to be from the BATA;
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1 (c) Threatening to place liens on Class Members' vehicle registrations in the Notice
2 letters;

3 (d) Threatening to impose civil judgments and other collection efforts on Class
4 Members if they do not pay the fines set forth in the Notice letters;

5 (e) Entering into contracts with Xerox and willingly agreeing to become
6 "processing agenc[ies]" as that term is used and defined in Vehicle Code §§ 40252 and 40253;

7 (f) Entering into contracts with Xerox and becoming willing participants in a joint
8 venture with a state actor – *i.e.*, BATA; and

9 (g) Processing, reviewing, and collecting toll evasion violation penalties, resulting
10 from their exercise of the coercive power of the State of California.

11 29. The BATA and District Defendants' willing operation of the toll collections, and their
12 processing of the Notices of Toll Evasion and Notices of Delinquent Toll Evasion along with Xerox,
13 leaves them entwined with governmental policy.

14 30. The BATA and District Defendants' willing participation in a joint venture with state
15 actors as "processing agenc[ies]" under the Vehicle Code, Xerox is obligated to comply with Vehicle
16 Code §40250, *et. seq.* and the California Constitution.

17 31. The BATA and District were entwined with, and directly managed, Xerox's activities
18 that are challenged in this Complaint.

19 32. Through these activities, collecting penalties authorized by state statute, and
20 threatening vehicle registration holds by the DMV, the private entities are commanding the power of
21 the state.

22 **XEROX OPERATES THE TOLL BRIDGES**

23 33. From October of 2010 to the present, Defendant Xerox was responsible for providing
24 the following functions to BATA and the District and in fact operated the Toll Bridges for BATA and
25 GGB:

26 (a) Customer service/call center operation (staff to hand enrollment, respond to calls,
27 complaints, resolve violations, payment processing);
28

1 (b) Account maintenance (update accounts, research new accounts to resolve unpaid violations,
2 suspend accounts, reinstate or revoke accounts, prepare and mail customer notices, investigate
3 accounts);

4 (c) Inventory (transponders and supplies related to transponders);

5 (d) Mail room;

6 (e) Payment processing;

7 (f) Reports (aging, FasTrak revenue and activity reports, financial reporting);

8 (g) Special projects;

9 (h) Toll enforcement processing including actually conducting and/or overseeing any initial
10 internal administrative review proceeding conducted concerning a toll violation by BATA,
11 actually conducting any administrative review (the second tier of the three tier review process)
12 image review services, maintenance of electronic data exchange with the DMV, electronically
13 produce file to mail, process violation inquiries, process affidavits of non-liability, place
14 registration holds, resolve customer violation issues, perform judgment recovery services;

15 34. (i) SOP's configuration Control & Documentation (library catalog, training manuals,
16 system software changes tracking, update software source code, test, maintain and schedule software
17 changes as required, test configuration platform, develop and maintains disaster recovery plan,
18 document security audits);

19 35. (j) System support (provide complete system administrative and support service for the
20 operation of the customer service system, violation, imaging, reporting, webs services and other
21 FasTrak related software system – including generating account statements, processing auto debiting,
22 posting all tolls, penalties, and charges and credits, maintain compliance with interoperability transfer,
23 archive account and image data, ensure the daily transfer of violations for the image processing
24 systems and more);

25 (k) Program Management (provide overall program management for each item in the
26 contract between the parties). ((a) through (k), are collectively referred to as the "Functions.")
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1 36. From October of 2010 to present date, Xerox participated with the District and BATA
2 in determining the amount of the penalties assessed, collected, and charged against Plaintiff and the
3 Class Members.

4 37. From October of 2010 to present date, Xerox actually provided PII of Class Members
5 to Other Unauthorized Parties.

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10 **DEFENDANTS' ADMINISTRATIVE PROCESS IS FATALLY FLAWED AND**
11 **UNCONSTITUTIONAL AND THUS PLAINTIFF IS NOT REQUIRED TO**
12 **EXHAUST ANY ADMINISTRATIVE PROCEDURES**

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14 38. Exhaustion is excused as to Plaintiff's Counts I, II and IV because exhaustion would
15 be futile, idle or useless. Plaintiff's pursuit of the administrative process would be "futile" because
16 nothing in the administrative proceeding would decide whether Defendants should be enjoined from
17 issuing unconstitutional penalties, which they seek in this action, or whether they should be entitled to
18 restitution damages for tolls they may have already paid, or whether penalties were excessive. *See,*
19 *e.g., California Constitution, article III, §3.5.10 132.*¹ Exhaustion is excused based on futility when
20 no findings of fact will be made by the "administrative review" process. The entire review process
21 does not involve a fact-finding mission, and singularly addresses whether somebody traveled on the
22 Toll Bridges. If they did and did not pay, for whatever reason, there is no consideration as to factual
23 questions concerning the penalties.

24
25 ¹ "An administrative agency, including an administrative agency created by the Constitution or an
26 initiative statute, has no power: (a) To declare a statute unenforceable, or refuse to enforce a statute,
27 on the basis of it being unconstitutional unless an appellate court has made a determination that such
28 statute is unconstitutional; (b) To declare a statute unconstitutional; (c) To declare a statute
unenforceable, or to refuse to enforce a statute on the basis that federal law or federal regulations
prohibit the enforcement of such statute unless an appellate court has made a determination that the
enforcement of such statute is prohibited by federal law or federal regulations."

1 39. Exceptional circumstances also excuse exhaustion because alleged violators were
2 precluded them from exhausting this administrative scheme, because they were unaware not only of
3 its existence, but that they were implicated as toll violators, until after they were foreclosed from
4 invoking its provisions.

5 40. The administrative scheme itself, conditioned on payment in advance of penalties
6 Plaintiff could not afford, were they to have been aware of them in the first place, is preclusive. It is,
7 thus, not only evincing of Constitutional due process violations, it presents exceptional circumstances
8 to relieve the Plaintiff of any requisite of administrative exhaustion.

9 41. The entire administrative scheme set forth in the California Vehicle Code is
10 unconstitutional, as its delegation to BATA and GGB (and to processing agencies) of the appointment
11 of adjudicative persons that constitute inferior officers, and their undertaking of judicial functions,
12 violate the separation of powers doctrines and appointments clauses of article III, section 3, and article
13 VI, section 1, of the California Constitution, and article II, section 2 of the United States Constitution.

14 42. Finally, Plaintiff is not required to exhaust the administrative process in the California
15 Vehicle Code because Defendants' administrative procedures are the very source of the asserted
16 injury. Plaintiff challenges the constitutionality of the tolls and penalties as being excessive and
17 assessed by the Defendants in violation of due process on their face, and as applied, pursuant to Counts
18 I and II of this Complaint. Thus, the Defendants' administrative procedures are the very source of their
19 injury, and Plaintiff cannot attack the excessive penalties, and whether they were given notice they
20 were entering a toll road before a toll was being imposed, which are wrapped into the notices of toll
21 violations.

22 43. The administrative process provides an inadequate venue, excusing Plaintiff's
23 requirement to exhaust Defendants' review process before asserting Counts I, II, and IV in this lawsuit.
24 The administrative process does not afford Plaintiff and absent Class Members the fair procedural
25 rights, including rights to be heard.

26 44. The review process is inadequate to require Plaintiff to exhaust before asserting Counts
27 I, II, and IV because an alleged violator has only "15 days to initiate an investigation from mailing."
28 Here, Plaintiff, and others similarly situated, did not receive the notice of violation before the 15 days

1 had expired for them to request an investigation. But even if the 15 days had not expired, Plaintiff
2 could not invoke the second tier, because he did not have funds to invoke the second-tier review, and
3 in the alternative, requiring him to do so is unconstitutional.

4 45. GGB and BATA's remedy is also "inadequate" as to Plaintiff because the second tier
5 contradictorily promises a hearing, but then indicates that the review may be conducted by "mail."
6 Moreover, the review process is inadequate, because a "commissioner" may preside over the matter
7 at the third tier and may only evaluate the rulings under the California Vehicle Code *de novo*, and
8 without consideration as to whether any "factual" findings are clearly erroneous. Also, the review
9 process is inadequate because it is not conducted with "fairness and impartiality" as required by the
10 California Vehicle Code. Instead, in practice, no investigation takes place and the processing agency
11 serves as prosecutor, arbiter, and executioner. The processing agency for the GGB/BATA (Xerox)
12 also fails to hire a person who is not compensated based on penalties to conduct the second tier of the
13 review.

14 46. The remedies Plaintiff seeks are unavailable in the administrative process, excusing
15 Plaintiff's requirement to exhaust the Defendants' review process before asserting claims in this
16 lawsuit. Plaintiff can only challenge whether there was a system error, and not the constitutionality of
17 the actual amount of the penalties incurred under the "review" system. This is signified in many ways
18 from the required contours of the investigation (tier one), the minimal documents to create a "prima
19 facie" case (tier two), and that review can only be conducted *de novo* (tier three) and not based on
20 "questions of fact" considering whether the extent by which the penalties are assessed is
21 disproportionate to the toll assessed. The remedy is also unavailable because the administrative
22 proceedings do not permit Plaintiff to challenge that he did not get adequate notice of the cashless,
23 man-less system when the toll roads were rolled out.

24 47. Plaintiff's privacy claims were not required to be exhausted by administrative
25 proceedings because these causes involve wrongful transmission of PII, and not the assessment of a
26 toll under the California Vehicle Code.

27 **CIVIL PENALTIES ARE ASSESSED WITHOUT FAIR HEARINGS**

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1 48. Under the guise of Vehicle Code §40250, BATA and the District also assess millions
2 of dollars in civil penalties against commuters that are excessive, without proper notice and without a
3 fair hearing.

4 49. Under Vehicle Code §§40250, *et seq.*, the District may assess civil penalties for “toll
5 evasion” violations for a variety of reasons, including inadvertent mistakes, such as if the commuter’s
6 card has expired, if the credit card was declined, or the transponder was not properly placed on the
7 windshield.

8 50. Under Vehicle Code §40254(e), “[t]he processing agent shall use its best efforts to
9 obtain accurate information concerning the identity and address of the registered owner for the purpose
10 of forwarding a notice of toll evasion violation pursuant to subdivision (a).” Despite the clear intent
11 of the Legislature to use all means necessary to provide notice to commuters, the District and BATA
12 fail and/or refuse to send any notices by e-mail or telephone after months of no contact with the
13 commuter. Meanwhile, the commuter racks up thousands of dollars in civil penalties and unwittingly
14 waives due process rights by failing to timely submit an affidavit to contest the violations. Plaintiff is
15 informed and believes the failure of District and BATA to use “best efforts” is, and has been, a willful
16 and deliberate scheme to generate greater penalty assessments and judgments against commuters.

17 51. Under Vehicle Code §40254, the District has between 21 to 90 days to serve notices of
18 the toll violations. However, within this time, many commuters have already passed through the Toll
19 Bridges and incurred enormous civil penalties without any notice of the toll violations. For example,
20 even if notice is sent within one week after the violation, the commuter could potentially be assessed
21 several thousands of dollars in one week. This 21-to-90 day notice window encourages BATA to
22 delay sending notices in a conscious effort to increase penalties and generate a financial return.

23 52. The notices are also deliberately vague and ambiguous as to what law the commuter
24 violated, further denying due process.
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1 **THE ASSESSMENT OF TOLLS AND PENALTIES AGAINST**
2 **CLASS MEMBERS LACKS DUE PROCESS AND**
3 **PROVIDES NO NOTICE OF INFRACTION**

4 53. The Toll Bridges’ system of toll collection and enforcement lacks key procedural and
5 substantive constitutional protections and violates consumer protection laws.

6 54. The abuse of BATA and GGB has been well chronicled in the news. John Goodwin of
7 BATA has claimed he is only interested in tolls, but this belies his dogged attempt at collecting
8 hundreds of millions, if not billions in penalties. <http://www.ktvu.com/news/4612222-story> (2
9 INVESTIGATES; difficult to clear name after FasTrak errors).

10 55. Goodwin states in that same video: “in order to keep costs down, we rely so much on
11 automated systems. Sometimes things like this will happen.”

12 56. If Class Members cannot pay the outrageous tolls, BATA and GGB having shockingly
13 recommended the individual file a bankruptcy.

14 57. BATA and GGB have even been fined by the Transit Authorities \$330,000 for bad
15 customers service, which just scratched the surface of what “7 On Your Side”, uncovered.
16 [http://abc7news.com/technology/7-on-your-side-fastrak-customers-unfairly-hit-with-](http://abc7news.com/technology/7-on-your-side-fastrak-customers-unfairly-hit-with-penalties/515536/)
17 [penalties/515536/](http://abc7news.com/technology/7-on-your-side-fastrak-customers-unfairly-hit-with-penalties/515536/) (February 12, 2015). As stated in the story “the fact that a private corporation,
18 Xerox, can put a hold on the DMV –my registration – seems wrong.” (*Id.*)

19 58. FasTrak has a deplorable 1.5 star ranking on YELP [https://www.yelp.com/biz/fastrak-](https://www.yelp.com/biz/fastrak-san-francisco-2)
20 [san-francisco-2](https://www.yelp.com/biz/fastrak-san-francisco-2), and 100% negative reviews on ripoffreport.com/ Better Business Bureau.

21 59. Yelp features hundreds of negative reviews from normal consumers outraged by the
22 manner the Toll Bridges are operated. Specifically, many persons receive “notices of toll violations”
23 even though the license plate image captured does not even match with the number on file with the
24 toll authorities.
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26 60. The signage warning Class Members (defined *infra*) that they are travelling on the Toll
27 Bridges is wholly inadequate and inconspicuous. Signage locations and language on the Toll Bridges
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1 do not provide adequate advance notice to Class Members of the Toll Bridges, nor any notice
2 whatsoever of the amount of tolls to be assessed to Class Members for entering the Toll Bridges.

3 61. Once a Class Member enters the Toll Bridge, even inadvertently, a toll is electronically
4 assessed, and there is no reasonable means by which a Class Member can mitigate or avoid the toll,
5 exit the Toll Bridge, or contest the assessment. Specifically, the District and BATA prey on
6 unsuspecting travelers who traverse the Golden Gate Bridge in their rental cars.

7 62. Further, when passing through the unmanned cashless areas, there is no indication by
8 Defendants (or their agents) that a toll and/or penalty has been assessed against the Class Member, or
9 that there has been an infraction.

10 63. Defendants' unmanned cashless systems are designed to eliminate their costs of
11 manning Toll Bridges and shift the burden and penalty to the unwitting Class Members. Moreover,
12 Defendants' systems are designed to reap an unjust windfall to Defendants and their private investors
13 through collection of massive penalties.

14 **THE AUTOMATED ENFORCEMENT SYSTEM**
15 **LEADS TO ADDITIONAL PENALTIES**

16 64. Even though many Class Members are unaware that they may have incurred a toll, they
17 are tasked under the law to proactively contact Defendants, to make payment.

18 65. Phone calls to Defendants to inquire in good faith as to alleged toll violations frequently
19 go unanswered and unreturned.

20 66. If a Class Member does not know of the alleged violation and cannot locate the BATA
21 website in five days from the alleged violation, and pay the toll in full, Defendants: (a) assess excessive
22 penalties disproportionate to the amount of the original toll; (b) obtain *ex parte* judgments against the
23 commuter for the total toll plus unconscionable and/or excessive penalties; and/or (c) place liens on
24 vehicle registration renewals with the DMV if those excessive penalties are not paid within 30 days.

25 67. Defendants' operation of the Toll Bridges has become an unconscionable profit center,
26 unfairly rewarding them and their private investors at an oppressive cost to consumers, generating,
27 directly and indirectly, billions of dollars in returns. Defendants' executive staff realize substantial
28

1 salaries and other benefits while consumers' vehicle registrations can be put on hold – or worse – over
2 as little as a \$2.00 toll fee.

3 **CLASS ACTION ALLEGATIONS**

4 68. Plaintiff bring this action on behalf of himself and all others similarly situated, pursuant
5 to Federal Rule of Civil Procedure Rule 23(b)(3) and Rule 23(b)(2).

6 69. The proposed class consists of the following two Classes:

7 **Excessive Fines Class: All consumers who, between July 12, 2014 and the present,**
8 **were assessed and/or paid a penalty amount, or were charged with a toll evasion**
9 **violation in connection with using the Toll Bridges.**

10 **PII Class: All consumers who between July 12, 2014 and the present, had their**
11 **PII provided to any person who was not authorized to receive the PII pursuant to**
12 **California Streets and Highways Code §31490, under California's Constitutional**
13 **right to privacy, in violation of the Defendants' privacy policy and/or transponder**
14 **agreements.**

15 70. This action is properly brought as a class action for the following reasons:

16 (a) The proposed class is so numerous that the joinder of all Class Members is
17 impracticable. While Plaintiff does not know the exact number and identities of all Class Members,
18 Plaintiff is informed and believes that there are hundreds of thousands (if not millions) of Class
19 Members. The precise number of Class Members can be ascertained through discovery, which will
20 include Defendants' business records;

21 (b) The disposition of Plaintiff's and the Class Members' claims in a class action
22 will provide substantial benefits to both the parties and the Court;

23 (c) The proposed class is ascertainable and there is a well-defined community of
24 interest in the questions of law or fact alleged herein since the rights of each proposed class member
25 were infringed or violated in the same fashion;

26 (d) There are questions of law and fact common to the proposed class which
27 predominate over any questions that may affect particular Class Members. Such common questions of
28 law and fact include, but are not limited to:

1 (1) Whether the tolls and Toll Bridge penalties, as assessed by Defendants,
2 constitute an unconstitutional penalty;

3 (2) Whether the tolls and Toll Bridge penalties, as assessed by Defendants,
4 constitute “excessive fines” under the United States and California Constitutions;

5 (3) Whether Defendants transmitted or sold personally identifiable
6 information as a practice, policy, or pattern including, but not limited to, as part and parcel of their
7 collection activity;

8 (4) Whether Defendants violated California’s Unfair Competition Law,
9 Business & Professions Code §§17200, *et seq.* (“UCL”);

10 (5) Whether Defendants violated California’s Consumer Legal Remedies
11 Act, Civil Code §§1750, *et seq.* (“CLRA”);

12 (6) Whether Defendants have received funds from Plaintiff and Class
13 Members that they unjustly received;

14 (7) Whether Plaintiff and Class Members have been harmed and the proper
15 measure of relief;

16 (8) Whether Plaintiff and Class Members is entitled to an award of punitive
17 damages, attorneys’ fees, and expenses against Defendants; and

18 (9) Whether, as a result of Defendants’ misconduct, Plaintiff is entitled to
19 equitable relief, and if so, the nature of such relief.

20 (e) Plaintiff’s claims are typical of the claims of the Class Members. Plaintiff and
21 all Class Members have been injured by the same wrongful practices of Defendants. Plaintiff’s claims
22 arise from the same practices and conduct that give rise to the claims of all Class Members and are
23 based on the same legal theories;

24 (f) Plaintiff will fairly and adequately protect the interests of the proposed class in
25 that they have no interests antagonistic to those of the other proposed Class Members, and Plaintiff
26 has retained attorneys experienced in consumer class actions and complex litigation as counsel;

27 (g) A class action is superior to other available methods for the fair and efficient
28 adjudication of this controversy for at least the following reasons:

1 (1) Given the size of Class Member's claims and the expense of litigating
2 those claims, few, if any, Class Members could afford to or would seek legal redress individually for
3 the wrongs Defendant committed against them, and absent Class Members have no substantial interest
4 in individually controlling the prosecution of individual actions;

5 (2) This action will promote an orderly and expeditious administration and
6 adjudication of the proposed class claims, and economies of time, effort and resources will be fostered
7 and uniformity of decisions will be insured;

8 (3) Absent class certification of Plaintiff's claims, Class Members will
9 continue to suffer damages, and Defendants' violations of law will proceed without remedy while
10 Defendant continues to reap and retain the substantial proceeds of its wrongful conduct; and

11 (4) Plaintiff knows of no difficulty that will be encountered in the
12 management of this litigation which would preclude its maintenance as a class action.

13 71. Defendants have, or have access to, address information for Class Members which may
14 be used for the purpose of providing notice of the pendency of this class action.

15 72. Plaintiff seeks damages and equitable relief on behalf of the proposed class on grounds
16 generally applicable to the entire proposed class.

17 **CAUSES OF ACTION**

18 **COUNT I**

19 **VIOLATION OF ARTICLE I, §17 OF THE CALIFORNIA CONSTITUTION**

20 **(EXCESSIVE FINES)**

21 **(By Plaintiff, Individually and on Behalf of All Class Members, Against All**
22 **Defendants)**

23 73. Plaintiff hereby refers to and incorporates by reference each and every allegation
24 contained in the preceding paragraphs of this Complaint.

25 74. This claim for relief is brought under the California Constitution and under California
26 Civil Code ("Civil Code") §52.1(b).

27 75. The dollar amount and enforcement of these penalties constitute violations of the
28 prohibition in Article 1, §17 of the California Constitution against the imposition of excessive fines.

1 The Vehicle Code permitting penalties to be charged by GGB and BATA of up to 20 times the toll
2 either expressly or implicitly, constitute excessive fines, and are thus, unconstitutional. As applied,
3 BATA and GGB routinely charged putative Class Members (including the named class
4 representatives) penalties in excess of 10 times the amount of the toll, or 1,000%.

5 76. As a direct result of these constitutional violations on the part of Defendants, Plaintiff
6 and the Class Members have been damaged and are entitled to damages, including restitution of the
7 amounts of any penalties and collection fees paid to Defendants or assessed by Defendants.

8 77. Plaintiff and the Class Members will suffer immediate and irreparable injury for which
9 there is no adequate remedy at law if the aforementioned penalties and policies to enforce them are
10 allowed to continue. Plaintiff and the Class Members seek injunctive relief, both preliminary and
11 permanent, to stop Defendants' unlawful conduct described above.

12 78. There is a real and actual controversy between the parties as to whether the toll penalties
13 described above violate the prohibition in Article 1, §17 of the California Constitution against the
14 imposition of excessive fines. This imposition of, and continued effort to collect, penalties constitute
15 a legal injury which is concrete and particularized. It is likely that these injuries will be fairly addressed
16 by a favorable Court ruling. Plaintiff and the Class Members therefore seek declaratory relief declaring
17 that the toll and penalty scheme are unconstitutional and that they did not and do not owe and need
18 not pay the tolls, penalties, and attendant collection fees.

19 79.. Plaintiff is informed and believes and thereon alleges that the acts of the Defendants
20 were willful, malicious, intentional, reckless and/or were done in willful and conscious disregard of
21 Plaintiff's rights, justifying the awarding of punitive and exemplary damages in an amount to be
22 determined at the time of trial.

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COUNT II
VIOLATION OF ARTICLE I, §7 OF THE CALIFORNIA CONSTITUTION
(DUE PROCESS)
(By Plaintiff, Individually and on Behalf of All Class Members, Against All
Defendants)

80. Plaintiff hereby refers to and incorporates by reference each and every allegation contained in the preceding paragraphs of this Complaint.

81. Article 1, §7(a) of the California Constitution provides that a person may not be deprived of life, liberty, or property without due process of law. Defendants' excessive penalties scheme and their enforcement, as above alleged, have deprived Plaintiff and the Class Members of property without due process.

82. There is inadequate (if any) notice of the entry to the Toll Bridges or the incurring of tolls and penalties thereon.

83. The civil penalty scheme of California Vehicle Code §§40250, et seq., on its face and as applied by Defendants against Plaintiff and the Class Members, violates the Due Process Clause of the California Constitution for the following reasons, among others set forth in this Complaint: (a) Defendants failed to provide adequate notice to Plaintiff and Class Members of the manner in which toll charges must be paid and the consequences of non-payment; (b) Defendants failed to inform Plaintiff and Class Members promptly and reliably about alleged toll violations in time for them to avoid large penalties; (c) Defendants failed to provide Plaintiff and the Class Members with an adequate amount of time to be heard on the amount of the civil penalty assessments; (d) Defendants prevented Plaintiff and Class Members from challenging tolls and penalties by the use of inadequate time periods in which to make such challenges; (e) Defendants failed to take into account the inadequacy of DMV records to locate Plaintiff and Class Members reliably; (f) Defendants failed to adequately inform Plaintiff and Class Members of the electronic means by which they must pay their tolls and failed to take into account the needs of persons without easy access to computers; (g) Defendants allowed for ex parte judgments to be entered against Plaintiff and Class Members without

1 giving them notice and based on the other due process violations listed above; (h) California Vehicle
2 Code §40267 states that, in any case in which unpaid penalties exceed \$400 (essentially, any round
3 trip's unpaid fines and penalties), the processing agency may file with the court proof of the fact that
4 the penalties exceed \$400 and that such filing shall have the same effect as a civil judgment, which is
5 subject to execution. This entry of judgment occurs without any hearing on the issue of penalties
6 incurred. The entry of judgment is final and may not be contested.

7 84. Defendants' enforcement system, as authorized and set forth in California Vehicle
8 Code §§40250, *et seq.*, results in widespread due process violations against motorists alleged to have
9 failed to pay their tolls. These violations and the injuries suffered by the Plaintiff and class can be
10 avoided or substantially limited by modifying Defendants' systems without undue cost or
11 inconvenience to Defendants.

12 85. Plaintiff and the Class Members will suffer immediate and irreparable injury for which
13 there is no adequate remedy at law if the aforementioned policies, procedures, practices, and/or
14 customs of Defendants are allowed to continue. Henceforth, Plaintiff and the Class Members seek
15 injunctive relief, both preliminary and permanent, to enjoin Defendants' unlawful policies, procedures,
16 practices and/or customs described above.

17 86. In addition, there is a real dispute between the parties as to whether Vehicle Code
18 §§40250, *et seq.* and Defendants' practices violate Article I, §7 of the California Constitution. Plaintiff
19 maintains that the penalty scheme of Vehicle Code §§40250, *et seq.*, on its face and as applied by
20 Defendants, violates Article I, §7 of the California Constitution. Defendants claim that the penalty
21 scheme and their actions do not violate the due process clause of Article I, §7 of the California
22 Constitution and are constitutional. Plaintiff and the Class Members therefore seek declaratory relief
23 to declare the penalty scheme of Vehicle Code §§40250, *et seq.*, on its face and as applied by
24 Defendants, as unconstitutional.

25 87. By engaging in the herein-mentioned acts and omissions, Defendants interfered by
26 threat, intimidation, and coercion, and attempted to interfere by threat, intimidation, and coercion, with
27 the exercise and enjoyment by Plaintiff and each Class Members of their rights secured by the
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1 Constitution or laws of the United States, and of the rights secured by the Constitution or laws of the
2 State of California, entitling them to damages under, *inter alia*, Civil Code §52.1(b) These coercive
3 acts include, without limitation, the imposition of arbitrary, inadequate deadlines and grossly
4 disproportionate penalties, as well as the threatened or actual placement of liens on motorists' DMV
5 vehicle registrations.

6 **COUNT III**

7 **VIOLATION OF CALIFORNIA STREETS AND**
8 **HIGHWAYS CODE §31490**

9 **(By Plaintiff, Individually and on Behalf of All Class Members, Against All**
10 **Defendants)**

11 88. Plaintiff hereby refers to and incorporates by reference each and every allegation
12 contained in the preceding paragraphs of this Complaint.

13 89. California Streets and Highways Code §31490 provides that:

14 (a) Except as otherwise provided in this section, a transportation agency may not sell or
15 otherwise provide to any other person or entity personally identifiable information of any person who
16 subscribes to an electronic toll or electronic transit fare collection system or who uses a toll bridge,
17 toll lane, or toll highway that employs an electronic toll collection system.

18 90. The Plaintiff and the Class Members are either "subscribers" or "users" of Defendants
19 Toll Bridges pursuant to California Streets and Highways Code §31490(a).

20 91. California Streets and Highways Code §31490(h) provides that:

21 This section, with respect to an electronic toll collection system, does not prohibit a
22 transportation agency from sharing data with another transportation agency solely to comply with
23 interoperability specifications and standards adopted pursuant to Section 37565 regarding electronic
24 toll collection devices and technologies. A third-party vendor may not use personally identifiable
25 information obtained under this subdivision for a purpose other than described in this subdivision.

26 92. California Streets and Highways Code §31490(l) provides: For purposes of this section,
27 "transportation agency" means the Department of Transportation, the Bay Area Toll Authority, any
28 entity operating a toll bridge, toll lane, or toll highway within the state, any entity administering an

1 electronic transit fare collection system and any transit operator participating in that system, or any
2 entity under contract with any of the above entities.

3 93. California Streets and Highways Code §31490(o) provides that: For purposes of this
4 section, “personally identifiable information” means any information that identifies or describes a
5 person including, but not limited to, travel pattern data, address, telephone number, email address,
6 license plate number, photograph, bank account information or credit card number.

7 94. California Streets and Highways Code §31490(p) provides that: For purposes of this
8 section, “interoperability” means the sharing of data, including personally identifiable information,
9 across multiple transportation agencies for the sole purpose of creating an integrated transit fare
10 payment system, integrated toll payment system, or both.

11 95. Defendants operate an “electronic toll collection system” within the meaning of
12 California Streets and Highways Code §31490(m).

13 96. Defendants BATA, GGB, and Xerox provided Plaintiff’s and Class Members’ PII,
14 within the meaning of California Streets and Highways Code §31490(o), to the following
15 Unauthorized Parties: Law Enforcement Agencies, including the DMV, the FTB, the San Francisco
16 Police Department and other city, state, county, and federal Law Enforcement Agencies located in the
17 State of California; Banking Institutions, including, without limitation, Wells Fargo Bank, N.A., JP
18 Morgan Chase Bank, Bank American, N.A.; Car Rental Agencies, including without limitation Ace
19 Rent-A-Car, Advantage, Alamo, Avis, Budget, Dollar, Economy, Enterprise, Europcar, Rent-a-car,
20 Firefly, Fox; out-of-state collection agencies, credit buereaus (including Experian, Transunion, and
21 Equifax) and other unauthorized third persons and entities to be ascertained through discovery (Other
22 Unauthorized Parties).

23 97. *Ad nauseum*, the BATA provided to TCA, BRiC, 3M, Cofiroute, OCTA, LA Metro
24 Express, South Bay Expressway, SANDAG, the PII of Plaintiff and the Class Members (i.e., their
25 plate images) for non-interoperability purposes.

26 98. *Ad nauseum*, the GGB provided to TCA, BRiC, 3M, Cofiroute, OCTA, LA Metro
27 Express, South Bay Expressway, SANDAG, the PII of Plaintiff and the Class Members (i.e., their
28 plate images) for non-interoperability purposes.

1 99. *Ad nauseum*, the Xerox provided to TCA, BRiC, 3M, Cofiroute, OCTA, LA Metro
2 Express, South Bay Expressway, SANDAG, the PII of Plaintiff and the Class Members (i.e., their
3 plate images) for non-interoperability purposes.

4 100. Such PII of Plaintiff and Class Members included, without limitation, information that
5 identified or described Plaintiff and Class Members as Toll Bridge toll violators, data of their travel
6 patterns on the Toll Bridges, and images of license plates of vehicles they owned or were driving.

7 111. California Streets and Highways Code §31490(i) is not a defense or excuse of liability
8 pursuant to §31490(a) or (h) because §31490(i) refers to, incorporates, and implicates subsection (d)
9 which contemplates purging that may take place under the California Streets and Highways Code,
10 which has nothing to do with the “providing” of PII. In other words, the statute contemplates that
11 collection may still occur even if the transportation agency has purged documents, but this is no
12 defense to the Defendants’ express violation of §31490(a) and (h).

13 112. By providing the Unauthorized Parties with the PII of Plaintiff and the Class Members,
14 Defendants’ purpose was to track Plaintiff’s and Class Members’ comings and goings, and to interfere
15 with Plaintiff’s and Class Members’ rights to use their vehicles.

16 113. Defendants did not receive a search warrant from any law enforcement agency under
17 California Streets and Highways Code §31490 prior to making any of the above-referenced
18 transmissions of PII.

19 114. Defendants did not have authorization under the transponder agreements with
20 commuters to make any of the above transmissions of PII.

21 115. GGB, BATA, and XEROX completed separate forms with the DMV prior to
22 transmitting PII for different purposes – albeit both were illegal. GGB, BATA, and XEROX would
23 first file requests (in certain circumstances only) to provide plate images to the DMV to obtain
24 information about commuters, even though the named Defendants already had the information of
25 commuters based on their completed transponder agreements, the availability of public information
26 and databases that indicate information for registration of car owners, private investigation, the right
27 to subpoena under California Streets and Highways Code, the right of publication, and other means to
28 obtain information.

1 116. Based on DMV procedures and practices, the DMV did not maintain a database of the
2 images of Class Members GGB, BATA, and XEROX would then provide plate images subsequently
3 thereto to the DMV to place a hold on commuters' registration, which was an entirely independent
4 request and function from providing plate images to obtain information about commuters. In other
5 words, the Defendants did not need to make subsequent transmission of image files and PII to obtain
6 the address of a commuter.

7 117. Based on the fact that GGB, BATA, and XEROX provided PII of Plaintiff and Class
8 Members to the Unauthorized Persons in violation of California Streets and Highways Code §31490(a),
9 pursuant to §31490(p)(1), Plaintiff and Class Members are entitled to \$2,500 for each individual
10 violation, attorney's fees, reasonable costs from GGB, BATA, and XEROX, and for Plaintiff and those
11 Class Members who had their information provided three or more times, \$4,000 for each individual
12 violation, attorney's fees, and reasonable costs from GGB, BATA, and XEROX. California Streets
13 and Highways Code §31490(p)(2).

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16 **DEFENDANTS ARE LIABLE BECAUSE THE PURPOSE BY WHICH PII**
17 **WAS PROVIDED TO UNAUTHORIZED PARTIES WAS NOT FOR**
18 **“INTEROPERABILITY PURPOSES”**

19 118. When Plaintiff and each of the Class Members drove on the Toll Bridges, each of them
20 was a “user” of the Toll Bridges pursuant to §31490(a).

21 119. Each of the named Defendants is independently a “transportation agency” pursuant to
22 California Streets and Highways Code §31490(l).

23 120. GGB, BATA, and XEROX are each independently “entities” operating a toll bridge,
24 toll lane or toll highway within the state of California based on their contractual and actual roles in the
25 operations of the joint enterprise.

26 121. Each of the Toll Bridges (as previously defined) is a “Toll Highway” and/or “Toll
27 Lane” under §31490(n).

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1 122. Defendants provided to the Unauthorized Parties PII for purposes that were not, and
2 could not have been, for “interoperability purposes” in that none of the transmittals were for the “sole
3 purpose of creating an integrated transit fare payment system, integrated toll payment system, or both.”
4 In fact, none of Defendants’ providing PII to Unauthorized Parties alleged hereinabove had anything
5 to do with creating any system, much less an “integrated transit fare payment system, integrated toll
6 payment system, or both,” but were instead meant to place holds on commuters’ vehicle registrations
7 as an illicit collection device.

8 123. As defined in §31490(m), for purposes of this section: “[E]lectronic toll collection
9 system” is a system where a transponder, camera-based vehicle identification system, or other
10 electronic medium is used to deduct payment of a toll from a subscriber’s account or to establish an
11 obligation to pay a toll, and “electronic transit fare collection system” means a system for issuing an
12 electronic transit pass that enables a transit passenger subscriber to use the transit systems of one or
13 more participating transit operators without having to pay individual fares, where fares are instead
14 deducted from the subscriber’s account as loaded onto the electronic transit pass. The transmissions
15 described above were not provided pursuant to a collection system of interoperability, but were instead
16 disseminated to unlawfully implement impermissible collection devices, place holds through the
17 DMV, interfere with property rights, and to track commuters’ comings and goings. See, Streets and
18 Highways Code §27565.

19 124. Thus, regardless of whether any of the Unauthorized Parties are themselves
20 “transportation agencies,” the named Defendants are liable for violations of California Streets and
21 Highways Code §31490(a), (h), and (l) because their provisions of Plaintiff’s and Class Members’ PII
22 were not for “interoperability purposes.”

23 125. Based on the fact that GGB, BATA, and XEROX provided PII of the Plaintiff and
24 Class Members to the Unauthorized Persons in violation of California Streets and Highways Code
25 §31490(a), pursuant to §31490(p)(1), Plaintiff and Class Members are entitled to \$2,500 for each
26 individual violation, attorney’s fees, reasonable costs from GGB, BATA, and XEROX, and for
27 Plaintiff and those Class Members who had their information provided three or more times, \$4,000
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1 for each individual violation, attorney's fees, and reasonable costs from GGB, BATA, and XEROX.
2 California Streets and Highways Code §31490(p)(2).

3 **DEFENDANTS ARE ALTERNATIVELY LIABLE BECAUSE THE UNAUTHORIZED**
4 **PARTIES WERE NOT PERMITTED RECIPIENTS OF PLAINTIFF'S AND CLASS**
5 **MEMBERS' PII REGARDLESS OF THE PURPOSE**

6 126. Plaintiff is informed and believes, and on that basis alleges, that neither GGB, BATA,
7 and XEROX, was under contract with any of the Unauthorized Third Parties, within the meaning and
8 purpose of California Streets and Highways Code §31490(l), at the time they provided Plaintiff's and
9 Class Members' PII to the Unauthorized Persons, with the exception of contracts by and between
10 Xerox and BATA/GGB.

11 127. Specifically, Plaintiff is informed and believes, and based thereon alleges that neither
12 GGB, BATA, and XEROX executed any contract with the DMV at all.

13 128. The DMV is not a "transportation agency." Specifically, the GGB and BATA were not
14 "under contract" with the DMV for the purposes of California Streets and Highways Code §31490(l).
15 The DMV has not been a signatory to any writing with BATA and GGB concerning BATA and/or
16 GGB providing PII under the unlawful transmissions described above. The DMV has no continuing
17 contractual obligation with any party such that it would be said to be "under contract."

18 129. Xerox is not under contract with the DMV.

19 130. The DMV is a law enforcement agency within the meaning of the California Streets
20 and Highways Code and thus, cannot be a "transportation agency" thereunder.

21 131. None of the Law Enforcement Agencies are "under contract" with GGB, BATA, and
22 XEROX pursuant to California Streets and Highways Code §31490(l).

23 132. The FTB is not "under contract" with GGB, BATA, and XEROX under California
24 Streets and Highways Code §31490(l).

25 133. None of the Banking Institutions are "under contract" with GGB, BATA, and XEROX
26 pursuant to California Streets and Highways Code §31490(l).

27 134. None of the Other Unauthorized Parties are "under contract" with GGB, BATA, and
28 XEROX pursuant to California Streets and Highways Code §31490(l).

1 135. None of the Credit Bureaus are “under contract” with GGB, BATA, and XEROX.

2 136. None of the Car Rental Agencies are “under contract” with GGB, BATA, and XEROX
3 pursuant to California Streets and Highways Code §31490(l).

4 137. Thus, none of the Unauthorized Parties was a “transportation agency” within the
5 meaning of California Streets and Highways Code §31490(l).

6 138. Consequently, Defendants’ provision of PII to the Unauthorized Parties was in
7 violation of California Streets and Highways Code §31490 for this independent reason, irrespective of
8 whether providing the PII was provided for interoperability purposes.

9 **DEFENDANTS ARE INDEPENDENTLY LIABLE BECAUSE THEY PROVIDED PII**
10 **TO LAW ENFORCEMENT AGENCIES WITHOUT A SEARCH WARRANT**

11 139. California Streets and Highways Code §31490(e)(1) provides: A transportation agency
12 may make personally identifiable information of a person available to a law enforcement agency only
13 pursuant to a search warrant. Absent a provision in the search warrant to the contrary, the law
14 enforcement agency shall immediately, but in any event within no more than five days, notify the
15 person that his or her records have been obtained and shall provide the person with a copy of the search
16 warrant and the identity of the law enforcement agency or peace officer to whom the records were
17 provided.

18 140. Each of the DMV and San Francisco Police Department, and other Law Enforcement
19 Agencies in the State of California, is a law enforcement agency within the meaning of California
20 Streets and Highways Code §31490(e)(1).

21 141. Plaintiff is informed and believes, and on that basis alleges, that none of the Defendants
22 obtained a search warrant and otherwise complied with California Streets and Highways Code
23 §31490(e)(1) when providing Plaintiff’s and Class Members’ PII to the DMV, the San Francisco
24 Police Department, and other Law Enforcement Agencies.

25 142. Consequently, Defendants’ provision to the DMV, other Law Enforcement Agencies,
26 and San Francisco Police Department of Plaintiff’s and Class Members’ PII was in violation of
27 California Streets and Highways Code §31490.

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1 143. Plaintiff is informed and believes, and thereon alleges, that Defendants have violated,
2 and conspired to violate, California Streets and Highways Code §31490 by unlawfully transmitting
3 Plaintiff's and the Class Members' PII, within the meaning of California Streets and Highways Code
4 §31490(o), to other agencies and individuals including, but not limited to, the Unauthorized Parties.
5 Further, Defendants ratified, authorized, directed, and approved that the DMV place a hold on
6 Plaintiff's and Class Members' vehicles and that the DMV transfer Plaintiff's and Class Members' PII
7 to other Law Enforcement Agencies, and that the San Francisco Police Department do the same,
8 thereby intentionally and illicitly circumventing the law.

9 144. Specifically, on at least two occasions per week, Defendants have transmitted and
10 continue to transmit to Unauthorized Parties a list of all users and subscribers, that contains PII of each
11 user and subscriber, whose registration should be placed on hold.

12 **DEFENDANTS ARE INDEPENDENTLY AND ADDITIONALLY LIABLE BASED**
13 **ON THEIR NON-COMPLIANT PRIVACY POLICIES IN VIOLATION OF CALIFORNIA**
14 **STREETS AND HIGHWAYS CODE §31490(B) AND (P)**

15 145. California Streets and Highways Code §31490(b) provides that: (b) A transportation agency that
16 employs an electronic toll collection system shall establish a privacy policy regarding the collection
17 and use of personally identifiable information and provide to subscribers of that system a copy of the
18 privacy policy in a manner that is conspicuous and meaningful, such as by providing a copy to the
19 subscriber with the transponder or other device used as an electronic toll collection mechanism, or, if
20 the system does not use a mechanism, with the application materials. A transportation agency shall
21 conspicuously post its privacy policy on its Internet Web site. For purposes of this subdivision,
22 "conspicuously post" has the same meaning as that term is defined in paragraphs (1) to (4), inclusive,
23 of subdivision (b) of Section 22577 of the Business and Professions Code. The policy shall include,
24 but need not be limited to, a description of the following:

25 (1) The types of personally identifiable information that is collected by the agency.

26 (2) The categories of third-party persons or entities with whom the agency may share
27 personally identifiable information.
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1 (3) The process by which a transportation agency notifies subscribers of material changes to
2 its privacy policy.

3 (4) The effective date of the privacy policy.

4 (5) The process by which a subscriber may review and request changes to any of his or her
5 personally identifiable information.

6 146. Each of the named Defendants are transportation agencies that employ an electronic
7 toll collection system under Streets & Highways Code Section 31490.

8 147. The “FasTrak Privacy Policy,” set forth in a back-page footer of BATA’s website at
9 <https://www.bayareafastrak.org/en/support/privacy.shtml>, fails to comply with California Streets and
10 Highways Code §31490(b)(1). The policy fails to completely and accurately identify the who BATA,
11 GGB, and XEROX will be sharing personally identifiable information with as required by
12 §31490(b)(1).

13 148. The Defendants’ privacy policy provides: “BATA may share PII with GGBHTD,
14 ACTC, and VTA for the purpose of managing FasTrak® and other electronic toll collection operations
15 (i.e. License Plate Accounts, One-Time Payment Accounts and Invoices). BATA may also share PII
16 with other toll agencies within the State of California for the purpose of managing
17 FasTrak® operations. If you participate in the SFO Parking Program to pay parking fees, BATA will
18 share your FasTrak® toll tag number with SFO for the purpose of operating the SFO Parking Program.
19 In addition, BATA may share PII with SFO as necessary to resolve customer disputes.”

20 21 149. Further, the Policy provides: “[i]n addition, BATA hires third-party service providers
22 for the purpose of operating the FasTrak® and other electronic toll collection programs referenced
23 above, such as managing Accounts, collecting revenues due, and providing remote walk-in locations
24 at which FasTrak®, License Plate Account, One-time Payment Account, and Invoices customers can
25 pay tolls in cash. The CSC Contractor, Xerox, which may need to share PII with subcontractors to
26 enable credit card processing and mailing services, is one such service provider. These contractors are
27 provided only with the PII they need to deliver the services. BATA requires the service providers to
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1 maintain the confidentiality of the information and to use it only as necessary to carry out their duties
2 under the FasTrak[®] and other electronic toll collection programs mentioned in this Privacy Policy.”

3 150. The Policy violates §31490(b)(1) because BATA, GGB and Xerox actually provide PII
4 to a host of other unauthorized persons: Car Rental Agencies, Law Enforcement Agencies without a
5 search warrant (including the DMV), the Credit Bureaus, Banking Institutions, the FTB and the Other
6 Unauthorized Persons.

7 151. Further, BATA, GGB and XEROX have violated California Streets and Highways
8 Code §31490(b) because even though BATA, GGB and XEROX “shall” establish a privacy policy
9 regarding the “collection and use” of PII, BATA, GGB and XEROX failed to do so. Specifically, the
10 privacy policy fails to state that PII (the license plate images of Class Members and other PII of Class
11 Members), as previously alleged, is provided by BATA, GGB and XEROX to a multitude of persons
12 and entities to place holds on Class Members’ registration, to collect debts, to monitor movements,
13 and for other purposes. The privacy policy does not reference that BATA, GGB and XEROX will use
14 the PII to place holds on Plaintiff’s and Class Members’ vehicles.
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16 152. Based on the fact that BATA, GGB and XEROX failed to comply with §31490(b) in
17 regards to the requirements of the privacy policy (which each party had authority and control over
18 drafting, implementing, and publishing) before BATA, GGB and XEROX provided Class Members’
19 PII to any third person, the BATA, GGB and XEROX have “otherwise provided information in
20 violation of this section” pursuant to California Streets and Highways Code §31490(p). Thus, Plaintiff
21 and Class Members are entitled to \$2,500 for each individual violation, attorney’s fees, reasonable
22 costs from BATA, GGB and XEROX, and for Plaintiff and those Class Members who had their
23 information provided three or more times, \$4,000 for each individual violation, attorney’s fees, and
24 reasonable costs from BATA, GGB and XEROX.

25 153. Besides these entities, PII will not be disclosed to any other third party without express
26 customer consent, except as required to comply with laws or legal processes served on BATA. In fact,
27 the privacy policy does not identify anything about the “personally identifiable information” that is
28 collected.

1 not reduce from the reasonable expectation of privacy of vehicle owners and operators who do not
2 expect driving down a street to expose their PII to unbridled dissemination.

3 158. Plaintiff and Class Members had a reasonable expectation of privacy that, when a
4 vehicle is merely driven down the road, its owner's PII (including travel pattern data) will not be
5 captured for broad dissemination to third parties, including but not limited to Unauthorized Parties,
6 for the purposes of obtaining DMV registration liens and ex parte judgments against them.

7 159. The privacy rights of Plaintiff and Class Members, in and to their PII, are serious,
8 underscored by statute, the active participation in relevant Legislative proceedings by the American
9 Civil Liberties Union, the Privacy Rights Clearinghouse, the Consumer Federation of California,
10 CALPIRG and the enactment of laws to reflect such concerns about the collection and dissemination
11 of this data. By their conduct described above, these established, serious privacy rights were seriously
12 invaded by the Defendants.

13 160. By the aforementioned acts and omissions, Defendants have violated the privacy rights
14 of Plaintiff and other Class Members. As a consequence, Plaintiff and the Class Members have
15 suffered, and seek hereby from Defendants, their actual damages. Plaintiff and Class Members
16 additionally seek attorneys' fees, and costs, as may be allowed.

17 **COUNT V**

18 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**

19 **CIVIL CODE §§1750, *ET SEQ.***

20 **(Against Xerox & DOES 1-10)**

21 161. Plaintiff hereby refers to and incorporates by reference each and every allegation
22 contained in the preceding paragraphs of this Complaint.

23 162. Defendant Xerox is a "person" as defined by Civil Code §1761(c). Plaintiff and the
24 Class Members are consumers within the meaning of Civil Code §1761(d).

25 163. The CLRA applies to Defendant Xerox's conduct because it extends to transactions
26 that are intended to result in the sale or lease of goods or services to consumers or do result in such
27 sales or leases. The use of the Toll Bridges constitutes such sale or lease of goods or services.
28

1 164. Defendant Xerox had a duty to truthfully disclose how they truly intended to operate
2 Toll Bridges and their related charges and payments, use and disclose personally identifiable
3 information of Plaintiff and the Class Members, and disclose the omitted facts regarding such use and
4 disclosure. Defendant Xerox had exclusive knowledge of material facts not known to Plaintiff and the
5 Class Members. Specifically, Defendant Xerox operate Toll Bridges and related charges and payments
6 in a manner that defrauds the Plaintiff and the Class Members, unjustly enriches Defendants, and uses
7 and discloses personally identifiable information of Plaintiff and the Class Members contrary to law
8 and for improper purposes. Defendant Xerox, however, actively concealed material facts and did not
9 provide Plaintiff or the Class Members proper notice of their actual intentions for use and disclosure
10 of Plaintiff's or Class Members' personally identifiable information.

11 165. The facts, which Defendant Xerox misrepresented and concealed as alleged in the
12 preceding paragraphs, were material to Plaintiff's and the Class Members' decisions about whether to
13 use the Toll Bridges (when such use was known) and pay bills rendered by or for Defendant Xerox.
14 Defendant Xerox are liable under the CLRA for these material misrepresentations and omissions.

15 166. In violation of Civil Code §1770(a)(16), Defendant Xerox represented that the subject
16 of a Toll Bridges transaction was supplied in accordance with a previous representation when it was
17 not. Defendant Xerox have failed to disclose material facts to Plaintiff and the Class Members by
18 billing them for services that were not in fact provided, by billing them at rates higher than were
19 disclosed or allowed by law, and/or through billing errors.

20 167. Additionally, by their conduct described in this Complaint, Defendant Xerox have
21 violated Civil Code §1770(a)(5), (7), (9), (13), (14), (17), and (19).

22 168. Defendant Xerox had a duty to disclose the omitted facts because it had exclusive
23 knowledge of material facts not known to Plaintiff and the Class Members (that they were billing for
24 services that they did not in fact provide and/or that they were billing at rates higher than disclosed or
25 permitted by law), because they actively concealed material facts, and because they did not provide
26 Plaintiff and the Class Members proper notice of the Toll Bridges, toll charges, penalties, the processes
27 by which charges and penalties could be assessed and contested, and because they otherwise
28 suppressed true material facts.

1 176. The unlawful conduct of Defendant Xerox, alleged herein, are acts of unfair
2 competition under Bus. & Prof. Code §§17200, *et seq.*, for which Defendant Xerox is liable and for
3 which this Court should issue equitable and injunctive relief, including restitution, pursuant to Bus. &
4 Prof. Code §17203.

5 177. Through its conduct, Defendant Xerox has engaged in unfair business practices in
6 California by employing and utilizing the practices complained of herein. Defendant Xerox's use of
7 such unfair business practices constitute unfair competition that has provided and continues to provide
8 Defendants with an unfair advantage over their competitors.

9 178. Defendant Xerox's conduct as alleged herein is unlawful, unfair, and fraudulent.

10 179. Defendant Xerox's conduct as alleged herein is "unlawful" in that, among other things,
11 it violates the duties they owe to Plaintiff and the Class Members.

12 180. Defendant Xerox's conduct as alleged herein is also "unfair" because, among other
13 things, it was designed to deprive Plaintiff and the Class Members of their constitutionally protected
14 rights and their property for less than adequate consideration and to unjustly punish and penalize
15 Plaintiff and the Class.

16 181. Defendant Xerox's scheme, as alleged herein, is also "fraudulent," in that it is
17 knowingly calculated and likely to mislead. Defendant Xerox had actual knowledge of the egregious
18 penalties being charged by BATA, GGB and XERXO, the means by which its sought to conceal and
19 apply them, the coercive judgments and liens they were placing on Plaintiff and Class Members'
20 assets, and the illicit and reckless plans they possessed and concealed from Plaintiff and the Class
21 Members to obtain and misuse their personal and private information. Defendant Xerox has continued
22 to take steps to perpetuate these deceitful practices against the Plaintiff and the Class Members and
23 other members of the public at large.

24 182. Unless enjoined, Defendant Xerox will continue to harm the Plaintiff, the other Class
25 Members, and the general public. Plaintiff and the Class Members have suffered injuries in fact and
26 lost money as a result of Defendants' conduct, as more specifically alleged above.

27 183. As a result of Defendant Xerox's unfair business practices, it has reaped unfair benefits
28 and illegal profits at the expense of the Plaintiff and the Class Members. Defendant Xerox should be

1 made to disgorge its ill-gotten gains and restore such monies to Plaintiff and the Class Members.
2 Defendant Xerox's unfair business practices furthermore entitle Plaintiff and the Class Members
3 herein to obtain preliminary and permanent injunctive relief, including, but not limited to, orders that
4 Defendant Xerox cease its complained-of practices and account for, disgorge, and restore to Plaintiff
5 and the Class Members the compensation unlawfully obtained from them.

6 **COUNT VII**

7 **NEGLIGENCE**

8 **(By Plaintiff, Individually and On Behalf of All Class Members, Against All**

9 **Defendants)**

10 184. Plaintiff hereby refers to and incorporates by reference each and every allegation
11 contained in the preceding paragraphs of this Complaint.

12 185. Defendants owed a duty to Plaintiff and the Class Members to exercise due care in their
13 own actions so as not to create an unreasonable risk of injury to them.

14 186. Defendants also owe Plaintiff and Class Members duties that arose from *inter alia*: (1)
15 the contracts and associated documents between them and the BATA/District Defendants pursuant to
16 which Xerox accepted responsibility for the operation of the all-electronic tolling system of the Toll
17 Bridges, including all associated duties to send toll invoices and notices of toll evasions and to process,
18 collect, and review disputes of such invoices and notices; (2) their role as a Processing Agency, as
19 defined in Vehicle Code §§40252-40253; (3) the provisions of Civil Code §52.1 precluding them from
20 using threats or coercion (such as fines, loss of property, or loss of use of vehicles) to interfere with
21 the exercise and enjoyment of Plaintiff's and Class Members' statutory and constitutional rights; and
22 (4) the duty of ordinary persons not to collect or attempt collection of funds to which they are not
23 legally entitled, through coercive or unfair process.

24 187. Defendants owed a duty to Plaintiff and Class Members because: (1) they were
25 processing toll violations and notices of violations that were intended to affect Plaintiff and Class
26 Members; (2) it was easily foreseeable that if such invoices and notices were processed incorrectly or
27 unfairly, Plaintiff and the Class Members would suffer harm including the loss of their automobiles;
28 (3) there is a high degree of certainty that Plaintiff and Class Members suffered harm alleged, because

1 fines and DMV holds were imposed on them; (4) Defendants' conduct is closely connected to, and
2 indeed proximately caused, the injuries; (5) a high degree of moral blame attaches to Defendants'
3 conduct because it acted arbitrarily, capriciously, unfairly, and in violation of public policy as
4 described in the Complaint; and (6) there is need to prevent future harm to Plaintiff and the Class
5 Members.

6 188. Defendants breached these duties of care by negligently failing to train their employees;
7 adequately staff themselves; or develop, maintain, and enforce policies, systems, procedures and
8 guidelines, including, without limitation, as follows:

9 (a) To provide meaningful toll evasion citation review and to effectively resolve
10 complaints;

11 (b) To use "best efforts" to "obtain" accurate information concerning the identity
12 and address of the registered owner for the sending of toll invoices and notice of toll evasion violations;

13 (c) To provide vehicle owners with notice of toll violations within 21 days of the
14 violation, the facts associated with the violation, and all required disclosures, including the process for
15 contesting the violation and appealing an adverse decision;

16 (d) To provide vehicle owners with notice of delinquency toll evasion violations,
17 including all required disclosures, and the process for contesting the violation and appealing an adverse
18 decision;

19 (e) To provide fair, neutral, and adequate administrative review of toll evasion
20 violations and delinquency toll evasion violations in which vehicle owners are permitted to submit
21 evidence; and

22 (f) To correct or update their system and databases in a reasonable fashion.

23 189. Defendants owed a duty when rolling out a cashless toll system to give adequate notice
24 to consumers of violations. This is particularly true since many persons who use these Toll Bridges
25 are out-of-state tourists on vacation.

26 190. Defendants have engaged in a pattern and practice of acts of unfair competition in
27 violation of California's UCL, including the practices alleged herein.
28

1 191. Defendants issued penalties and tolls against Plaintiff and the Class Members that were
2 in excess of the intended penalty structure, pursuant to a cashless system designed by Defendants, and
3 based on negligence and errors in design of the toll road system.

4 192. As a foreseeable and proximate result of Defendants' negligent acts, Plaintiff and the
5 Class Members were injured, including by being forced to pay exorbitant fees, fines, and penalties;
6 suffering injury to their property and the use and enjoyment of such property; and losing their freedom
7 to move about.

8 193. This injury was directly and substantially caused by Defendants' negligence, as alleged
9 above.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff, and each Class Member, pray for judgment against Defendants as
12 follows:

13 A. That this action and the proposed class be certified and maintained as a class action,
14 appointing Plaintiff as representative of the Class, and appointing the attorneys and law firms
15 representing Plaintiff as counsel for the Class;

16 B. For actual damages, restitution, and all other appropriate legal and equitable and
17 injunctive relief;

18 C. For declaratory relief;

19 D. For pre-judgment and post-judgment interest;

20 E. For civil penalties, as requested herein;

21 F. For punitive and exemplary damages, as requested herein;

22 G. For attorneys' fees and costs pursuant, *inter alia*, Code of Civil Procedure §1021.5,
23 Civil Code §§1788.17 and 1788.30(c), and Streets and Highways Code §31490;

24 H. For appropriate injunctive relief;

25 I. For statutory damages in the amount of no less than \$2,500 or \$4,000 (as applicable)
26 per provision of each of Plaintiff's and Class Members' PII to each of the Unauthorized Parties, for
27 privacy policy violations as to the Class, and more as allowed, pursuant to California Streets and
28 Highways Code §31490; and

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J. For such other and further relief as this Court may deem just and proper.

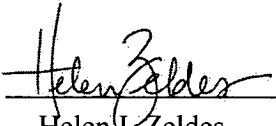
DEMAND FOR JURY TRIAL

Plaintiff and the Class Members hereby demand a trial by jury on all causes of action so triable.

Dated: July 13, 2018

Respectfully submitted,

COAST LAW GROUP LLP
HELEN I. ZELDES (220051)

By: 
Helen I. Zeldes

helen@coastlaw.com
225 Broadway, Suite 2050
San Diego, CA 92101
Telephone: (760) 942-8505
Facsimile: (760) 942-8515

Attorneys For Plaintiff
WILLIAM MONTGOMERY AND THE
PUTATIVE CLASS

EXHIBIT "E"

Attorney or Party without Attorney: COAST LAW GROUP LLP Helen I. Zeldes, Esq. (220051) 1140 S COAST HWY 101 ENCINITAS, CA 92024 Telephone No: 760-942-8505 Attorney For: Plaintiff and the Putative Class				For Court Use Only ELECTRONICALLY FILED Superior Court of California, County of San Francisco 08/23/2018 Clerk of the Court BY: YOLANDA TABO-RAMI Deputy Clerk	
Ref. No. or File No.: BATA-51006.01					
Insert name of Court, and Judicial District and Branch Court: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO					
Plaintiff: William Montgomery, individually and on behalf of those similarly situated Defendant: Bay Area Toll Authority, et al.					
PROOF OF SERVICE SUMMONS		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-18-568084

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the Summons, Complaint, Plaintiff's Application for Complex Designation, Declaration of Helen Zeldes in Support of Plaintiff's Application for Complex Designation
3.
 - a. Party served: Xerox State and Local Solutions, Inc.
 - b. Person served: Becky Degeorge, Process Specialist, CSC Lawyers, Registered Agent
4. Address where the party was served: 2710 Gateway Oaks Drive, Suite 150-N, Sacramento, CA 95833
5. I served the party:
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive process for the party (1) on: Fri, Aug 10 2018 at: 02:52 PM
 - (1) (business)
 - (2) (home)
 - (3) (other):
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 - a. as an individual defendant.
 - b. as the person sued under the fictitious name of (specify):
 - c. as occupant.
 - d. On behalf of (specify): Xerox State and Local Solutions, Inc. under the following Code of Civil Procedure section:

<input checked="" type="checkbox"/> 416.10 (corporation)	<input type="checkbox"/> 415.95 (business organization, form unknown)
<input type="checkbox"/> 416.20 (defunct corporation)	<input type="checkbox"/> 416.60 (minor)
<input type="checkbox"/> 416.30 (joint stock company/association)	<input type="checkbox"/> 416.70 (ward or conservatee)
<input type="checkbox"/> 416.40 (association or partnership)	<input type="checkbox"/> 416.90 (authorized person)
<input type="checkbox"/> 416.50 (public entity)	<input type="checkbox"/> 415.46 (occupant)
<input type="checkbox"/> other:	



Attorney or Party without Attorney: COAST LAW GROUP LLP Helen I. Zeldes, Esq. (220051) 1140 S COAST HWY 101 ENCINITAS, CA 92024 Telephone No: 760-942-8505				For Court Use Only	
Attorney For: Plaintiff and the Putative Class			Ref. No. or File No.: BATA-51006.01		
Insert name of Court, and judicial District and Branch Court: SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO					
Plaintiff: William Montgomery, individually and on behalf of those similarly situated Defendant: Bay Area Toll Authority, et al.					
PROOF OF SERVICE SUMMONS		Hearing Date:	Time:	Dept/Div:	Case Number: CGC-18-568084

Recoverable cost Per CCP 1033.5(a)(4)(B)

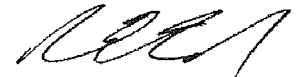
7. Person who served papers

- a. Name: Michael Morris
- b. Address: FIRST LEGAL
1111 6th Avenue, Ste. 204
SAN DIEGO, CA 92101
- c. Telephone number: (619) 231-9111
- d. The fee for service was: \$153.54
- e. I am:
 - (1) not a registered California process server.
 - (2) exempt from registration under Business and Professions Code section 22350(b).
 - (3) a registered California process server:
 - (i) owner employee independent contractor
 - (ii) Registration No: 2102-33
 - (iii) County: Sacramento

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

08/13/2018

(Date)



(Signature)



EXHIBIT "F"

1 LAFAYETTE & KUMAGAI LLP
GARY T. LAFAYETTE (SBN 88666)
2 BARBARA L. LYONS (SBN 173548)
1300 Clay Street, Suite 810
3 Oakland, California 94612
Telephone: (415) 357-4600
4 Facsimile: (415) 357-4605

5 Attorneys for Defendant
6 CONDUENT STATE & LOCAL SOLUTIONS, INC. f/k/a
XEROX STATE & LOCAL SOLUTIONS, INC.
7

8 **UNITED STATES DISTRICT COURT**

9 **NORTHERN DISTRICT OF CALIFORNIA**

10 WILLIAM MONTGOMERY, individually and
on behalf those similarly situated,

11 Plaintiff,

12 v.

13 BAY AREA TOLL AUTHORITY; GOLDEN
14 GATE BRIDGE, HIGHWAY AND
15 TRANSPORTATION DISTRICT; XEROX
STATE & LOCAL SOLUTIONS, INC.; and
16 DOES 1 - 100,

17 Defendants.

Case No.

DECLARATION OF JEFF FRANK

Action filed: July 13, 2018

18
19 I, Jeff Frank, declare:

20 1. I am the Program Manager, for Conduent State & Local Solutions, Inc., formerly
21 known as Xerox State & Local Solutions, Inc. ("Conduent"). I have been in this position since 4
22 April, 2017. I make this declaration of my own personal knowledge. If called as a witness to
23 testify regarding matters stated in this declaration, I could and would competently testify thereto
24 under oath.

25 2. Xerox State & Local Solutions, Inc. was a subsidiary of Xerox Business Services,
26 LLC, which, in turn, was a subsidiary of Xerox Corporation. On January 1, 2017, Xerox
27 Corporation split into two independent companies, Xerox Corporation and Conduent, Inc. Xerox
28 State & Local Solutions, Inc. then changed its name to Conduent State & Local Solutions, Inc.

LAFAYETTE & KUMAGAI LLP
ATTORNEYS AT LAW
101 MISSION STREET, SUITE 600
SAN FRANCISCO, CALIFORNIA 94105
(415) 357-4600

1 3. Xerox State & Local Solutions, Inc. was a New York corporation. Conduent
2 remains a New York corporation.

3 4. Conduent maintains its principal place of business in Florham Park, New Jersey.

4 5. Conduent provides diversified business process services to companies and
5 governments with leading capabilities in digital processing, automation, and analytics to help
6 clients deliver quality services.

7 6. Conduent is a private corporation that contracted with Bay Area Transit Authority
8 (“BATA”) to operate and manage the regional customer service center for FasTrak, including tolls
9 on the Golden Gate Bridge (“GGB”) for the Golden Gate Bridge, Highway and Transportation
10 District (“District”) as well as other toll bridges.

11 7. Conduent has a services contract with BATA to manage the FasTrak Regional
12 Customer Service Center (“FasTrak”), which coordinates toll operation and communications with
13 motorists regarding tolls, fines and fees pertaining to toll-bridge crossings.

14 8. BATA, not Conduent, establishes policies and procedures governing road signs,
15 notices of tolls and fines, and the ability to challenge fines. Conduent is neither authorized to
16 change BATA’s policies, nor does Conduent have discretion to deviate from BATA’s policies when
17 Conduent applies such polices and BATA-mandated procedures.

18 9. When a motorist crosses an electronically operated toll-bridge without a FasTrak
19 account, the lane host uses digital imaging to obtain a picture of the license plate. The license plate
20 state and number are then transferred by the lane host to Conduent. Conduent then verifies whether
21 the motorist is enrolled with a FasTrak account. If not, Conduent then sends the license plate
22 number the appropriate state’s Department of Motor Vehicles. In turn, the DMV sends back
23 address information so Conduent can invoice the motorist via mail, pursuant to its mandatory
24 obligations as part of Conduent’s services contract with BATA.

25 10. The Plaintiff’s Complaint in this case describes such license plate, name and address
26 information as Personally Identifiable Information, or PII.

27 11. BATA establishes policies and procedures for handling PII, and Conduent is not
28 authorized to modify those policies and procedures.

LAFAYETTE & KUMAGAI LLP
ATTORNEYS AT LAW
1300 CLAY STREET, SUITE 810
OAKLAND, CALIFORNIA 94612
(415) 357-4600


1 12. Additionally, Conduent maintains unique agreements with each state's DMV,
2 specifying how to handle PII provided by the respective DMV.

3 13. Conduent's handling of PII is compliant with all relevant regulations including
4 General Data Protection Regulations.

5 14. California's Vehicle Code requires the toll invoice to be mailed to the "registered
6 owner," information which Conduent obtains from the DMV. The registered owner must pay the
7 toll within 21 days.

8 15. If a motorist does not pay the invoice within 21 days, Conduent sends a toll evasion
9 notice, which includes the toll and a \$25 fine for late payment.

10 Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury under the laws of the
11 United States of America and the State of California that the foregoing is true and correct and that
12 this declaration was executed on 31 August, 2018, at San Francisco, California.

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15 _____
16 JEFF FRANK
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LAFAYETTE & KUMAGAI LLP
ATTORNEYS AT LAW
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OAKLAND, CALIFORNIA 94612
(415) 357-4600

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action: Drivers Charged 'Excessive Penalties' for Bay Area Toll Bridge Violations Without Notice](#)
