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Special Master

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

IN RE: TOLL ROADS LITIGATION
PENNY DAVIDI BORSUK; DAVID COULTER;
EBRAHIM E. MAHDA; TODD QUARLES;
TODD CARPENTER; LORI MYERS; DAN
GOLKA; and JAMES WATKINS on Behalf
of Themselves and All Others Similarly
Situated,

Plaintiffs,

v.

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

Defendants.

Case No. 8:16-cv-00262 ODW (JCGx)

(JW Reference No.: A267204)

**SPECIAL MASTER’S REPORT AND
RECOMMENDATION REGARDING PLAINTIFFS’
MOTION FOR FINAL APPROVAL OF THREE CLASS
ACTION SETTLEMENTS (DKT. NO. 614) AND
PLAINTIFFS’ MOTION FOR ATTORNEYS’ FEES,
COSTS, AND SERVICE AWARDS (DKT. NO. 611)**

1 Eight plaintiffs, on behalf of themselves and others similarly situated, filed this lawsuit
2 challenging the operation of certain California toll roads. Defendants are the transportation
3 agencies in charge of those toll roads and some of those agencies' employees and contractors.

4 After many years of protracted litigation, Plaintiffs now move for final approval of three
5 class action settlements. (Dkt. No. 614.) They also move for attorneys' fees, costs, and service
6 awards. (Dkt. No. 611.)

7 Judge Wright appointed this Special Master to:

8 consider[] and recommend[] whether to approve, on preliminary and final
9 bases, all proposed class settlements reached in this case, the notice plan
10 including the proposed notice of the proposed settlements to be disseminated
11 to members of the settlement class, and any administrative fees, attorneys'
fees and costs, and service awards pursuant to Federal Rule of Civil Procedure
23.

12 (Dkt. No. 82 at 1.)

13 The Special Master held a hearing on these motions on January 4, 2022. Before the
14 hearing, the parties were provided with a tentative ruling regarding the materials presented. The
15 hearing was conducted via a ZOOM webinar format, and all class members were provided with
16 meeting information that allowed them to observe the hearing as Participants and send chat
17 messages to the Special Master and counsel. The hearing was reported by Stephanie Leslie,
18 CSR No. 12893.

19 The Special Master appreciates counsel's preparation for the hearing and fulsome
20 answers to the Special Master's and class members' questions during the hearing.

21 The Special Master has considered all materials presented, and now **RECOMMENDS**
22 **GRANTING** the motion for final approval, including certification of the proposed settlement
23 classes, and **RECOMMENDS GRANTING** the motion for fees, costs, and awards.

24 The Special Master further **RECOMMENDS** that the Court sign the versions of the parties'
25 proposed orders that are attached to this Report, including the two proposed orders granting
26 motion for final approval of class action settlement and OCTA's proposed class action judgment.
27
28

1 **1. BACKGROUND**

2 Few facts have changed since the Special Master recommended, and the Court granted,
3 preliminary approval of the parties' three settlement agreements. (See Dkt. Nos. 590, 596,
4 599, 600.) But given the complexity of the settlements and the differing participants in each of
5 them, the Special Master repeats some of the brief background that was stated in his two
6 earlier Reports.

7 This lawsuit concerns two sets of Southern California toll roads. One set of toll roads,
8 referred to here as the "TCA toll roads," covers California Highway Routes 73, 133, 241, and
9 261. It is operated by the Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills
10 Transportation Corridor Agency (collectively, "TCA entities"). The other set is operated by the
11 Orange County Transportation Authority (or "OCTA") and is commonly referred to as the 91
12 Express Lanes.

13 Settling Plaintiffs—Penny Davidi Borsuk, David Coulter, Ebrahim E. Madha, Todd Quarles,
14 Todd Carpenter, Lori Myers, and Dan Golka—are seven drivers who have driven on the TCA toll
15 roads without paying the toll, and who then received toll violation notices and penalties.
16 Plaintiffs Golka and Coulter have also received toll violation notices and penalties for driving on
17 the 91 Express Lanes without properly paying the toll. Plaintiff James Watkins also participated
18 in the case, but is not a party to any of the settlements. (Dkt. No. 614 at 7.)

19 The defendants named in Plaintiffs' operative complaint are associated with either the
20 TCA toll roads or the 91 Express Lanes. Aside from the TCA entities, the defendants sued for
21 their alleged role in the operation of the TCA toll roads (also referred to in this report as the "TCA
22 Defendants") include: TCA employees Rhonda Reardon, Michael Kraman, Craig Young, Scott
23 Schoeffel, and Ross Chun, and TCA contractor BRiC TPS LLC. Another TCA contractor, 3M
24 Company ("3M") is separately referenced in this report, as 3M reached a separate settlement
25 agreement with Settling Plaintiffs. In his first Report, the Special Master recommended granting
26 preliminary approval of two settlements: (1) a settlement between TCA Defendants and Settling
27 Plaintiffs, and (2) a separate settlement between 3M and Plaintiffs Carpenter, Myers, Golka,
28 Borsuk, and Coulter (Quarles' and Madha's claims against 3M were previously dismissed (see

1 Dkt. No. 440 at 6–7)). (Dkt. No. 590 at 9.)

2 As for the defendants sued regarding the 91 Express Lanes (or the “OCTA Defendants”),
 3 they include OCTA contractor Cofiroute USA, LLC, and OCTA employees Lori Donchak and Darrel
 4 Johnson. In his second Report, the Special Master recommended granting preliminary approval
 5 of a settlement between the OCTA Defendants and Plaintiff Golka. (Dkt. No. 596 at 8.) (Although
 6 Coulter also received a toll violation notice for driving on the 91 Express Lanes, he is only
 7 participating in the TCA Settlement Agreement and is not participating in the OCTA Settlement
 8 Agreement.)

9 Broadly speaking, Plaintiffs’ putative class action challenged the amount of the penalties
 10 Defendants charge, and Defendants’ enforcement and collection practices. One group of claims
 11 particularly called into question Defendants’ efforts to provide notice of the penalties assessed
 12 and the underlying tolls, and Defendants’ practice of sharing drivers’ personally identifiable
 13 information (commonly referred to as “PII”) with third parties.

14 **2. SETTLEMENT**

15 **2.1 Settlement Value**

16 For each settlement, the parties propose that class notice and administration costs, the
 17 costs of the Special Master and his team, class counsel’s attorneys’ fees and costs, and
 18 proposed service awards to class representatives be paid out of the non-reversionary
 19 settlement funds (*not* any penalty forgiveness values), in the following breakdowns:

	TCA Defendants	3M	OCTA
Penalty Forgiveness Value	\$135,000,000	--	\$40,000,000
Total Initial Value of Non-Reversionary Settlement Fund	\$ 29,000,000	\$11,950,000	\$ 1,000,000
Proposed Attorneys’ Fees and Costs	\$ 17,500,000	\$ 2,987,500	\$ 250,000
Class Notice and Administration Costs (upper estimates; see Dkt. No. 617 at 3)	\$ 3,254,366.60	\$ 448,869.45	\$ 423,413.47

1	Proposed Service Awards to Class Representatives	\$ 105,000	\$ 15,000	\$ 5,000
2				
3	Costs of Special Master (upper estimate, shown as split equally among Defendants for purposes of this chart only)	\$ 15,000	\$ 15,000	\$ 15,000
4				
5				

6 **TCA Settlement**

7 The TCA settlement includes “\$29 million dollars in cash, \$135 million dollars in penalty
8 forgiveness and substantial injunctive and programmatic relief (changes to the TCA’s
9 practices).” (Dkt. No. 614 at 9.)

10 After all fee and cost deductions are made, the money remaining of the \$29 million will
11 go to “Settlement Class Members who submitted valid Claim Forms and **are not** eligible for
12 penalty forgiveness” on a pro-rata basis. (Dkt. No. 614 at 9 (emphasis added).) “[U]nconfirmed
13 claims” will receive half of the pro rata share. (*Id.* at 9 n.8.)

14 TCA’s \$135 million penalty forgiveness fund will go toward Settlement Class Members
15 with outstanding penalties. Plaintiffs explain,

16 [f]irst, all Participating Penalty Forgiveness Class Members will receive the
17 lesser of the total of their outstanding penalties or \$57.50 (the equivalent of at
18 least one penalty assessment) in penalty forgiveness. Second, the remainder
19 of the Penalty Forgiveness Fund will be distributed to Penalty Forgiveness Class
20 Members from those with the oldest outstanding penalties to the newest. There
is no requirement to submit a Claim Form to receive penalty forgiveness, it will
be electronically pushed out to Penalty Forgiveness Class Members.

21 (*Id.* at 9–10.)

22 Some of the remedial measures that Plaintiffs state are also included in the TCA
23 settlement follow. (*Id.* at 10–12 (listing remedial measures as “include[d], but not limited to.”).)

- 24 • TCA will increase the time that drivers have available to pay tolls before a Notice of
25 Evasion issues, from 5 days to 7 days.
- 26 • TCA will change their privacy policy to include lists of categories of PII sent or received
27 from various entities.

- 1 • TCA asks that the Court approve that TCA can send “(i) a single email to all account
2 holders notifying them that they have been opted out and asking them to select their
3 communications preferences in their online account; and (ii) a statement to be
4 included in any other communications that would otherwise be sent to TCA
5 customers advising them to update their communications preferences and/or
6 containing a link to a website that allows TCA customers to update their
7 communications preferences.” (*Id.* at 10.) If TCA receives approval, it will perform a
8 one-time removal of “the opt-in status [] for all current subscribers in the VTX system
9 (governing opt-ins for communications by TCA).” (*Id.*)
- 10 • TCA has agreed to certain limitations on PII transmissions. (*Id.* at 11–12.)
- 11 • TCA has “provided significant revisions and improvements to its privacy policy to now
12 disclose its current collection and sharing PII practices.” (*Id.* at 12.)

13 **3M Settlement**

14 The 3M settlement includes a \$11.95 million dollar cash settlement fund. (*Id.* at 18.)
15 After all fee and cost deductions are made, payments from the 3M settlement fund will be
16 distributed on a pro-rata basis to each individual who submits valid claim forms. (*Id.* (explaining
17 “pro-rata” as “the total fund, minus costs, divided by the total number of claims.”).) “If there are
18 any remaining funds after the initial distribution, a second round of checks will also be allocated
19 on a pro rata basis to the claimants who have cashed their settlement checks or accepted their
20 digital payments.” (*Id.*) “[U]nconfirmed claims” will receive half of the pro rata share. (*Id.* at 18
21 n.11.)

22 Members of the 3M Settlement Class are also members of the TCA Settlement Class,
23 and were able to make claims for either or both settlement funds. (*Id.* at 17, 19.)

24 **OCTA Settlement**

25 The OCTA Settlement includes “\$1 million dollars in cash, \$40 million dollars in penalty
26 forgiveness, and programmatic relief, including a reduction in OCTA’s maximum toll violation
27 penalty.” (Dkt. No. 614 at 21.)
28

1 After all fee and cost deductions are made, payments from the \$1 million cash
2 settlement fund will be distributed “on a pro rata basis to the members of the Debt Collection
3 Subclass who are not eligible for penalty forgiveness because they do not have outstanding
4 unpaid penalties and who submit valid claims, up to a maximum of \$15.00 per person.” (*Id.* at
5 21–22.) Plaintiff states that “[a]ny remaining cash after distribution to eligible class members
6 will be donated to Privacy Rights Clearinghouse as a *cy pres* award.” (*Id.* at 22.)

7 OCTA’s \$40 million penalty forgiveness fund will go to Debt Collection Subclass Members
8 with outstanding penalties (“Penalty Forgiveness Eligible Class Members”). Plaintiff explains,

9 [f]irst, all penalties owed as of the Settlement Class Period End Date by Penalty
10 Forgiveness Eligible Class Members will be reduced to \$100.00 per violation
11 (from a current maximum of between \$150 and \$190). Second, the remainder
12 of the \$40 million penalty forgiveness fund will be allocated on a per capita
13 basis to all Penalty Forgiveness Eligible Class Members and applied to the
14 remaining balance of their outstanding penalties.

15 ...

16 There is no requirement to submit a claim form to receive penalty forgiveness
17 – it will be electronically credited to the violation accounts of the Penalty
18 Forgiveness Eligible Class Members. For debts that have been reduced to
19 judgments, partial satisfaction of judgments will be filed.

20 (*Id.* at 22.)

21 In addition to the penalty forgiveness and cash settlement funds, Plaintiff states that
22 “OCTA will reduce the maximum per-violation penalty to \$100.00 from a maximum penalty of
23 20x the highest system wide toll. The highest the toll penalty has been during the class period is
24 \$195.00.” (*Id.* at 22–23.) Plaintiff further states, “the Parties have agreed that the only PII of
25 toll violators that OCTA or Cofiroute will provide to a subcontracted third-party debt collector will
26 be the information contained in the relevant toll violation notice(s), together with any updated
27 contact, address and/or email information, and a unique toll violator identification number
28 assigned by Cofiroute.” (*Id.* at 23.)

2.2 Proposed Class Definitions

The settlement agreements are based on proposed class definitions that differ in some

1 respects from the Privacy Class that was previously certified in this case. (See Dkt. No. 501 at
2 19–20.) The Special Master reviewed these proposed class definitions at the preliminary
3 approval stage.

4 **TCA Settlement Class**

5 The parties propose a definition of the TCA Settlement Class as follows.

6 All individuals whose PII [(“Personally Identifiable Information”)] was provided
7 by Defendants [TCA, BRiC, and 3M] to any other individual or entity between
8 April 13, 2015 and the Settlement Class Period End Date [June 16, 2021],
except as otherwise specified. The Settlement Class consists of:

- 9 • Any person with a transponder account with a Toll Agency whose PII
10 was sent by Defendants to another Toll Agency between April 13,
11 2015 and the Settlement Class Period End Date (the
12 “Interoperability Subclass”);
- 13 • Any person who used any of the TCA Toll Roads whose PII was sent
14 by Defendants to a third party between April 13, 2015 and the
15 Settlement Class Period End Date in connection with TCA
16 Defendants’ efforts to collect tolls and/or penalties (the
17 “Collection/Enforcement Subclass”);
- 18 • Any person whose PII was sent by Defendants to a third party
19 between April 13, 2015 and the Settlement Class Period End Date
20 for any reason other than those listed above (the “Communications
21 Subclass”).

22 Excluded from the Settlement Class are: (1) employees of TCA Defendants,
23 including their current and former directors, officers and counsel; (2) any entity
24 that has a controlling interest in TCA Defendants; (3) TCA Defendants’ affiliates
25 and subsidiaries; and (4) the judge to whom this case is or was assigned, any
26 member of the judge’s immediate family, and any member of the judge’s staff.

27 (Dkt. No. 614 at 9; see also Proposed Order re Final Approval of TCA & 3M Class Action
28 Settlements, Dkt. No. 614-5 at 4–5, ¶ 4.)

29 **3M Settlement Class**

30 The parties propose a definition of the 3M Settlement Class as follows.

31 All individuals whose PII [(“Personally Identifiable Information”)] was provided
32 by 3M or TCA to any other individual or entity from April 13, 2015 to June 30,
33 2015, including:

- 34 • Any person with a transponder account with a Toll Agency whose PII
35 was sent by 3M or TCA from April 13, 2015 to June 30, 2015 to
36 another Toll Agency (interoperability transmissions);
- 37 • Any person who used any of the TCA Toll Roads whose PII was sent
38 by 3M or TCA to a third party from April 13, 2015 to June 30, 2015

- in connection with efforts to collect tolls or penalties (collection transmissions); and
- Any person whose PII was sent by 3M or TCA to a third party from April 13, 2015 to June 30, 2015 for any reason other than those listed above (other transmissions).

Excluded from the Settlement Class are: (1) employees of Defendant, including their current and former directors, officers and counsel; (2) any entity that has a controlling interest in Defendant; (3) Defendant’s affiliates and subsidiaries; and (4) the judge to whom this case is assigned, any member of the judge’s immediate family, and any member of the judge’s staff.

(*Id.* at 17–18; see also Proposed Order re Final Approval of TCA & 3M Class Action Settlements, Dkt. No. 614-5 at 4, ¶ 3.)

OCTA Settlement Class

The parties propose a definition of the OCTA Settlement Class as follows.

[All] individuals whose PII was provided by OCTA or Cofiroute to an entity described below between June 29, 2015 and May 27, 2021 . . . :

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

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

1 (Dkt. No. 614 at 20–21; see also Proposed Order re Final Approval of OCTA Class Action
2 Settlement, Dkt. No. 614-4 at 5, ¶ 3.)

3 **2.3 Notice & Class Member Communications**

4 After preliminary approval was granted, Epiq Class Action & Claims Solutions, Inc., the
5 parties’ settlement administrator, was able to deliver the court-approved notices to millions of
6 individuals, estimating notice efforts reached 93% to 95% of identified Settlement Class
7 Members. (See Suppl. Azari Decl. re TCA & 3M Settlements, Dkt. No. 617-1 ¶¶ 6, 7; Suppl. Azari
8 Decl. re OCTA Settlement, Dkt. No. 617-2 ¶¶ 6, 7.) As of December 21, 2021, Epiq had
9 received: “740,356 claims for the TCA Settlement, 299,397 for the 3M Settlement, and
10 296,945 for the OCTA Settlement.” (Dkt. No. 617 at 1.) Epiq had also received “482 opt-outs
11 from the TCA Settlement, 471 from the 3M Settlement, and 44 from the OCTA Settlement.” (*Id.*)

12 The Attorney General of the United States and the 51 Attorneys General as well as the
13 five territories were notified of the settlement under 28 U.S.C. § 1715, and no objections have
14 been received. (See Azari Decl. re TCA & 3M Settlements, ¶ 9; Azari Decl. re OCTA Settlement,
15 ¶ 9.)

16 There was one objection to the TCA Settlement. (Dkt. No. 612.) That objection was
17 withdrawn, with an accompanying joint stipulation filed requesting that counsel for the objector
18 be reimbursed for attorney’s fees and costs in the amount of \$55,772.55 “subject to the
19 Special Master’s Report and Recommendation and Court approval.” (Dkt. No. 615, 616.)

20 The parties have also submitted correspondence that counsel received from *pro se*
21 plaintiff James Watkins. (See Dkt. No. 617 at 2.) The parties state that Watkins’s
22 correspondence makes “several unfounded assertions about the TCA Settlement” and is
23 “procedurally flawed because it was not filed in accordance with the procedures set forth in the
24 Preliminary Approval Order or on the Settlement website.” (*Id.*)

25 **2.3 Attorneys’ Fees, Costs, and Service Awards**

26 Plaintiffs have separately moved for the following.

27 (a) Service Awards to the Class Representatives totaling \$125,000 for all three
28 settlements (between \$15k and \$23k to each Class Representative [footnote

omitted]); (b) Class Counsel’s attorneys’ fees in the amount of \$20,737,500; and (c) unreimbursed expenses in the amount of \$571,972.15.

(Dkt. No. 611 at i.)

Regarding Service Awards, Plaintiffs seek the following awards for each Class Representative.

	Quarles	Carpenter	Myers	Madha	Golka	Borsuk	Coulter
3M		3,000	3,000		3,000	3,000	3,000
TCA	15,000	15,000	15,000	15,000	15,000	15,000	15,000
OCTA					5,000		
totals	15,000	18,000	18,000	15,000	23,000	18,000	18,000

(*Id.*)

4. FINAL APPROVAL

4.1 Legal Standard

Courts may only approve a settlement agreement that is “fair, reasonable, and adequate.” Fed. R. Civ. P. 23(e)(2). Review of a proposed settlement generally involves two separate hearings. Federal Judicial Center, Manual for Complex Litigation, § 21.632 (4th ed. 2004). First the court makes a preliminary fairness evaluation. *Id.* It then holds a final approval hearing, where it “takes a closer look at the proposed settlement, taking into consideration objections and any other further developments in order to make a final fairness determination.” *True v. Am. Honda Motor Co.*, 749 F. Supp. 2d 1052, 1062 (C.D. Cal. 2010).

To determine whether a settlement agreement is fair, reasonable, and adequate, courts must consider various factors, including (1) the strength of plaintiffs’ case; (2) the risk, expense, complexity, and likely duration of further litigation; (3) the risk of maintaining class action status throughout the trial; (4) the amount offered in settlement; (5) the extent of discovery completed, and the stage of the proceedings; (6) the experience and views of counsel; (7) the presence of a governmental participant; and (8) the reaction of the class members to the proposed

1 settlement. *Staton v. Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003) (citation omitted); see also
2 Fed. R. Civ. P. 23(e)(2)(A)–(D). “This is by no means an exhaustive list of relevant
3 considerations.” *Officers for Justice v. Civil Serv. Comm'n of City & Cty. of San Francisco*, 688
4 F.2d 615, 625 (9th Cir. 1982). “The relative degree of importance to be attached to any
5 particular factor will depend upon and be dictated by the nature of the claim(s) advanced, the
6 type(s) of relief sought, and the unique facts and circumstances presented by each individual
7 case.” *Id.* “It is the settlement taken as a whole, rather than the individual component parts,
8 that must be examined for overall fairness, and the settlement must stand or fall in its
9 entirety.” *Staton*, 327 F.3d at 960 (quoting *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1026 (9th
10 Cir. 1998)).

11 “[T]he decision to approve or reject a settlement is committed to the sound discretion of
12 the trial judge.” *Hanlon*, 150 F.3d at 1026. Ultimately, “[s]trong judicial policy favors
13 settlements.” *Churchill Vill., LLC v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir. 2004) (omission and
14 quotation marks omitted) (quoting *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th
15 Cir. 1992)).

16 **4.2 Class Certification for Settlement Purposes Remains Appropriate**

17 In the Preliminary Approval Orders, the Court certified the proposed settlement classes.
18 (Dkt. No. 599 at 3–4, ¶ 2; Dkt. No. 600 at 3 ¶ 2.) The Special Master finds and concludes that
19 the same facts and reasons articulated in the Special Master’s R&Rs recommending granting
20 preliminary approval continue to be present. (Dkt. No. 590 at 4–10, Dkt. No. 596 at 3–9.) Thus,
21 the Special Master continues to recommend that certification of the three proposed settlement
22 classes for settlement purposes only is appropriate. The Special Master further recommends
23 the same class representative(s), class counsel, and third-party settlement administrator as
24 were recommended in the preliminary approval R&Rs. (Dkt. No. 590 at 9–10, Dkt. No. 596 at
25 8–9.)

26 **4.3 Ninth Circuit Fairness Factors**

27 Application of the Ninth Circuit’s multi-factor test, as well as the factors of Rule
28 23(e)(2)(A)–(D), supports approval of these settlements. See Section 2; see also *Staton*, 327

1 F.3d at 959.

2 The Special Master is satisfied that the settlement is based on a sufficient
3 understanding of what’s at stake in this case. The TCA Settlement involves an enormous class –
4 over twelve million members – and the other two classes are significant in size as well. (Azari
5 Decl. re TCA & 3M Settlements, Dkt. No. 614-2 ¶ 19 (finding 12,180,235 unique Settlement
6 Class Member records for the TCA Settlement and a subset of 1,158,138 records that are also
7 part of the 3M settlement); Azari Decl. re OCTA Settlement, Dkt. No. 614-3 ¶ 20 (finding
8 979,740 unique Settlement Class Member records for the OCTA Settlement).) Plaintiffs’ motion
9 provides a thoughtful description of the litigation history for this case, which involved significant
10 discovery, motion practice, and arms-length settlement negotiations. (Dkt. No. 614 at 2–8.) This
11 case has been substantially litigated, with major litigation costs.

12 Discovery efforts were “intense, wide-ranging and extensive.” (Dkt. No. 614 at 3.)
13 “Plaintiffs undertook comprehensive and ambitious discovery into all five Defendants’ conduct,
14 including the production of and review of over 500,000 pages of documents, depositions of 34
15 witnesses, expert discovery, a site inspection of TCA’s VTX System and a site inspection of the
16 computerized database and software system maintained by Cofiroute on behalf of OCTA.” (Dkt.
17 No. 614 at 3 (citing Zeldes Decl., Dkt. No. 614-1 ¶ 6).)

18 The parties also engaged in significant motion practice, including at the pleading stage,
19 class certification stage, and summary judgment stage. Particularly important was the Court’s
20 Order Regarding Defendants’ Motion To Decide Key Legal Questions. (Dkt. No. 566.) It included
21 rulings on issues raised throughout the case. The Court had long proposed to make such rulings
22 to facilitate the advancement of the case, and they ultimately affected numerous aspects of it,
23 including the meaning of important statutory language.

24 Despite how much litigation had already occurred in this case, the risk, expense,
25 complexity, and likely duration of continued litigation were also substantial. As the ruling on Key
26 Legal Questions showed, Plaintiffs faced serious threats to many of their claims. Even if one or
27 more of Plaintiffs’ claims had survived additional motion practice, Plaintiffs still had to prove
28 their case at trial and, if they won at trial, likely defend a verdict in their favor on appeal. For

1 these same reasons, continued litigation would remain protracted and costly, a reality made
2 worse by the complex nature of the claims and the significant size of the classes. Indeed, as the
3 very first case brought under a California Streets & Highways Code § 31490, the uncertainty,
4 complexity, and high stakes of this case have continued to be apparent over the course of this
5 litigation. There is no indication that would have changed if the case had gone to trial or appeal.

6 All parties endorse the settlements, which were reached after extensive arms-length
7 negotiations during five mediations before settlements were reached with all Defendants. (See
8 Dkt. No. 614 at 5–6 (citing Zeldes Decl., Dkt. No. 614-1 ¶ 14–15)); see also *Rodriguez v. W.*
9 *Publ'g Corp.*, 563 F.3d 948, 965 (9th Cir. 2009). All parties participated in a mediation session
10 with Lynn Frank in 2017. Plaintiffs and the TCA Defendants then reached their settlement after
11 two mediation sessions with third-party mediators Robert Kaplan and Rachel Ehrlich. Indeed,
12 they report that their second mediation, with Ms. Ehrlich, “lasted for 19 hours concluding at
13 4:30 a.m. in the morning.” (*Id.* at 6.) Plaintiffs and 3M also reached their settlement after two
14 mediation sessions, both with Mr. Kaplan, and further communications and negotiations
15 between themselves and with his assistance. (*Id.*) Plaintiffs and OCTA settled after the Court
16 issued its Order Regarding Defendants’ Motion To Decide Key Legal Questions. In their second
17 mediation with Mr. Kaplan, “[t]he parties made significant progress toward a resolution,
18 including a conceptual agreement on many of the basic terms of a settlement. Mr. Kaplan
19 submitted a Mediator’s Proposal, which was accepted by all of the Parties.” (*Id.*) The TCA and
20 OCTA settlements were subject to board approval, and were approved by their respective
21 boards soon after. (*Id.*)

22 As spelled out in Section 2, the settlements reached provide meaningful relief to class
23 members. The TCA and OCTA Settlements include penalty forgiveness of up to \$135 million and
24 \$40 million for certain class members. The Special Master has considered various factors
25 relating to these penalty forgiveness amounts, and determines that the overall settlements are
26 fair, reasonable, and equitable, including as they relate to these amounts. All three settlements
27 also include a non-reversionary cash value, with \$29 million for certain TCA class members,
28 \$11.95 million for 3M class members, and \$1 million for certain OCTA class members. The TCA

1 and OCTA Settlements also include programmatic relief that will benefit all class members. As
2 stated at the preliminary approval stage, the Special Master also finds the *cy pres* award to
3 Privacy Rights Clearinghouse is appropriate given the nature of this case.

4 The reaction of the class members to the proposed settlements has been
5 overwhelmingly positive. As Plaintiffs explain, “Epiq sent approximately 15 million notices to
6 potential class members. Over a million made claims seeking benefits. Only 485 [at the time
7 Plaintiffs’ motion for final approval was filed] requests for exclusion were filed, along with only
8 one objection to the TCA Settlement only.” (*Id.* at 29.) The objection to the TCA Settlement has
9 since been resolved. (Dkt. No. 615, 616.)

10 Counsel on both sides are experienced and have a clear view of the strengths and
11 weaknesses of the case. The counsel involved are thus positioned well to judge its value.

12 Based on a review of all materials presented, the Special Master recommends finding
13 that the settlements are overall fair, reasonable, and equitable.

14 **4.4 Other Matters**

15 The Special Master has reviewed the settlement notices to class members and Epiq’s
16 implementation plan, and recommends finding due process and Rule 23(e)(2)(C)(ii) have been
17 satisfied. (See Azari Decl. re TCA & 3M Settlement; Azari Decl. re OCTA Settlement.)

18 As also stated in the Preliminary Approval R&Rs, the Special Master recommends
19 approving TCA’s proposal to change every account holder’s status to “opt out” in conjunction
20 with a single email and statements included in other communications that would otherwise be
21 sent to customers advising them to update their communication preferences to “opt in.”

22 In the Preliminary Approval R&Rs, the Special Master previously considered the parties’
23 request for a permanent injunction barring members of the Settlement Class from pursuing a
24 claim or litigation against Defendants for providing information to Epiq for class action
25 settlement notice purposes. (See, e.g., Dkt. No. 590 at 19.) The parties have submitted
26 amended proposed orders granting final approval of class action settlement that include
27 permanent injunction language. Based on conversation with counsel at the hearing, the Special
28

1 Master is satisfied that the proposed language should be entered based on the parties' joint
2 agreement.

3 At the preliminary approval stage, the Special Master also discussed the language in the
4 releases with the parties. (*Id.*) The parties have submitted amended proposed orders granting
5 final approval of class action settlement that include release language consistent with the
6 changes previously discussed with the Special Master during the preliminary approval hearing.
7 Based on conversation with counsel at the hearing, the Special Master finds that the release
8 language is appropriate and sufficiently limited given the nature of this case.

9 Also at the preliminary approval stage, the parties and Special Master discussed some
10 express carve-outs to the OCTA Settlement. (See, e.g., Dkt. No. 596 at 17 – 18.) The parties have
11 submitted amended proposed orders granting final approval of class action settlement that
12 include the express carve-outs. Based on conversation with counsel at the hearing, the Special
13 Master finds that the carve-outs are appropriate and adequately reflected in the record.

14 The parties also previously filed a joint stipulation requesting over \$55,000 in attorney
15 fees and costs for an objector who has since withdrawn his objection to the TCA Settlement. The
16 Special Master and parties briefly discussed the joint stipulation at the hearing. (Dkt. No. 615,
17 616.) The Special Master notes that Judge Wright has already adopted the parties' proposed
18 order on this joint stipulation and entered it as an order of the Court on December 29, 2021.
19 (Dkt. No. 619.)

20 Finally, the Special Master notes that Plaintiffs and OCTA Defendants have submitted a
21 Proposed Class Action Judgment that is separate from their Proposed Order Granting Motion for
22 Final Approval of Class Action Settlement. The Proposed Class Action Judgment is "so agreed as
23 provided in the [Settlement Agreement and Release]" between the parties. (Dkt. No. 614-6.) It
24 includes specific findings on certain points of law, based on the determinations that the Court
25 previously reached when resolving Defendants' Motion To Decide Key Legal Questions. It also
26 finds that other actions relating to fulfilling the processes required by the OCTA Settlement are
27 not violations of California Streets & Highways Code section 31490. The Special Master and
28

1 parties briefly discussed the separate proposed order at the hearing, and the Special Master
2 finds it appropriate in the circumstances surrounding the OCTA Settlement.

3 **5. ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS**

4 **5.1 Legal Standard**

5 "In a certified class action, the court may award reasonable attorney[] fees and
6 nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P.
7 23(h). "Where a settlement produces a common fund for the benefit of the entire class, courts
8 have discretion to employ either the lodestar method or the percentage-of-recovery method." *In*
9 *re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). But this "discretion
10 must be exercised so as to achieve a reasonable result." *Id.* Courts generally first calculate a fee
11 award using the percentage method, and then use the lodestar method as a "check" on that
12 amount. See, e.g., *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1050 (9th Cir. 2002). Courts
13 can, "[a]s a final check on the reasonableness of the requested fees, . . . compare the fee
14 counsel seeks as a percentage with what their hourly bills would amount to under the lodestar
15 analysis." *In re Omnivision Techs.*, 559 F. Supp. 2d 1036, 1048 (N.D. Cal. 2007).

16 In assessing a request for attorney fees, courts consider several factors. These factors
17 include: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of
18 work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs;
19 (5) awards made in similar cases; and (6) a comparison of the percentage and lodestar
20 methods. See *Vizcaino*, 290 F.3d at 1048–50; see also *In re Omnivision Techs., Inc.*, 559 F.
21 Supp. 2d at 1046.

22 The class representative incentive award is a "fairly typical" feature of class action
23 cases. See *Rodriguez*, 563 F.3d at 958. Such awards are discretionary and are "intended to
24 compensate class representatives for work done on behalf of the class, to make up for financial
25 or reputational risk undertaken in bringing the action." *Id.* at 958–59.

26 **5.2 Attorneys' Fees**

27 Plaintiffs argue that employing the percentage-of-recovery method, the requested
28 attorneys' fees of \$20,737,500 represent approximately 9.6% of the \$216 million in cash and

1 penalty forgiveness provided by the three settlements. (Dkt. No. 611 at 19.) Plaintiffs stress
2 that valuing the common fund of the settlements at \$216 million provides a very minimum
3 estimate, given that this valuation does not account for the other programmatic and remedial
4 measures that Defendants have implemented under the settlements. See Section 2, *supra*.
5 Plaintiffs also emphasize that 9.6% is “well below the Ninth Circuit’s 25% ‘benchmark’ for such
6 awards.” Plaintiffs state, “the extraordinary result presented by the Settlements, the contingent
7 nature of representation, the risks of nonpayment, the highly complex nature of the litigation,
8 and the high caliber of lawyering required and employed by all counsel weigh in favor of a higher
9 percentage of the fund than that sought by Class Counsel here.” (Dkt. No. 611 at 19–20.)

10 Plaintiffs further argue that a lodestar crosscheck supports their request. Plaintiffs state
11 that they have spent 26,210.05 hours actively litigating this case (*id.* at 24), resulting in
12 \$19,437,708.25 expended that should be subject to a “very small multiplier of 1.067” (*id.* at
13 2.). Plaintiffs’ counsel have submitted detailed declarations in support of the motion for
14 attorneys’ fees that explain the time spent on this case by billers at their firms, the rates of
15 those billers, information regarding the billers’ qualifications, and other statements to support
16 the reasonableness of the fees and costs expended. The motion notes that additional work will
17 still be required to see the settlements through to completion, including overseeing the claims
18 administration process and attending the final approval hearing. (Dkt. No. 611 at 21.) The
19 motion also emphasizes that a 1.067 multiplier is more than warranted given the lengthy and
20 complex nature of this litigation, and the exceptional results achieved. (*Id.* at 22–25.)

21 As already stated in more detail in other sections of this Report (see, e.g., Sections 2.1
22 and 4.2, *supra*) the three settlements offer meaningful monetary and non-monetary relief to the
23 15 million class members involved in this case. Response to the settlements has been
24 overwhelmingly positive. Over a million claims have been submitted, and there have been less
25 than 500 individuals who have opted out of the class action, and one objection. And that single
26 objection was resolved and withdrawn before the final approval hearing. No additional
27 objections were raised at the final approval hearing. The Special Master has also already
28 discussed the risk involved in this litigation, the skill required of counsel, and the quality of

1 work. See *supra*, § 4.3. The contingent nature of the fee and the financial burden carried by the
2 plaintiffs has been enormous. Counsel has also persuasively shown through the motion and
3 supporting papers that the lodestar crosscheck supports the amount sought.

4 Finally, the 9.6 percentage and 1.067 lodestar are appropriate in comparison with other
5 class counsel fee awards. *In re Experian Data Breach Litig.*, No. SACV 15-01592 AG (DMFx),
6 2019 U.S. Dist. LEXIS 81243, at *30–31 (C.D. Cal. May 10, 2019); *Wershba v. Apple Computer*,
7 91 Cal. App. 4th 224, 255, 110 Cal. Rptr. 2d 145 (2001) (“Multipliers can range from 2 to 4 or
8 even higher.”); *In re Nasdaq Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998)
9 (“In recent years multipliers of between 3 and 4.5 have become common”) (citation
10 omitted); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (holding
11 “modest” multiplier of 4.65 “fair and reasonable”); *Vizcaino*, 290 F.3d at 1048, 1051 (25% of
12 common fund is a “benchmark” award that can be exceeded when justified).

13 Certain arguments made in the withdrawn objection related to concerns over the amount
14 of attorneys’ fees sought. Similarly, Mr. Watkins’ correspondence to counsel expressed
15 disapproval over the amount of attorneys’ fees. The Special Master has considered these
16 statements, but ultimately finds both the amount of fees sought and the source for those fees
17 (*i.e.*, deducted from the non-reversionary cash amounts) are acceptable given the nature of this
18 case.

19 Overall, the Special Master recommends finding that the fees sought are reasonable and
20 appropriate.

21 **5.3 Other Funds**

22 Plaintiffs also seek \$571,972.15 in litigation costs and \$125,000 in class
23 representative awards. The Special Master previously recommended approving the amount of
24 class representative awards at the preliminary approval stage, and affirms that
25 recommendation here. The Special Master is aware of caselaw questioning class representative
26 awards, but finds them appropriate in this complicated case that involved the significant
27 involvement and willing participation of class representatives, including during the discovery
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1 process. In addition, the class representatives encountered sensitive issues concerning their
2 privacy over the course of the case, which further supports the awards.

3 The Special Master further recommends finding the requested costs, aside from the
4 costs of the Special Master, are fair and reasonable considering the nature and complexity of
5 this case, as well as the expenses incurred prosecuting and settling this matter.

6 **6. CONCLUSION**

7 The Special Master **RECOMMENDS GRANTING** the motion for final approval, including
8 certification of the proposed settlement classes, and **RECOMMENDS GRANTING** the motion for
9 fees, costs, and awards.

10 The Special Master has reviewed and considered the parties' proposed orders, and
11 based on that review finds the proposed orders appropriate. The Special Master thus further
12 **RECOMMENDS** that the Court sign the versions of the parties' proposed orders that are
13 attached to this Report, including the two proposed orders granting motion for final approval of
14 class action settlement; OCTA's proposed class action judgment; and the parties' proposed
15 order regarding attorney fees. Some of the attached proposed orders are amended versions
16 that were submitted to the Special Master after the final approval hearing. To the extent
17 counsel have not yet done so, the Special Master asks that word processing versions of the
18 amended proposed orders are submitted to Judge Wright's chambers.

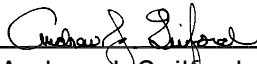
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20 **THUS IT IS RECOMMENDED.**

21

22 Dated: January 13, 2022.

23



Hon. Andrew J. Guilford, Ret.
Special Master

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TCA & 3M Proposed
Order Granting Motion
for Final Approval of
Class Action Settlement
(emailed to Special
Master January 4, 2022;
Attachment 1 emailed to
Special Master January
5, 2022)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

In re TOLL ROADS LITIGATION

PENNY DAVIDI BORSUK, *et al.*,

Plaintiffs,

vs.

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY, *et al.*,

Defendants.

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

Hon. Otis D. Wright II

**[PROPOSED] ORDER GRANTING
MOTION FOR FINAL APPROVAL
OF CLASS ACTION SETTLEMENTS**

Date: January 4, 2022

Time: 10:00 AM

Location: Judicate West
1851 East First Street
Suite 1600
Santa Ana, CA 92705

**(Referred to Special Master: Hon.
Andrew J. Guilford (ret.))**

1 **ORDER GRANTING FINAL APPROVAL**

2 On August 27, 2020, Plaintiffs and Defendants Foothill/Eastern Transportation
3 Corridor Agency, San Joaquin Hills Transportation Corridor Agency, Michael
4 Kraman, Craig Young, Scott Schoeffel, Ross Chun, Rhonda Reardon and BRiC-TPS,
5 LLC (collectively “TCA”) entered into a Settlement Agreement and Release (“TCA
6 Agreement”), after two arm’s-length mediations, one with the assistance of mediator
7 Robert Kaplan, and the second with mediator Rachel Ehrlich, Esq.¹ Also on August
8 27, 2020, Plaintiffs and Defendant 3M Company (“3M”) entered into a Settlement
9 Agreement and Release (“3M Agreement”), after two arm’s-length mediations with
10 the assistance of mediator Robert Kaplan, Esq. Collectively, the TCA Agreement and
11 the 3M Agreement will be referred to as the Agreements, and the settlements reached
12 in those Agreements will be referred to as the Settlements.

13 On May 17, 2021 this Court granted Preliminary Approval of the Agreements
14 and ordered that Notice be sent to the TCA Settlement Class and the 3M Settlement
15 Class (together, the “Settlement Classes”).

16 On January 4, 2022, this matter came before the Special Master Andrew J.
17 Guilford (ret.). Special Master Guilford issued a Report and Recommendation
18 recommending granting the Motion for Final Approval. After reviewing (a) the
19 motion and the supporting papers, including, the Agreements; (b) any objections filed
20 with or presented to the Court; (c) the parties’ responses to any objections; and (d)
21 Special Master Guilford’s Report and Recommendation, the Court finds good cause
22 to grant the motion.

23 //

24
25 _____
26 ¹ Unless otherwise defined, all terms used herein have the same meanings as set forth
27 in the Agreements. All capitalized terms used in defining the 3M settlement class
28 have the same meaning set forth in the 3M Agreement. All capitalized terms used in
defining the TCA settlement class have the same meaning set forth in the TCA
Agreement.

1 **FINDINGS:**

2 1. Upon review of the record, the Court hereby finds that the Settlements
3 are, in all respects, fair, adequate, and reasonable. The Court has come to this
4 determination pursuant to the factors outlined in Federal Rules of Civil Procedure
5 (“Rule”) 23(e)(2). Among other matters considered, the Court took into account: (a)
6 the complexity of Plaintiffs’ theory of liability; (b) the arguments raised by
7 Defendants in their pleadings that could potentially preclude or reduce the recovery
8 by class members; (c) delays in any award to the Classes that would occur due to
9 further litigation and appellate proceedings; (d) the amount of discovery that has
10 occurred; (e) the relief provided to the respective Settlement Classes; (f) the
11 recommendation of the Settlements by counsel for the Parties; and (g) the low number
12 of objectors to the Settlements, demonstrating that the Classes have a positive reaction
13 to the Settlements.

14 2. The Court finds that the respective class members have been adequately
15 represented by the respective Class Representatives and Class Counsel.

16 3. The Court also finds that extensive arm’s-length negotiations have taken
17 place, in good faith, between Class Counsel and Defendants’ Counsel resulting in the
18 Settlements. These negotiations were presided over by the experienced mediators
19 Robert Kaplan, Esq and Rachel Ehrlich, Esq.

20 4. The Settlements provide substantial and adequate value to the Classes.

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

1 fairness hearing. The Court finds that the Notice provided to the Classes pursuant to
2 the Settlement Agreements and the Preliminary Approval Order and consisting of
3 individual direct postcard and email notice, publication notice, settlement website,
4 and CAFA notice has been successful and (i) constituted the best practicable notice
5 under the circumstances; (ii) constituted notice that was reasonably calculated, under
6 the circumstances, to apprise Class Members of the pendency of the Action, their right
7 to object to the Settlements or exclude themselves from the Classes, and to appear at
8 the Final Approval Hearing; (iii) was reasonable and constituted due, adequate, and
9 sufficient notice to all persons entitled to receive notice; and (iv) otherwise met all
10 applicable requirements of the Federal Rules of Civil Procedure, the Due Process
11 Clause of the United States Constitution, and the rules of the Court.

12 6. The Court finds that the appropriate government officials were properly
13 and timely notified of the Settlement Agreements, pursuant to the Class Action
14 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the
15 substance of this notice and finds that it complied with all applicable requirements of
16 CAFA. As required by CAFA, more than ninety (90) days have elapsed between the
17 date since notice was provided pursuant to CAFA and the Final Approval Hearing.

18 7. The Parties adequately performed their obligations under the
19 Agreements.

20 8. The persons on the list attached hereto as Exhibit A have each submitted
21 a timely request for exclusion and are hereby excluded from the Class(es) from which
22 they excluded themselves.

23 9. For the reasons stated in the Preliminary Approval Order, and having
24 found nothing in any submitted objections that would disturb these previous findings,
25 this Court finds and determines that the proposed Settlement Classes, as defined
26 below, meet all of the legal requirements for class certification for settlement purposes
27 under Rule 23(a) and (b)(3).

28 //

1 **IT IS ORDERED THAT:**

2 1. The Settlement Agreements are hereby finally approved in all respects,
3 and the Parties are hereby directed to implement the Settlement Agreements according
4 to their terms and provisions.

5 2. The Court has personal jurisdiction over the parties to this Action and
6 the Class Members, venue is proper, and the Court has subject matter jurisdiction to
7 approve the Settlement Agreements, including all exhibits thereto, and to enter this
8 Order.

9 3. 3M Settlement Class. The 3M Settlement Class is defined as:

10 All individuals whose PII was provided by 3M or TCA to any other individual
11 or entity from April 13, 2015 to June 30, 2015, including:

- 12 • Any person with a transponder account with a Toll Agency whose PII
13 was sent by 3M or TCA from April 13, 2015 to June 30, 2015 to another
14 Toll Agency (interoperability transmissions);
- 15 • Any person who used any of the TCA Toll Roads whose PII was sent by
16 3M or TCA to a third party from April 13, 2015 to June 30, 2015 in
17 connection with efforts to collect tolls or penalties (collection
18 transmissions); and
- 19 • Any person whose PII was sent by 3M or TCA to a third party from April
20 13, 2015 to June 30, 2015 for any reason other than those listed above
21 (other transmissions).

22 Excluded from the 3M Settlement Class are: (1) employees of 3M, including their
23 current and former directors, officers and counsel; (2) any entity that has a controlling
24 interest in Defendant; (3) Defendant's affiliates and subsidiaries; and (4) the judge to
25 whom this case is or was assigned, any member of the judge's immediate family, and
26 any member of the judge's staff.

27 4. TCA Settlement Class. The TCA Settlement Class is defined as:

28 All individuals whose PII was provided by TCA or 3M to any other individual

1 or entity between April 13, 2015 and June 16, 2021. The Settlement Class consists
2 of:

- 3 • Any person with a transponder account with TCA or a Non-Party
4 Toll Agency whose PII was sent by TCA or 3M Company to a
5 Non-Party Toll Agency between April 13, 2015 and June 16, 2021
6 (interoperability transmissions);
- 7 • Any person who used any of the TCA Toll Roads whose PII was
8 sent by TCA or 3M to a third party between April 13, 2015 and
9 June 16, 2021 in connection with efforts to collect tolls and/or
10 penalties (collection/enforcement transmissions); and
- 11 • Any person whose PII was sent by TCA or 3M to a third party
12 between April 13, 2015 and June 16, 2021 for any reason other
13 than those listed above (communications transmissions).

14 Excluded from the TCA Settlement Class are: (1) employees of TCA, including their
15 current and former directors, officers and counsel; (2) any entity that has a controlling
16 interest in TCA; (3) TCA’s affiliates and subsidiaries; and (4) the judge to whom this
17 case is or was assigned, any member of the judge’s immediate family, and any
18 member of the judge’s staff.

19 5. Binding Effect of Order. This Order applies to all claims or causes of
20 action settled under the Agreements, and binds all members of the Settlement Classes,
21 including those who did not properly request exclusion. Except for Paragraph 6
22 below, this Order does not bind persons who filed timely Requests for Exclusion as
23 to each Settlement that they were excluded from. Attached as Exhibit A is a list of
24 persons who properly requested to be excluded from each Settlement.

25 6. In accordance with both the Court’s general authority to protect its
26 jurisdiction and the All Writs Act (28 USC § 1651), the Court hereby permanently
27 enjoins each and every member of each of the Settlement Classes from filing or
28 pursuing any claim or litigation against any of the persons and/or entities listed

1 below in 6 (a)-(d), asserting that compliance with the obligations imposed by this
2 Order, the Preliminary Approval Order, or either of the Agreements violates
3 California Streets & Highways Code section 31490 or any other federal, state or local
4 constitution, statute, rule, regulation or policy purporting to limit the disclosure of
5 personally identifiable information:

- 6 a. Any and all Released Parties (as defined in Section 2.26 of the TCA
7 Agreement);
- 8 b. Any and all Released Parties (as defined in Section 2.26 of the 3M
9 Agreement);
- 10 c. OCTA and Cofiroute, together with their respective officers, agents,
11 employees and attorneys;
- 12 d. Any other person or entity who provided information to the Class
13 Administrator pursuant to the Preliminary Approval Order, together with their
14 respective officers, agents, employees and attorneys.

15 7. Release. Plaintiffs and all members of each Settlement Class who did
16 not properly request exclusion are: (1) deemed to have released and discharged all
17 Released Parties from all Released Claims as defined by the respective Agreements
18 of the Settlement Classes of which they are members; and (2) barred and permanently
19 enjoined from asserting, instituting, or prosecuting, either directly or indirectly, these
20 claims. The full terms of the releases described in this paragraph are set forth in
21 Section 14 of the 3M Settlement Agreement and Section 15 of the TCA Settlement
22 Agreement and as modified by the Agreements subsequently filed with the Court on
23 12/30/20, Dkt. #591-1 are specifically incorporated herein by this reference.

24 8. 3M Class Relief. 3M, through the Class Administrator, shall issue a
25 Cash Award to each member of the 3M Settlement Class who submitted claims
26 deemed timely as stated in the 3M Settlement Agreement.

27 9. TCA Class Relief. TCA, through the Class Administrator, shall issue a
28 Cash Award to each Cash Distribution Class Member who submitted claims deemed

1 timely, and shall also provide penalty forgiveness to those eligible for such relief, as
2 stated and pursuant to the schedule provided in the TCA Settlement Agreement.

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

14 11. Injunctive Relief. The TCA shall make the following changes to its
15 business practices for a minimum of five (5) years following the Effective Date of the
16 TCA Settlement:

17 a. Increase Time to Pay Tolls from 5 to 7 Days. The TCA shall not
18 assess penalties for any person who pays their toll within seven days of using State
19 Route 73, 133, 241, or 261. TCA shall not be required to further change its road
20 signage or any other published information, but shall instead apply a two-day grace
21 period beyond the advertised five days to pay.

22 b. Update to Privacy Policies. Within thirty (30) days after the
23 Effective Date, TCA shall update its privacy policy in the FastTrak account agreement
24 and its website to include a list of the categories of PII sent to any third party,
25 including but not limited to CTOC entities, and a separate list of the categories of PII
26 TCA receives from other Non-Party Toll Agencies.

27 c. Re-Set of Opt-in Status for Communications by TCA. The Court
28 authorizes the Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills

1 Transportation Corridor Agency each to send, following the Effective Date of the
2 TCA Agreement: (i) a single email to all account holders notifying them that they
3 have been opted out and asking them to select their communications preferences in
4 their online account; and (ii) a statement to be included in any other communications
5 that would otherwise be sent to TCA customers advising them to update their
6 communications preferences and/or containing a link to a website that allows TCA
7 customers to update their communications preferences.

8 d. FTB Transmissions. When TCA sends PII to the Franchise Tax
9 Board (“FTB”) for the purpose of placing a tax intercept, TCA shall send only the PII
10 that the FTB requires to place such tax intercept. For purposes of this Order and
11 settlement purposes, it is understood that the FTB requires TCA to send an
12 individual’s social security number in order to place a tax intercept on such individual.

13 e. Rental Car Transmissions. When TCA transmits PII to a rental car
14 company as a result of a rental car traveling on State Route 73, 133, 241, or 261 and
15 failing to pay a toll associated with travel on such Route, TCA shall transmit only
16 such PII as is contained in the toll violation notice resulting from the aforementioned
17 failure to pay a toll.

18 f. Skip Tracers. TCA shall use skip tracers only in instances where
19 (i) mail is returned to TCA as undeliverable, or (ii) TCA requires the use of skip
20 tracers to obtain information that the FTB requires to place a tax intercept.
21 Notwithstanding the foregoing, if legislation is enacted that provides for the use of
22 skip tracers in additional instances, TCA shall also be permitted to use skip tracers in
23 those additional instances.

24 g. DMV Registration Holds. When TCA sends PII to the California
25 Department of Motor Vehicles (“DMV”) for the purpose of causing the DMV to place
26 a DMV registration hold, TCA shall only send the PII that the DMV requires to place
27 a DMV registration hold.

28 12. Administrator Costs. Notice and Administration Costs of up to

1 \$3,254,366.60 shall be paid out of the TCA Settlement Fund and up to \$448,869.45
2 shall be paid out of the 3M Settlement Fund, according to the terms of the Settlement
3 Agreements, to the Class Administrator, Epiq Class Action and Claims Solutions, Inc.

4 13. Dismissal with Prejudice. The Court dismisses with prejudice all claims
5 of the members of the Settlement Classes asserted in this Action.

6 14. Court's Jurisdiction. Without affecting the finality of this Order or the
7 Judgment in any way, pursuant to the Parties' request, the Special Master and Court
8 shall retain jurisdiction over all matters relating to the interpretation, administration,
9 implementation, effectuation, consummation, and enforcement of the Agreements
10 and this Order and judgment, and for any other necessary purpose.

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12 **IT IS SO ORDERED:**

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14 Dated: _____, 2022

Otis D. Wright II
United States District Judge

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Attachment 1



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
1	AARON	R	GILLIAM	✓	✓
2	AARON		MERNICK	✓	✓
3	ABRAHAM		VILLA	✓	✓
4	ADRIAN	A	RAMOS	✓	✓
5	ADRIANE	DONNA	GEGGIE	✓	✓
6	ALBERT	A	GONZALES	✓	✓
7	ALESSANDRO		ASSANTI	✓	✓
8	ALEXANDER		BAKHTIARI	✓	✓
9	ALEXANDER		MORALES	✓	✓
10	ALI		MAKVANDI	✓	✓
11	ALICE		NEE	✓	✓
12	ALLAN	LEE	DOLLISON	✓	✓
13	AMADOU		KANTE	✓	✓
14	ANDREA	NICOLE	PETRUZZIELLO	✓	✓
15	ANDRES		OSORIO	✓	✓
16	ANDREW		GERRY	✓	✓
17	ANDREW		MARTIN	✓	✓
18	ANDREW		REYES	✓	✓
19	ANDREW	C	SMITH	✓	✓
20	ANDY		MONTIEL	✓	✓
21	ANGEL		RODRIGUEZ	✓	✓
22	ANNE		EDRISI	✓	✓
23	ANNETTE	K	CORRAO	✓	✓
24	ANNIE		GILL	✓	✓
25	ANTHONY	J	GLASIER	✓	✓
26	ANTHONY		LUONG	✓	✓
27	ANTHONY		MANZO	✓	✓
28	ANTHONY		MOUMJIAN	✓	✓
29	ANTHONY		RAMIREZ	✓	✓
30	ANTONIOS		GAMILIS	✓	
31	ANWAR		GREER	✓	✓
32	AQEEL		ABBAS	✓	✓
33	ARA		HAROUTOUNIAN	✓	✓
34	ARANG		ABEDINZADEH	✓	✓
35	ARMANDO		MORALES	✓	✓
36	ARMANDO		SANCHEZ	✓	✓
37	ARNE		LINDER	✓	✓
38	ASHANTE	JAZLYN	ROBINSON	✓	✓
39	LEE		AUGARTON	✓	✓
40	AUSTIN		ROMERO	✓	✓
41	BAGUS	ANAK AGUNG	GEDE	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
42	BAHRAM	M	TOUSKI	✓	✓
43	BARBARA		PATINO	✓	✓
44	BARBARA		ROPELATO	✓	✓
45	BENJAMIN	ALAN	GOLDBERG	✓	✓
46	BENYAMIN	Y	YACOUB	✓	✓
47	BETH	A	SMITH	✓	✓
48	BINH		DINH	✓	✓
49	BINH		VU	✓	✓
50	BLAKE	A	ROSEBERRY	✓	✓
51	BOBBI		CARROLL	✓	✓
52	BRADLY		GRUNBAUM	✓	✓
53	BRANDEN		FULLNER	✓	✓
54	BRANDON	MATHEW	BISHOP	✓	✓
55	BRANDON		PAIZ	✓	✓
56	BRANDON		PHILLIPS	✓	✓
57	BRANDON	A	TROSTLE	✓	✓
58	BRENT	JAMES	JESSEE	✓	✓
59	BRIAN	P	HARDIMAN	✓	✓
60	BRIAN		HAYES	✓	✓
61	BRIAN		SKELTON	✓	✓
62	BRIAN		TURNER	✓	✓
63	BRIANNA		RAMOS-VILLAGOMEZ	✓	✓
64	BRODIE	R	MARSHALL	✓	✓
65	BRUCE	C	HUNTER	✓	✓
66	BRUNO		BALDERRAMA	✓	✓
67	BRYAN	ROBERT	BELL	✓	✓
68	BRYAN	DAVID	BROERMAN	✓	✓
69	BRYAN		HENDRY	✓	✓
70	BRYAN	W	THOMPSON	✓	✓
71	CAREN		WOLF	✓	✓
72	CARL		BALZANTI	✓	✓
73	CARLA	MARIE	YORBA	✓	✓
74	CARLOS		HERRERA-GUTIERREZ	✓	✓
75	CAROL		BARRY	✓	✓
76	CECELIA	A	LAHR	✓	✓
77	CHAD		CHESEBRO	✓	✓
78	CHARLES		CONTRERAS	✓	✓
79	CHARLES	VAN	NGUYEN	✓	✓
80	CHARLES	A	PENNELL	✓	✓
81	CHARLES		REYNOLDS	✓	✓
82	CHARLES		TRIEU	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
83	CHEN		GUOHUI	✓	✓
84	CHERYL		BOKANO	✓	✓
85	CHRISTIAN		ANDERSON	✓	✓
86	CHRISTIAN		YASSA	✓	✓
87	CHRISTINE		WHITE	✓	✓
88	CHRISTOPHER		BISSONNETTE	✓	✓
89	CHRISTOPHER		MANASSERO	✓	✓
90	CHRISTOPHER	M	MAZZUCKIS	✓	✓
91	CHRISTOPHER	H	RUSH	✓	✓
92	CINDY		ANDERSON	✓	✓
93	CODY		LINDSAY	✓	✓
94	CONALLEE		MOSS	✓	✓
95	CONRADO	A	PORTNOY	✓	✓
96	CONSTANCE	P	HENES	✓	✓
97	CRISTIAN	GERARDO	ROJAS	✓	✓
98	DALILA		ORTEGA	✓	✓
99	DAN		DUMITRU	✓	✓
100	DANA	ANDREW	KEIR	✓	✓
101	DANIEL	ALFONSO	EGER	✓	✓
102	DANIEL	E	GARCIA	✓	✓
103	DANIEL	R	RAMIREZ	✓	✓
104	DANIEL	M	RESENDIZ	✓	✓
105	DANIEL	GUINN	SHAY	✓	✓
106	DAVID		ENGELBERT	✓	✓
107	DAVID	JAMES	FULLER	✓	✓
108	DAVID		GINSBERG	✓	✓
109	DAVID		GOMEZ	✓	✓
110	DAVID		KANOY	✓	✓
111	DAVID	C	KAUFFMAN	✓	✓
112	DAVID		NEIDHARDT III	✓	✓
113	DAVID	B	PODESTA	✓	✓
114	DAVID		SANCHEZ	✓	✓
115	DAWN	M	KEITH	✓	✓
116	DEANA	URIAH	MOLLÉ	✓	✓
117	DEBORA	R	FERREIRA	✓	
118	DEBORAH	ANN	KURILCHYK	✓	✓
119	DEBORAH		LAMB	✓	✓
120	DEBRA	E	SUZUKI	✓	✓
121	DIANA	D	ALLEN	✓	✓
122	DIANA		PROFANT	✓	✓
123	DIANE	M	SUPPLE	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
124	DIBA		KAZERANI	✓	✓
125	DIMETRIO		GONZALEZ	✓	✓
126	DOMINIQUE		GALLARDO	✓	✓
127	DONNA		BRINKMAN	✓	
128	DONNY		FRANCO	✓	✓
129	DYLAN	R	CUTILLO	✓	✓
130	DYLAN	STEVEN	YOUNG	✓	✓
131	EARTH	MECHANICS	INC	✓	
132	EDUARDO	MERCADO	CARVAJAL	✓	✓
133	EDUARDO		GUILLEN	✓	✓
134	EDWAR		MOUSA	✓	✓
135	EDWARD		KIM	✓	✓
136	EDWIN	C	ANGELES	✓	✓
137	EDWIN	CONRAD	VAN	✓	✓
138	ELIZABETH	A	FOGARTY	✓	✓
139	ELIZABETH	ANNMARIE	KRUK	✓	✓
140	ERIC		GRUNWALD	✓	✓
141	ERIC		MELENDEZ	✓	✓
142	ERICK		LUCCIO	✓	✓
143	ERIK	C	RECORDS	✓	✓
144	EVAN	J	GAUVREAU	✓	✓
145	EVERETT		BLOOM	✓	✓
146	EZE		OLISEMEKE	✓	✓
147	FABIAN	A	DORANTES	✓	✓
148	FADI		CHEIKHA	✓	✓
149	FERNANDO		RODRIGUEZ	✓	✓
150	FRANCES	L	ENDRES	✓	✓
151	FRANCINE	G	BAKST	✓	✓
152	FRANCISCO		ALVAREZ	✓	✓
153	FRANCOIS		MALINOWSKI	✓	✓
154	FRANK		VERDONCK	✓	✓
155	FRED	L	COOPER	✓	✓
156	FREDERICK		JOHNCOX	✓	✓
157	GAIL		BROWER-NEDLER	✓	✓
158	GARY	R	CARRADINE	✓	✓
159	GARY	A	HAAS	✓	✓
160	GENE	S	SHILLMAN	✓	✓
161	GEORGE		ASHBY	✓	✓
162	GEORGE	S	YAMAMOTO	✓	✓
163	GERALD	A	JOHNSON	✓	✓
164	GLEN	S	ARNOLD	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
165	GLENN	NUNEZ	PATRICIO	✓	✓
166	GORDON	P	RENAUD	✓	✓
167	GRANT		MACKEY	✓	✓
168	GREGORY	R	GRUICH	✓	✓
169	GUILLERMO		ELIZALDE	✓	✓
170	GUY		EDWARDS	✓	✓
171	HAL	D	FELZER	✓	✓
172	HALA		NOKARI	✓	✓
173	HAROLD		ARANDA	✓	✓
174	HEATHER		LEMIEUX	✓	✓
175	HOA		VU	✓	✓
176	HOMAN		RAZEGHI	✓	✓
177	HORACIO		REYNA JR	✓	✓
178	IAN	JESSE	LASKY	✓	✓
179	IRMA		OCAMPO	✓	✓
180	ISAAC		CAMPOS	✓	✓
181	ISHI		SALAZAR	✓	✓
182	ISRRAEL		ANORVEMONTES	✓	✓
183	IVAN	R	BELTRAN	✓	✓
184	IVAN		MESSINGER	✓	✓
185	JACK		CAIN	✓	✓
186	JACKIE	L	DEAVERS	✓	✓
187	JACQUELYNE		GARCIA	✓	✓
188	JAMES	A	DOLAN	✓	✓
189	JAMES	W	DONNELL	✓	✓
190	JAMES		HENDERSON	✓	✓
191	JAMES		NOVELLA	✓	✓
192	JAMES		SPEIGHTS	✓	✓
193	JARED	M	YATES	✓	✓
194	JASON		FORD	✓	✓
195	JAVIER		PEREZ	✓	✓
196	JAVIER	PEREZ	TORRES	✓	✓
197	JAY		BERMAN	✓	✓
198	JEFF		ALARIO	✓	✓
199	JEFF		WYCKOFF	✓	✓
200	JEFFREY	DANIEL	LARKIN	✓	✓
201	JENELLE	A	HAUGEN	✓	✓
202	JESSE		CORTEZ	✓	✓
203	JESSICA	M	LAMM	✓	✓
204	JESSICA		NATELBORG	✓	✓
205	JHENELL	L	MAXEY	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
206	JIAMING		ZHOU	✓	✓
207	JIANGKUN		CAI	✓	✓
208	JIEZELLE	P	CHUA	✓	
209	JO JEAN		RIEDEL	✓	✓
210	JOBETH		BERRY	✓	✓
211	JOEL		SHEINER	✓	✓
212	JOHN	DANIEL	BALDWIN	✓	✓
213	JOHN		GRUBE	✓	✓
214	JOHN		JENNINGS	✓	✓
215	JOHN	W	KITTINGER	✓	✓
216	JOHN	FRANCIS	ROMEO	✓	✓
217	JOHN		SHAW JR	✓	✓
218	JOHN	VON	WOLZOGEN	✓	✓
219	JONATHAN		CAMPOS	✓	✓
220	JONATHAN		DUNCAN	✓	✓
221	JONATHAN	R	FISKE	✓	✓
222	JONY	GARCIA	BEIZA	✓	✓
223	JORDAN		KEMP	✓	✓
224	JORGE		MUNOZ	✓	✓
225	JORGE	CASTILLO	RANGEL	✓	✓
226	JOSE	MARIA	BLANCO	✓	✓
227	JOSEPH		GHABOUR	✓	✓
228	JOSEPH		NIEZGODA	✓	✓
229	JOSEPH		REED	✓	✓
230	JOSEPH	N	SMITH	✓	✓
231	JOSHUA		DUNTON	✓	✓
232	JOSHUA		MUNDELL	✓	✓
233	JOSHUA		SULT	✓	✓
234	JOSHUA	B	SWIGART	✓	✓
235	JOSUE	E	MEZA	✓	✓
236	JULIE	MARIE	MARQUEZ	✓	✓
237	JULIEN		MARTEVILLE	✓	✓
238	JULIO	REYES	ARCIGA	✓	✓
239	JULIO	DANIEL	GARCIA	✓	✓
240	JUSTIN		BARNEY	✓	✓
241	JUSTIN	J	WALKER	✓	✓
242	KARAN		KUMAR	✓	✓
243	KAREN		HERNANDEZ	✓	✓
244	KAREN		O'CONNELL	✓	✓
245	KARIEM		FAHMY	✓	✓
246	KARL		KLANKOWSKI	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
247	KARL	J	RUSNOCK	✓	✓
248	KASEM		RASHEED	✓	✓
249	KATHLENE		GASIOR	✓	✓
250	KAYLI	NOEL	RIDDLE	✓	✓
251	KAYLIN	M	MURRAY	✓	✓
252	KEITH		MARTENS	✓	✓
253	KELISSA	LUNA	RONQUILLO	✓	✓
254	KELLEY		HAYNES	✓	✓
255	KENNETH		SERRA	✓	✓
256	KEVIN		CRYAN	✓	✓
257	KEVIN	MICHAEL	WENTZEL	✓	✓
258	KHALID		IBRAHIM	✓	✓
259	KIMBERLY		GAUTNEY	✓	✓
260	KIRK		BARRUS	✓	✓
261	KLAUDIA		KAYE	✓	✓
262	KRAMER		ISON	✓	✓
263	KRIS		KELLER	✓	✓
264	KRISTI		TRAYER (MULLET)	✓	✓
265	KRISTINA		KALAYDJIAN	✓	✓
266	KURT	A	KISSINGER	✓	✓
267	KYLE		EDWARD	✓	✓
268	LANCE		CAPEL	✓	✓
269	LANCE	M	SPENCE	✓	✓
270	LAREE		MCWILLIAMS	✓	✓
271	LASHONE	MONIQUE	BELL	✓	✓
272	LAURA		FLINT	✓	✓
273	LAURA	A	MARSE	✓	✓
274	LAURA	LEE	WILLIAMS	✓	✓
275	LAUREN	NOELLE	LEFEVRE	✓	✓
276	LAURENS		DARUDONO	✓	✓
277	LAURETTA	MARIE	RUSTAD	✓	✓
278	LAURIE	DIANE	SUMMERS	✓	✓
279	LAWRENCE		WERRELL	✓	✓
280	LEO	CHIA LUN	WANG	✓	✓
281	LEONARD	Y	CHUNG	✓	✓
282	LEONID		SHEVCHENKO	✓	✓
283	LEXIE	LYNN	PALACIO	✓	✓
284	LI PING		WAN	✓	✓
285	LIEN		NGUYEN-CRETTENAND	✓	✓
286	LINDA	J	KIMBALL	✓	✓
287	LISA		GIBBARD	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
288	LIWEI		LOU	✓	✓
289	LOC		PHAM	✓	✓
290	LOGAN		HENSLEY	✓	✓
291	LORRAINE		BLANDING	✓	✓
292	LUIS		CASTRO	✓	✓
293	LUKE		LEFIELL	✓	✓
294	LYNDA	S	PETERS	✓	✓
295	LYNN	DEL	TORO-PACHECO	✓	✓
296	LYNN	S	VIQUELIA	✓	✓
297	MAHDI		JORAT	✓	✓
298	MANUEL		CHAVEZ	✓	✓
299	MANUEL	JOSEPH	ROJAS	✓	✓
300	MARCO	A	APUN	✓	✓
301	MARCUS	I	ZAPATA	✓	✓
302	MARGARET		THOMAS	✓	✓
303	MARIA	ISABEL	SERRANO-PAREDES	✓	✓
304	MARIBEL		ARANDA	✓	✓
305	MARIO	IVAN	SPINELLI	✓	✓
306	MARK	D	ALLEN	✓	✓
307	MARK		DUCHARM	✓	✓
308	MARK		MARADEI	✓	✓
309	MARTIN		SMITH	✓	✓
310	MARY	A	HEDGE	✓	✓
311	MARY		LEPMEN	✓	✓
312	MARY	ANN NUNEZ	PATRICIO	✓	✓
313	MARY		SUNVOLD	✓	
314	MATHEW		PRICE	✓	✓
315	MATTHEW		GABEL	✓	✓
316	MATTHEW		KARAM	✓	✓
317	MELISSA	A	MEJIA	✓	✓
318	MESSIAH		JOHNSON	✓	✓
319	MICHAEL	AUGUSTUS	CHASE	✓	✓
320	MICHAEL		CULLEN	✓	✓
321	MICHAEL		GALINDO	✓	✓
322	MICHAEL	ROY	GUNTRUM	✓	✓
323	MICHAEL		LOUIS	✓	✓
324	MICHAEL	J	SAENZ	✓	✓
325	MICHAEL		SEAL	✓	✓
326	MICHAEL	J	WEBB	✓	✓
327	MICHAEL	ANTHONY	WINCHESTER	✓	✓
328	MICHAEL		ZHU	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
329	MICHAEL-JAMES	S	MENIN	✓	✓
330	MICHELE	JANICE	UBERT	✓	✓
331	MICHELLE	J	WARD	✓	✓
332	MISHAWN		THOMPSON	✓	✓
333	MOHAMMED		ABBAS	✓	✓
334	MOHAMMED	KHALID	HASSAN	✓	✓
335	MONICA		CURRAN	✓	✓
336	MORGAN	DONALD	ROSS	✓	✓
337	MYLES	J	GENTZKOW	✓	✓
338	NANCY		LUCCA	✓	✓
339	NATHAN	AUSTIN	DANIELS	✓	✓
340	NATHAN		HOOVER	✓	✓
341	NATHANIEL	BLAINE	PETERS	✓	✓
342	NATOULIA	R	SCARBOROUGH	✓	✓
343	NAZAR		AGUSTOS	✓	✓
344	NICHOLAS		LOPEZ	✓	✓
345	NIKOO		KHOSRAVI	✓	✓
346	NINA		TRAN	✓	✓
347	NOUR		CHAABAN	✓	✓
348	ORKUN		BAYDAR	✓	✓
349	PATRICIA		CASTILLO-CARRETO	✓	✓
350	PATRICK	J	EGAN	✓	✓
351	PAUL	J	STANTON	✓	✓
352	PAUL		STEINBRUNER	✓	✓
353	PAULO	J	GROSPE	✓	
354	PEACE		ATAEE	✓	✓
355	PEDRO		VALENCIA	✓	✓
356	PETER		HERNANDEZ	✓	✓
357	PETER		KARIAN	✓	✓
358	PHILIP	LOUIS	HERNANDEZ	✓	✓
359	PHILIPPE	ALBERT	NOEL	✓	✓
360	PIA		TACADENA	✓	✓
361	PREEYA		GRUNWALD	✓	✓
362	RACHEL		ALTMANN	✓	✓
363	RAIED		SALEM	✓	✓
364	RAMON		MENESES	✓	✓
365	RANDALL		GREMILLION	✓	✓
366	REBECCA		ROACH	✓	✓
367	RED		WEBSTER	✓	✓
368	REILLY		CASE	✓	✓
369	REY		CAUNCA	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
370	RHONDA	C	GARCIA	✓	✓
371	RICARDO	RONALD	VEGA	✓	✓
372	RICHARD		ALVAREZ	✓	✓
373	RICHARD		MEEKER	✓	✓
374	RICHARD		NEGRILLO	✓	✓
375	RICHARD		STRANGE	✓	✓
376	RIGOBERTO		DE LA CRUZ	✓	✓
377	ROBERT		BLOM	✓	✓
378	ROBERT		CIACCIA	✓	✓
379	ROBERT	DAVID	KOONTZ	✓	✓
380	ROBERT	A	MADRID	✓	✓
381	ROBERT	L	STIDHAM	✓	✓
382	ROBERT	C	TUAZON	✓	✓
383	ROBERTO		STABEN	✓	✓
384	ROGER		PADAYAO	✓	✓
385	RONALD	BARRY	BENDELSTEIN	✓	✓
386	RONALD	P	GASCHLER	✓	✓
387	RUSSELL	LEE	SMITH	✓	✓
388	SADDAM	H	KHAN	✓	✓
389	SAM	MUIR	ATHERTON JR	✓	✓
390	SAMANTHA	G	ATHERTON	✓	✓
391	SAMIUR	R	TALUKDER	✓	✓
392	SAMUEL	TODD	RING	✓	✓
393	SAMUEL	TIMOTHY	SPIRER	✓	✓
394	SAMUEL		TIBBETS	✓	✓
395	SANDRA		ARROYO	✓	✓
396	SANH		TRAN	✓	✓
397	SANJEEWA		KOMANGODA	✓	✓
398	SARA		CORDER	✓	✓
399	SARA	J	SUAREZ	✓	✓
400	SARAH	KATE	HOESTENBACH	✓	✓
401	SARAH		MASRI	✓	✓
402	SARAH		TAITANO	✓	✓
403	SATIYA		SIREGAR	✓	✓
404	SCHEHERZAD		MASSOUDI	✓	✓
405	SCOTT	MANUEL	AVALOS	✓	✓
406	SCOTT	ALLEN	CARDENAS	✓	✓
407	SCOTT		DESPOSATO	✓	✓
408	SCOTT	E	FRANQUEMONT	✓	✓
409	SEAN	T	MCKELVEY	✓	✓
410	SEAN		MERRITT	✓	



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
411	SEBASTIAN		HO	✓	✓
412	SERGIO	G	ZONTA	✓	✓
413	SHAMARAH		RIGBY	✓	✓
414	SHANE	KUMAR	BATTAN	✓	✓
415	SHANE		CANALES	✓	✓
416	SHANE		NORQUIST	✓	✓
417	SHAUN	PATRICK	RUETZ	✓	✓
418	SILVIA		MAGANA	✓	✓
419	SLAVOLJUB		KANDIC	✓	✓
420	SONJA		MORENO	✓	✓
421	STEPHEN	PAUL	BARTOL	✓	✓
422	STEPHEN	K	HONG	✓	✓
423	STEPHEN		MCDOUGALL	✓	✓
424	STEPHEN	D	MUNCHERIAN	✓	✓
425	STEVE	J	GRAVES	✓	✓
426	STEVEN		BETANCES	✓	✓
427	STEVEN	JOHN	MARSHALL	✓	✓
428	SU	MIN	SONG	✓	✓
429	SUE		NISTICO	✓	✓
430	SUSAN	SHAWN	FLIPPEN	✓	✓
431	SYDNEY		HAWKINS	✓	✓
432	SYLVIA	A	BARRIOS	✓	✓
433	TAD	GENTRY	KELLER	✓	✓
434	TADASHI		SUZUKI	✓	✓
435	TANNER	RAY	THOMPSON	✓	✓
436	TERI		MASSICK	✓	✓
437	THERESE		HOLLOWELL	✓	✓
438	THO	HUU	HUYNH	✓	✓
439	THOMAS	T	BUI	✓	✓
440	THOMAS		CHAPMAN	✓	✓
441	THOMAS	A	TRAX	✓	✓
442	THU	HUYNH	NGUYEN	✓	✓
443	TIFFANY		ARNESEN	✓	✓
444	TIM	W	DOHERTY	✓	✓
445	TIMI	C	GLEASON	✓	✓
446	TIMOTHY		MABRY	✓	✓
447	TIMOTHY	SHAWN	MCGUIRE	✓	✓
448	TIMOTHY		SAVAGE	✓	✓
449	TIMURA		JACKSON	✓	✓
450	TO	OANH	THI LE	✓	✓
451	TONY	D	DO	✓	✓



Exclusion Report - 3M / TCA Settlements

Number	First Name	Middle Name	Last Name	TCA	3M
452	TONY	T	NGUYEN	✓	✓
453	TOYOAKI		UCHIDA	✓	✓
454	TRAVIS		BERTRAND	✓	✓
455	TRAVIS		BLANSHAN	✓	✓
456	TREVOR		SHUBIN	✓	✓
457	TRJET	MINH	NGUYEN	✓	✓
458	TROY		BETTON	✓	✓
459	TYLANI		GOSSETT	✓	✓
460	TYLER		PAYNE	✓	✓
461	ULISES		MUNOZ	✓	✓
462	VANESSA	C	MURILLO	✓	✓
463	VIC		SANCHEZ	✓	✓
464	VICTORIA	C	PARSCH	✓	
465	VINCENT		DOCHE	✓	✓
466	VINCENT		GOMEZ	✓	✓
467	VIRGILIO		URBIZTONDO	✓	✓
468	WALTER	R	GARCIA	✓	✓
469	WALTER		GOBEL	✓	✓
470	WILL		BUI	✓	✓
471	WILLIAM		COTA	✓	✓
472	WILLIAM		HOLLINGSWORTH	✓	
473	WILLIAM		MOYER	✓	✓
474	YAMILET		TORR	✓	✓
475	YANNI	A	ABOUDI	✓	✓
476	YAO	TE	SUNG	✓	✓
477	YASMINE	ABDEL	RAHMAN	✓	✓
478	YOOBIN		SEO	✓	✓
479	YRASEMA	NOEMI	ORTIZ	✓	✓
480	ZACHARY		ETTERMAN	✓	✓
481	ZACHARY		SMITH	✓	✓
482	ZION		LEE	✓	✓

OCTA Proposed
Order Granting Motion
for Final Approval of
Class Action Settlement
(emailed to Special
Master January 4, 2022;
Attachment 1 emailed to
Special Master January
5, 2022)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

In re TOLL ROADS LITIGATION

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

PENNY DAVIDI BORSUK, *et al.*,

Hon. Otis D. Wright II

Plaintiffs,

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

vs.

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY, *et al.*,

Date: January 4, 2022

Time: 10:00 AM

Location: Judicate West

1851 East First Street

Suite 1600

Santa Ana, CA 92705

Defendants.

**(Referred to Special Master: Hon.
Andrew J. Guilford (ret.))**

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ORDER GRANTING FINAL APPROVAL

On April 12, 2021, Plaintiff Dan Golka on behalf of himself and the proposed Settlement Class (as defined below) (“Plaintiff”) and Defendants Orange County Transportation Authority, Darrell Johnson and Lori Donchak (collectively “OCTA”), and Defendant Cofiroute USA, LLC (“Cofiroute”) (OCTA and Cofiroute are collectively referred to as “Defendants”) entered into a Settlement Agreement and Release (“Agreement”), after two arm’s-length mediations, both with the assistance of mediator Robert Kaplan.¹ The settlement reached by Plaintiff and Defendants will be referred to as the “Settlement.”

On May 17, 2021, this Court granted Preliminary Approval of the Agreement and ordered that Notice be sent to the Settlement Class.

On January 4, 2022, this matter came before the Special Master Andrew J. Guilford (ret.). Special Master Guilford issued a Report and Recommendation recommending granting the Motion for Final Approval. After reviewing: (a) the motion and the supporting papers, including the Agreement; and (b) Special Master Guilford’s Report and Recommendation, the Court finds good cause to grant the motion.

FINDINGS:

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

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

1 claims and in particular on Defendants’ Motion to Decide Key Legal Questions (Dkt.
2 566); (d) delays in any award to the Settlement Class that would occur due to further
3 litigation and appellate proceedings; (e) the amount of discovery that has occurred;
4 (f) the relief provided to the Settlement Class; (g) the recommendation of the
5 Settlement by counsel for the Parties; and (h) that there were no objectors to the
6 Settlement, demonstrating that the Settlement Class had a positive reaction to the
7 Settlement.

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

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

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

16 5. The Class Administrator provided notice to members of the Settlement
17 Class in compliance with the Agreement, the Preliminary Approval Order, due
18 process, and Rule 23. The notice: (a) fully and accurately informed Settlement Class
19 members about the lawsuit and settlement; (b) provided sufficient information so that
20 Settlement Class members were able to decide whether to accept the benefits offered,
21 opt-out and pursue their own remedies, or object to the proposed settlement; (c)
22 provided procedures for Settlement Class members to file written objections to the
23 proposed settlement, to appear at the hearing, and to state objections to the proposed
24 settlement; and (d) provided the time, date, and place of the final fairness hearing. The
25 Court finds that the Notice provided to the Class pursuant to the Settlement
26 Agreement and the Preliminary Approval Order and consisting of individual direct
27 postcard and email notice, publication notice, settlement website, and CAFA notice
28 (as defined below) has been successful and (a) constituted the best practicable notice

1 under the circumstances; (b) constituted notice that was reasonably calculated, under
2 the circumstances, to apprise Class Members of the pendency of the Action, their right
3 to object to the Settlement or exclude themselves from the Class, and to appear at the
4 Final Approval Hearing; (c) was reasonable and constituted due, adequate, and
5 sufficient notice to all persons entitled to receive notice; and (d) otherwise met all
6 applicable requirements of the Federal Rules of Civil Procedure, the Due Process
7 Clause of the United States Constitution, and the rules of the Court.

8 6. The Court finds that the appropriate government officials were properly
9 and timely notified of the Settlement Agreement, pursuant to the Class Action
10 Fairness Act of 2005 (“CAFA”), 28 U.S.C. § 1715. The Court has reviewed the
11 substance of this notice and finds that it complied with all applicable requirements of
12 CAFA. As required by CAFA, more than ninety (90) days have elapsed between the
13 date notice was provided pursuant to CAFA and the Final Approval Hearing.

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

16 8. The 44 persons on the list attached hereto as Exhibit A have each
17 submitted a valid, timely request for exclusion from the Class.

18 9. For the reasons stated in the Preliminary Approval Order, and having
19 found nothing that would disturb these previous findings, this Court finds and
20 determines that the proposed Settlement Class, as defined below, meets all of the legal
21 requirements for class certification for settlement purposes under Rule 23(a) and
22 (b)(3).

23 **IT IS ORDERED THAT:**

24 1. The Settlement Agreement is hereby finally approved in all respects, and
25 the Parties and the Class Administrator are hereby directed to implement the
26 Settlement Agreement according to its terms and provisions.

27 2. The Court has personal jurisdiction over the parties to this Action and
28 the Class Members, venue is proper, and the Court has subject matter jurisdiction to

1 approve the Settlement Agreement, including all exhibits thereto, and to enter this
2 Order.

3 3. Settlement Class. The Settlement Class is defined as:

4 All individuals whose PII was provided by OCTA or Cofiroute to an entity
5 described below between June 29, 2015 and May 27, 2021:

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

24 4. Exclusions from Settlement Class. The following individuals are hereby
25 excluded from the Settlement Class: (a) The persons listed on Exhibit A attached
26 hereto each of whom has submitted a valid, timely request for exclusion from the
27 Class; (b) Current members of the OCTA Board of Directors, OCTA’s Chief
28 Executive Officer, the General Manager of the 91 Express Lanes, OCTA’s 91 Express

1 Lanes Project Manager III, the attorneys representing OCTA or Cofiroute in this
2 Litigation. and the judge to whom this case is or was assigned, any member of the
3 judge’s immediate family, and any member of the judge’s staff.

4 5. Binding Effect of Order. This Order applies to all claims or causes of
5 action settled under the Agreement, and binds all members of the Settlement Class
6 who are not expressly excluded by this Order, including those who did not timely or
7 properly request exclusion. Except for Paragraph 6 below, this Order does not bind
8 persons excluded from the Settlement Class pursuant to Paragraph 4 above.

9 6. In accordance with both the Court’s general authority to protect its
10 jurisdiction and the All Writs Act (28 USC § 1651), the Court hereby permanently
11 enjoins each and every member of the Settlement Class from filing or pursuing any
12 claim or litigation against any of the persons and/or entities listed below in 6(a)-(c),
13 asserting that compliance with the obligations imposed by this Order, the Preliminary
14 Approval Order, or the Agreement violates California Streets & Highways Code
15 section 31490 or any other federal, state or local constitution, statute, rule, regulation
16 or policy purporting to limit the disclosure of personally identifiable information:

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

19 b. Foothill/Eastern Transportation Corridor Agency and San Joaquin Hills
20 Transportation Corridor Agency (collectively, “TCA”) and BRiC-TPS, LLC
21 (“BRiC”), together with their respective officers, agents, employees and
22 attorneys;

23 c. Any other person or entity who provided information to the Class
24 Administrator pursuant to the Preliminary Approval Order, together with their
25 respective officers, agents, employees and attorneys.

26 7. Release. Plaintiff and all members of the Settlement Class who did not
27 properly request exclusion are: (1) deemed to have released and discharged all
28 Released Parties from all Released Claims; (2) deemed to have released and

1 discharged any claim against Released Parties and any other person or entity who
2 provided information to the Class Administrator pursuant to the Preliminary Approval
3 Order asserting that compliance with the obligations of the Agreement, the
4 Preliminary Approval Order, and/or the Court ordered Class Notice violates
5 Section 31490 or any other federal, state or local constitution, statute, rule, regulation
6 or policy purporting to limit the disclosure of the personally identifiable information;
7 and (3) barred and permanently enjoined from asserting, instituting, or prosecuting,
8 either directly or indirectly, any of those claims. Released Claims does not include:
9 (a) the claims expressly asserted in the January 6, 2020 First Amended Complaint on
10 file in the case entitled *Mathew Skogebo et al., vs. Cofiroute USA, LLC, et al.*, Orange
11 County Superior Court Case No. 30-2019-01118474; (b) the claims expressly asserted
12 in the January 13, 2020 Second Amended Complaint on file in the case entitled
13 *Harvey J. Thompson, et al., vs. Cofiroute USA, LLC, et al.*, Orange County Superior
14 Court Case No. 30-2019-01108804; and (c) the claims expressly asserted in the
15 January 3, 2020 Corrected First Amended Complaint on file in the case entitled *Sanket*
16 *Vinod Thakur, et al., vs. Cofiroute USA, LLC, et al.*, United States District Court,
17 Central District of California, Case No. 8:19-CV-02233 ODW (JDEx). The full terms
18 of the releases described in this paragraph, including claims expressly excluded from
19 the releases, are set forth in Section 15 of the Settlement Agreement and are
20 specifically incorporated herein by this reference.

21 8. Class Relief. OCTA, through the Class Administrator, shall issue a Cash
22 Award of up to \$15.00 to each Cash Distribution Class Member who submitted claims
23 deemed timely, and shall also provide penalty forgiveness to those members of the
24 Debt Collection Subclass eligible for such relief, as stated in the Settlement
25 Agreement.

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

1 10. Administrator Costs. Notice and Administration Costs of up to
2 \$423,413.47 shall be paid out of the Settlement Fund, according to the terms of the
3 Settlement Agreement, to the Class Administrator, Epiq Class Action and Claims
4 Solutions, Inc.Entry of Judgment. Judgment shall be entered in favor of
5 Defendants and against Settlement Class Members as provided in the Agreement.

6 11. Court’s Jurisdiction. Without affecting the finality of this Order or the
7 Judgment in any way, pursuant to the Parties’ request, the Special Master and Court
8 shall retain jurisdiction over all matters relating to the interpretation, administration,
9 implementation, effectuation, consummation and enforcement of the Agreement and
10 this Order and judgment, and for any other necessary purpose.

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12 **IT IS SO ORDERED:**

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14 Dated: _____

Otis D. Wright II
United States District Judge

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Attachment 1



Exclusion Report - OCTA Settlement

Number	First Name	Middle Name	Last Name
1	AARON		MERNICK
2	AUGARTEN		LEE
3	BARBARA		ROPELATO
4	BENYAMIN	Y	YACOUB
5	BLAKE	A	ROSEBERRY
6	CHEN		GUOHUI
7	DAVID	B	COULTER
8	DEBORAH		LAMB
9	DIBA		KAZERANI
10	EDWAR		MOUSA
11	EDWIN		RABAINO
12	FRANCES	LOUISE	ENDRES
13	FRANCOIS		MALINOWSKI
14	GERALD	A	JOHNSON
15	IRMA		OCAMPO
16	ISRRAEL		ANORVEMONTES
17	JIANGKUN		CAI
18	JOSEPH		NIEZGODA
19	JULIEN		MARTEVILLE
20	KLAUDIA		KAYE
21	KRISTI		TRAYER
22	KRISTINA		KALAYDJIAN
23	LAURA		FLINT
24	LI PING		WAN
25	LINDA	J	KIMBALL
26	LISA		GIBBARD
27	MARIA	ISABEL	SERRANO-PAREDES
28	MARIO	I	SPINELLI
29	MARY	A	HEDGE
30	MICHAEL		SEAL
31	NATOULIA	R	SCARBOROUGH
32	RED		WEBSTER
33	ROBERT	C	TUAZON
34	ROBERT		CIACCIA
35	SANH		TRAN
36	SATIYA		SIREGAR
37	SILVIA		MAGANA
38	STEPHEN	K	HONG
39	SU MIN		SONG
40	SUSAN		FLIPPEN
41	THO HUU		HUYNH



Exclusion Report - OCTA Settlement

Number	First Name	Middle Name	Last Name
42	TIMI	C	GLEASON
43	VANESSA	C	MURILLO
44	YANNI	A	ABOUDI

OCTA Proposed Class Action Judgment (Dkt. No. 614-6)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION**

In re TOLL ROADS LITIGATION

PENNY DAVIDI BORSUK, *et al.*,

Plaintiffs,

vs.

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY, *et al.*,

Defendants.

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

Hon. Otis D. Wright II

**[PROPOSED] CLASS ACTION
JUDGMENT**

Date: January 4, 2022

Time: 10:00 AM

Location: Judicate West

1851 East First Street

Suite 1600

Santa Ana, CA 92705

**(Referred to Special Master: Hon.
Andrew J. Guilford (ret.))**

1 On April 12, 2021, Plaintiff Dan Golka on behalf of himself and the proposed
2 Settlement Class (as defined below) (“Plaintiff”) and Defendants Orange County
3 Transportation Authority, Darrell Johnson and Lori Donchak (collectively “OCTA”),
4 and Defendant Cofiroute USA, LLC (“Cofiroute”) (OCTA and Cofiroute are
5 collectively referred to as “Defendants”) entered into a Settlement Agreement and
6 Release (“Agreement”)¹. The settlement reached by Plaintiff and Defendants is
7 referred to herein as the “Settlement.”

8 On May 17, 2021, this Court granted preliminary approval of the Agreement
9 and ordered that notice be sent to the Settlement Class (Dkt. 600, “Preliminary
10 Approval Order”).

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

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

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

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

27 _____
28 ¹ Unless otherwise defined, all terms used herein have the same meanings as set forth
in the Agreement (Dkt. 594-3).

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

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

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

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

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

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

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

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

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

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

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

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

1 information that is reasonably necessary to provide notice to the Settlement Class
2 Members and to otherwise implement this Settlement

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

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

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

21 2. Unless there is a change in current law governing the personally
22 identifiable information of a toll violator that a transportation agency may provide to
23 a third-party debt collection agency, the only personally identifiable information of a
24 toll violator Defendant OCTA, and its processing agency, including Defendant
25 Cofiroute while acting in its capacity as processing agency for OCTA, shall provide
26 a third-party debt collection agency is the information contained in the relevant toll
27 violation notice, any updated contact, address and/or email information, and a unique
28 violation number and toll violator identification number. Defendant OCTA and its

1 processing agency shall have no obligation under this Judgment to search for or obtain
2 updated contact information for a toll violator before providing information to a third-
3 party debt collection agency.

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

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Otis D. Wright II
United States District Judge

Parties' Proposed
Order on Attorneys' Fees,
Costs and Service Awards
(emailed to Special
Master January 4, 2022)

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA – WESTERN DIVISION**

In re TOLL ROADS LITIGATION

PENNY DAVIDI BORSUK, *et al.*,

Plaintiffs,

vs.

FOOTHILL/EASTERN
TRANSPORTATION CORRIDOR
AGENCY, *et al.*,

Defendants.

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

District Court Judge: Otis D. Wright II
Magistrate Judge: Autumn D. Spaeth

[CLASS ACTION]

**[PROPOSED] ORDER ON
ATTORNEYS’ FEES, COSTS AND
SERVICE AWARDS**

Date: January 4, 2022

Time: 10:00 AM

Location: Judicate West
1851 East First Street
Suite 1600
Santa Ana, CA 92705

**(Referred to Special Master: Hon.
Andrew J. Guilford (ret.))**

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WHEREAS, the Parties to the above-captioned class action (“Action”) entered into three Class Action Settlement Agreements and Releases (the “Settlements” or “Settlement Agreements”);

WHEREAS, on May 17, 2021, the Court entered two Orders Preliminarily Approving the three Settlements (Dkt. #s 599, 600);

WHEREAS, this matter came before the Court on Plaintiffs’ Motion for Attorneys’ Fees, Costs and Service Awards (“Motion”);

WHEREAS, on January 4, 2022, at 10:00 a.m., at Judicate West, 1851 East First Street, Suite 1600, Santa Ana, CA 92705, the Honorable Andrew J. Guilford (Ret.) held a hearing to determine whether the Settlements were fair, reasonable, and adequate to the Classes and whether to award the requested attorneys’ fees, costs and Service Awards (“Final Approval Hearing”) and subsequently issued a Report and Recommendation;

WHEREAS, it appearing that Notices substantially in the form approved by the Court were mailed or e-mailed to all Settlement Class Members who could be identified with reasonable effort and notice was provided to other Settlement Class Members by publication notice, which informed Settlement Class Members of the amounts sought through this Motion;

WHEREAS, it appearing that Settlement Class Members were provided notice of this Motion, sufficiently in advance of the Objection Deadline; and

WHEREAS, based on the foregoing, the Special Master’s Report and Recommendation, and the Court having considered and determined the fairness and reasonableness of the request for fees, reimbursement of litigation costs and service awards,

THE COURT HEREBY FINDS AND CONCLUDES THAT:

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2 1. The Court has jurisdiction to enter this Order approving the attorneys’
3 fees, reimbursement of costs and service awards, and over the subject matter of the
4 Action and all parties to the Action, including all Settlement Class Members.

5 2. This Order incorporates by reference the definitions in the Settlement
6 Agreements with Defendants (ECF Nos. 585-4, 585-5, 594-3) and all capitalized
7 terms not otherwise defined herein shall have the same meanings as set forth in the
8 Settlement Agreements.

9 3. Notice of the Motion as well as the amounts sought in the Motion were
10 adequately provided to Settlement Class Members. The form and method of
11 notifying the Settlement Class of the amounts sought satisfied the requirements of
12 Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution
13 (including the Due Process Clause), and all other applicable law and rules;
14 constituted the best notice practicable under the circumstances; and constituted due
15 and sufficient notice to all persons and entities entitled thereto.

16 4. The Settlements in this case are fairly valued at approximately \$217
17 million. This amount does not consider the value of the remedial measures
18 implemented as a result of this litigation.

19 5. Class Counsel are awarded attorneys’ fees and reimbursement of costs
20 from the three settlements as follows:

21 The 3M Settlement. The 3M Settlement is fairly valued at \$11.95 million.
22 Class Counsel are hereby awarded attorneys’ fees in the amount of \$2,987,500 (25%
23 of the 3M Settlement value), and \$31,458.47 in reimbursement of Class Counsel’s
24 litigation costs, such amounts to be paid from the 3M Settlement Fund in accordance
25 with the terms of the 3M Settlement Agreement. From the 3M Settlement Fund,
26 \$3,000 shall be paid to each of the 3M Class Representatives as a Service Award,
27 which sums the Court finds to be fair and reasonable.

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1 The TCA Settlement. The TCA Settlement is fairly valued at \$164 million.
2 Class Counsel are hereby awarded attorneys' fees in the amount of \$17,500,000
3 (approximately 10.7% of the TCA Settlement value), and \$432,410.95 in
4 reimbursement of Class Counsel's litigation costs, such amounts to be paid from the
5 TCA Settlement Fund in accordance with the terms of the TCA Settlement
6 Agreement. From the TCA Settlement Fund, \$15,000 shall be paid to each of the
7 TCA Class Representatives as a Service Award, which sums the Court finds to be
8 fair and reasonable.

9 The OCTA Settlement. The OCTA Settlement is fairly valued at \$41 million.
10 Class Counsel are hereby awarded attorneys' fees in the amount of \$250,000
11 (approximately .61% of the OCTA Settlement value), and \$108,102.73 in
12 reimbursement of Class Counsel's litigation costs, such amounts to be paid from the
13 OCTA Settlement Fund in accordance with the terms of the OCTA Settlement
14 Agreement. From the OCTA Settlement Fund, \$5,000 shall be paid to the OCTA
15 Class Representative as a Service Award, which sum the Court finds to be fair and
16 reasonable.

17 6. In making this award of attorneys' fees and reimbursement of costs to
18 be paid from the Settlement Funds, the Court has also considered and found that:

- 19 (a) The Action raised numerous complex legal and factual issues, as well as
20 many issues of first impression;
- 21 (b) Had Class Counsel not achieved the Settlements, there would remain a
22 substantial risk that Settlement Class members may have recovered less or
23 nothing at all from the Defendants;
- 24 (c) The amount of attorneys' fees awarded from each Settlement is fair and
25 reasonable, and at or lower than the Ninth Circuit's benchmark as well as
26 awards in similar cases; and

1 (d) The costs incurred by Class Counsel were reasonable and necessary to the
2 effective prosecution of this action, and the amount of costs to be reimbursed
3 from the Settlement Funds is fair and reasonable.

4 7. Any appeal or any challenge affecting this Court’s approval regarding
5 any attorneys’ fees and costs application shall in no way disturb or affect the finality
6 of the Judgment.

7 8. Exclusive jurisdiction is hereby retained by the Special Master and
8 this Court, over the parties and the members of the Settlement Classes for all
9 matters relating to this Action, including the administration, interpretation,
10 effectuation or enforcement of the Settlement Agreements and this Order.

11 9. In the event that the Settlements are terminated or the Effective Dates
12 of the Settlements otherwise fail to occur, this Order shall be rendered null and
13 void to the extent provided by the Settlements.

14 10. There is no just reason for delay in the entry of this Order, and
15 immediate entry by the Clerk of the Court is expressly directed.

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18 **IT IS SO ORDERED.**

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22 DATED: _____

HON. OTIS D. WRIGHT II
UNITED STATES DISTRICT JUDGE

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PROOF OF SERVICE

**In Re Toll Roads Litigation
A267204**

I, the undersigned, an employee of Judicate West, located at 1851 E. First Street, Suite 1600, Santa Ana, CA 92705, declare under penalty of perjury that I am over the age of eighteen (18) and not a party to this matter or proceeding.

On January 13, 2022, I served the foregoing documents, described as:

SPECIAL MASTER'S REPORT AND RECOMMENDATION REGARDING PLAINTIFFS' MOTION FOR FINAL APPROVAL OF THREE CLASS ACTION SETTLEMENTS (DKT. NO. 614) AND PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, COSTS, AND SERVICE AWARDS (DKT. NO. 611)

to the following parties:

SEE ATTACHED MAILING LIST

- BY E-MAIL** I caused the above-referenced document to be transmitted via electronic mail (e-mail) to the parties as listed on this Proof of Service
- BY ELECTRONIC FILING** I caused such document to be sent via electronic service by submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.
- BY FACSIMILE** I caused the above-referenced document to be transmitted via facsimile to the parties as listed on this Proof of Service. The document was transmitted by facsimile transmission and the transmission was reported as complete and without error.
- BY PERSONAL SERVICE** I personally delivered the documents to the persons at the address (es): by leaving the documents at the person (s) office, in an envelope or package clearly labeled to identify the person(s) being served, with a receptionist or an individual in charge of the office.
- BY UNITED STATES PARCEL SERVICE** I am readily familiar with the business' practice for collection and processing of correspondence and mailing with the United States Postal Service; such correspondence would be deposited with the United States Postal Service the same day of deposit with postage thereon fully prepaid at Santa Ana, California in the ordinary course of business
- STATE** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- FEDERAL** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on **January 13, 2022**, at Santa Ana, California

Heidi Adams
Judicate West



Results Beyond DisputeSM

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as of Thursday, January 13, 2022

JW Case #: A267204

Case Caption: *In Re Toll Roads Litigation*

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