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12 *William Montgomery and all those similarly situated*

13
14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN FRANCISCO - COMPLEX DIVISION**

16 IN RE TOLL BRIDGES LITIGATION

17 SUMATRA KENDRICK, an individual;
18 MICHELLE KELLY, an individual; WILLIAM
MONTGOMERY, an individual; and on behalf of
19 those similarly situated,

20 Plaintiffs,

21 v.

22
23 BAY AREA TOLL AUTHORITY, a California
24 corporation; GOLDEN GATE BRIDGE,
HIGHWAY AND TRANSPORTATION
25 DISTRICT, a California public corporation,
26 XEROX STATE AND LOCAL SOLUTIONS,
INC., d/b/a CONDUENT STATE AND LOCAL
27 SOLUTIONS, Inc. and DOES 1-100

28 Defendants.

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/10/2019
Clerk of the Court

BY: ERNALYN BURA
Deputy Clerk

Lead Case No. CGC-17-562613
Consolidated with CGC-18-568084

**FIRST AMENDED CONSOLIDATED
CLASS ACTION COMPLAINT**

—Assigned for All Purposes to the Hon.
Judge Anne-Christine Massullo—
Department 304

Complaint Filed: November 21, 2017

Trial Date: None Set Yet

1 Plaintiffs Sumatra Kendrick, Michelle Kelly, and William Montgomery (“Plaintiffs”), on
2 behalf of themselves, and all others similarly situated, and the general public, submit their first
3 amended consolidated class action complaint against the above-captioned defendants (the
4 “Complaint”) as follows:

5 **NATURE OF THE CASE**

6 1. This class action seeks redress for defendants’ violation of Plaintiffs’ and class
7 members’ right to privacy and protection of personally identifiable information (“PII”) including
8 under *California Streets and Highways Code* § 31490. The defendants’ improper transmission of
9 Class members’ PII -- in direct violation of § 31490 -- to the Department of Motor Vehicles, the
10 Franchise Tax Board, and a host of other unauthorized third persons entitles Plaintiffs to damages and
11 injunctive relief.

12 **THE PARTIES**

13 2. Plaintiff Sumatra Kendrick (“Kendrick”) is an individual residing in the State of
14 California. While driving over the Golden Gate Bridge on September of 2016, through Defendants’
15 toll facilities, Sumatra Kendrick followed signage commands that indicated, “do not slow down, keep
16 going.” The signage did not adequately inform the driver of the pending toll crossing. Ms. Kendrick
17 was not a Fastrak subscriber. Ms. Kendrick received no notice of toll violation from the Defendants,
18 nor an opportunity to contest through any administrative hearing the tolls she had allegedly incurred.
19 Ms. Kendrick was also informed by certain of the Defendants that she was never sent a notice of toll
20 evasion violation. Ms. Kendrick first became aware of the alleged toll violations when she attempted
21 to renew her registration with the California Department of Motor Vehicles (“DMV”). The DMV
22 advised Ms. Kendrick of two alleged toll violations totaling \$170.00 that had been imposed as a lien
23 against her driver’s registration by tolling authorities. Ms. Kendrick paid the \$170.00 to renew her
24 registration.

25 3. Plaintiff Michelle Kelly is an individual residing in the State of California. While
26 driving through the Golden Gate Bridge tolls and the Carquinez Bridge through the Defendants’ toll
27 facilities, Ms. Kelly was assessed 155 toll violations by the defendants from October of 2015 to June
28 of 2016, totaling approximately \$9,000 in penalties. The penalties that Defendants assessed against

1 Ms. Kelly constitute a multiple of over 10x of the tolls assessed by the Defendants. From October of
2 2015 to June of 2016, Ms. Kelly's PII – her license plate, was photographed, information was
3 converted to a file, and her PII was provided approximately twice a month by the Defendants to the
4 DMV, rental car agencies, and other third-party entities, including without limitation, the Franchise
5 Tax Board as alleged later in this Complaint. When Ms. Kelly was financially unable pay the alleged
6 toll violations, the Defendants filed a separate request with the DMV to place a hold on Ms. Kelly's
7 registration.

8 4. Plaintiff William Montgomery is an individual residing in the State of Texas and a
9 sergeant in the U.S. Army. While stationed on military duty with the Army in Monterrey, California
10 in 2014, Plaintiff Montgomery's vehicle allegedly crossed the Benicia-Martinez Bridge in the
11 northbound direction through Defendants' toll facility on or about May 2, 2014. Mr. Montgomery has
12 no recollection of ever crossing the Benicia-Martinez Bridge in his vehicle. Over three years later, on
13 August 18, 2017, Mr. Montgomery first became aware of the alleged toll violations when he received
14 a Notice of Assignment to a Collection Agency from Professional Account Management, LLC
15 ("PAM") at his home address in Grand Prairie, Texas. The Notice of Assignment stated that he owed
16 \$75 in alleged tolls and penalties related to his vehicle's passage over the Benicia-Martinez Bridge on
17 or about May 2, 2014. The Notice of Assignment also indicates that Defendants shared Mr.
18 Montgomery's PII, including travel pattern data, with third parties. Mr. Montgomery attempted to
19 dispute the penalty with both BATA and PAM. Mr. Montgomery also sent a letter disputing the
20 violation via certified mail to Bay Area FasTrak on or about October 2, 2017. Bay Area FasTrak
21 refused to recognize Mr. Montgomery's dispute. Mr. Montgomery has security clearance with the U.S.
22 Army which requires him to report any collections matters as part of a security clearance application.
23 Mr. Montgomery only learned of the asserted debt collection activities when the California Franchise
24 Tax Board attempted to intercept monies belonging to him. Mr. Montgomery's PII, including his
25 name, social security number, and his address was provided to the Franchise Tax Board without his
26 consent.

27 5. Defendant, the Bay Area Toll Authority ("BATA"), is a government agency
28 responsible for operating and managing toll collection on the Golden Gate Bridge and other toll

1 bridges (including the FasTrak Program), sending invoices, and assessing and processing toll evasion
2 violations and penalties. BATA is an “issuing agent” within the meaning of California Vehicle Code
3 §§ 40250, *et seq.* BATA, at all times alleged herein, conducted its principal business within the State
4 of California, located in the City and County of San Francisco.

5 6. Defendant the Golden Gate Bridge, Highway and Transportation District (the
6 “District” or “GGB”) is also a government agency responsible for operating and managing toll
7 collection on the GGB (including the FasTrak Program), sending invoices, and assessing and
8 processing toll evasion violation and penalties. The District was and is at all times herein, conducted
9 business in California, with its headquarters located in the City and County of San Francisco. The
10 District is an “issuing agency” within the meaning of California Vehicle Code §§ 40250, *et seq.*

11 7. Defendant Xerox State and Local Solutions, Inc. (“Xerox”) formerly ACS State and
12 Local Solutions, Inc. is a private corporation headquartered in New York, and authorized to conduct
13 business in California. On April 2, 2012, ACS State and Local Solutions, Inc. filed a certificate of
14 amendment to its Articles of Incorporation, changing its name to Xerox State & Local Solutions, Inc.
15 Since 2002, Xerox had operated and maintained the Fastrak Program. In January of 2013, BATA and
16 the District contracted with Xerox pursuant to Government Code §40252 to administer the Fast Trak
17 program through June 30, 2019. Conduent State and Local Solutions, Inc. (“Conduent”) has indicated
18 it is a successor entity. Xerox/Conduent provide and administer the Fastrak and Pay-By-Plate
19 programs and manage the assessment, notification, and collection of fines and penalties pertaining to
20 toll invoices and toll evasion violations on the GGB and other bridges. Accordingly, pursuant to
21 Government Code §40253, Xerox and Conduent are each a “processing agency” within the meaning
22 of California Vehicle Code §40250 *et. seq.* Xerox and Conduent have accordingly been delegated a
23 public function by BATA and the District. Xerox and Conduent are also thereby entwined with BATA
24 and the District’s government policies, and BATA and the District are entwined in the management
25 and control of Xerox/Conduent. Finally, Xerox and Conduent are a knowing and willful participant
26 in a joint action, along with the BATA and the District, in the various acts and omissions set forth in
27 this complaint, which caused injury to Plaintiffs and the Class Members.
28

1 immediately becomes liable for those tolls and other charges as may from time to time be prescribed
2 by the California Transportation Commission.”

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

5 24. The tolling agencies in California accept payment for tolls by accepting cash and/or
6 credit cards, offering an electronic toll collection system (e.g., FasTrak), implementing a pay-by-
7 license-plate method of payment, or a combination of these methods.

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

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

17 27. Vehicle Code §23301.8 regulates pay-by-plate programs as follows:

18 **Where an issuing agency permits pay-by-plate toll payment as**
19 **described in subdivision (e) of Section 23302, it shall communicate,**
20 **as practicable, the pay-by-plate toll amount in the same manner as**
21 **it communicates other toll payment methods. The issuing agency**
22 **shall provide publicly available information on how pay-by-plate**
23 **toll payment works, including the toll amount, process for payment,**
24 **and period of time a vehicle has to resolve the payment before an**
25 **issuing agency may process the trip as a violation under Section**
26 **40255. Communication of this information may include the**
27 **Department of Transportation’s approved signage, posting of**
28 **information on the issuing agency’s Internet Web site, media**
advertising, public meeting or disclosure as required by the issuing
agency’s policies, or other methods of communication. Except
where the issuing agency has an agreement with a vehicle owner
that specifies in advance any administrative fees that will be
imposed on the owner for pay-by-plate toll payment, administrative

costs shall be incorporated into the pay-by-plate toll amount, and no additional administrative costs shall be added above the posted pay-by-plate toll amount.

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

29. The BATA outsourced the Toll Bridges' administrative functions to Defendant Xerox and Conduent (collectively the "Private Defendants"). The Private Defendants provided the Toll Bridges with customer service and toll compliance services.

XEROX/CONDUENT OPERATES THE TOLL BRIDGES

30. From October of 2010 to the present, Defendants Xerox and/or Conduent were responsible for providing the following functions to BATA and the District and in fact operated the Toll Bridges for BATA and GGB:

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

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

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

(d) Mail room;

(e) Payment processing;

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

(g) Special projects;

(h) Toll enforcement processing including actually conducting and/or overseeing any initial internal administrative review proceeding conducted concerning a toll violation by the BATA, actually conducting any administrative review (the second tier of the three tier review process) image review services, maintenance of electronic data exchange with the DMV, electronically produce file to mail,

1 process violation inquiries, process affidavits of non-liability, place registration holds, resolve
2 customer violation issues, perform judgment recovery services;

3 (i) SOP's configuration Control & Documentation (library catalog, training manuals, system
4 software changes tracking, update software source code, test, maintain and schedule software changes
5 as required, test configuration platform, develop and maintains disaster recovery plan, document
6 security audits);

7 (j) System support (provide complete system administrative and support service for the
8 operation of the customer service system, violation, imaging, reporting, webs services and other
9 FasTrak related software system – including generating account statements, processing auto debiting,
10 posting all tolls, penalties, and charges and credits, maintain compliance with interoperability transfer,
11 archive account and image data, ensure the daily transfer of violations for the image processing
12 systems and more);

13 (k) Program Management (provide overall program management for each item in the contract
14 between the parties). ((a) through (k), are collectively referred to as the “Functions.”)

15 31. From October of 2010 to present date, the Private Defendants participated with the
16 District and BATA in determining the amount of the penalties assessed, collected, and charged against
17 Plaintiff and the Class Members.

18 32. From October of 2010 to present date, the Private Defendants actually provided PII of
19 Plaintiffs and the Class Members to Other Unauthorized Parties.

20 33. Specifically, on or about December 31, 2003, Affiliated Computer Services, Inc.
21 (“ACS”) entered into an agreement labeled the Regional Customer Services Center Specification
22 Regional Video Tolling and Golden Gate Bridge Electronic Tolling with Defendants GGB and BATA
23 (“Agreement”). The Agreement has been amended through various iterations by Defendant Xerox
24 (who acquired ACS), and by Conduent, who purchased the rights to the Agreement. ACS, Xerox, and
25 Conduent have been required to sign many of the documents that address the transmission of drivers’
26 PII to third parties.

27
28

1 **CLASS ACTION ALLEGATIONS**

2 34. Plaintiffs bring this action on behalf of themselves, the general public, and all others
3 similarly situated, pursuant to California Code of Civil Procedure (“CCP”) § 382.

4 35. The Class is defined as:

5 All consumers who used Antioch, Benicia-Martinez, Carquinez, Dumbarton, Richmond-San
6 Rafael, San Francisco – Oakland, and San Mateo – Hayward, Bay Area Bridge, Golden Gate Bridge,
7 between November 21, 2013 and present, and:

- 8 • Who had their travel pattern data (date and time of trip, or plaza and lane numeric
9 identifiers) made available by Defendants to another transportation agency;
- 10 • Who had the date of their toll transaction or violation sent to the California DMV;
- 11 • Who had their license plate numbers sent by Defendants to the California DMV for
12 a second inquiry, the Arizona DMV, DataTicket Incorporated, Law Enforcement
13 Systems, LLC (Duncan Solutions), or such similar companies;
- 14 • Who had any personally identifiable information other than the amount of tolls and
15 penalties owed, the violation number, or the violator’s account number sent by
16 Defendants to Linebarger Goggan Blair & Sampson LLP or similar and related
17 company;
- 18 • Who, without providing express written consent to receive communications about the
19 products or services offered by a transportation agency or a transportation agency
20 contractor, had any personally identifiable information sent by Defendants to a third
21 party company; or
- 22 • Who had any personally identifiable information sent by Defendants to a car rental
23 company, LexisNexis, Microbilt, Experian, the California FTB, Judgment Recovery
24 Assistance, icontract, or a similar such company.

25 36. This action is properly brought as a class action for the following reasons:

26 (a) The proposed class is so numerous that the joinder of all Class Members is
27 impracticable. While Plaintiffs do not know the exact number and identity of all Class Members,
28 Plaintiffs are informed and believe that there are hundreds of thousands (if not millions) of Class

1 Members. The precise number of Class Members can be ascertained through discovery, which will
2 include Defendants' business records;

3 (b) The disposition of Plaintiffs' and the Class Members' claims in a class action
4 will provide substantial benefits to both the parties and the Court;

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

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

11 (1) Whether Defendants transmitted or sold personally identifiable
12 information as a practice, policy, or pattern including, but not limited to, as part and parcel of their
13 collection activity;

14 (2) Whether Defendants violated California's Unfair Competition Law,
15 Business & Professions Code §§17200, *et seq.* ("UCL");

16 (3) Whether Defendants violated California's Consumer Legal Remedies
17 Act, Civil Code §§1750, *et seq.* ("CLRA");

18 (4) Whether Plaintiffs and Class Members have been harmed and the proper
19 measure of relief;

20 (5) Whether Plaintiffs and Class Members are entitled to an award of
21 attorneys' fees, and expenses against Defendants; and

22 (6) Whether, as a result of Defendants' misconduct, Plaintiffs are entitled
23 to equitable relief, and if so, the nature of such relief.

24 (e) Plaintiffs' claims are typical of the claims of the Class Members. Plaintiffs and
25 all Class Members have been injured by the same wrongful practices of Defendants. Plaintiffs' claims
26 arise from the same practices and conduct that give rise to the claims of all Class Members and are
27 based on the same legal theories;

28

1 (f) Plaintiffs will fairly and adequately protect the interests of the proposed class
2 in that they have no interests antagonistic to those of the other proposed Class Members, and Plaintiffs
3 have retained attorneys experienced in consumer class actions and complex litigation as counsel;

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

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

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

13 (3) Without a class action, Class Members will continue to suffer damages,
14 and Defendants' violations of law will proceed without remedy while Defendants continue to reap and
15 retain the substantial proceeds of its wrongful conduct; and

16 (4) Plaintiffs know of no difficulty that will be encountered in the
17 management of this litigation which would preclude its maintenance as a class action.

18 37. Plaintiffs seek damages and equitable relief on behalf of the proposed class on grounds
19 generally applicable to the entire proposed class.

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

22 **CAUSES OF ACTION**

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF CALIFORNIA STREETS AND HIGHWAYS CODE §31490**

25 **(By Plaintiffs, Individually and on Behalf of All Class Members, Against All Defendants)**

26 39. Plaintiffs hereby refer to and incorporate by reference each and every allegation
27 contained in the preceding paragraphs of this Complaint.
28

1 40. California Streets and Highways Code §31490 provides that: (a) Except as otherwise
2 provided in this section, a transportation agency may not sell or otherwise provide to any other person
3 or entity personally identifiable information of any person who subscribes to an electronic toll or
4 electronic transit fare collection system or who uses a toll bridge, toll lane, or toll highway that
5 employs an electronic toll collection system.

6 41. The Plaintiffs and the Class Members are either “subscribers” or “users” of Defendants’
7 Toll Bridges pursuant to California Streets and Highways Code §31490(a).

8 42. California Streets and Highways Code §31490(h) provides that: This section, with
9 respect to an electronic toll collection system, does not prohibit a transportation agency from sharing
10 data with another transportation agency solely to comply with interoperability specifications and
11 standards adopted pursuant to Section 27565 regarding electronic toll collection devices and
12 technologies. A third-party vendor may not use personally identifiable information obtained under this
13 subdivision for a purpose other than described in this subdivision.

14 43. California Streets and Highways Code §31490(i) provides: For purposes of this section,
15 “transportation agency” means the Department of Transportation, the Bay Area Toll Authority, any
16 entity operating a toll bridge, toll lane, or toll highway within the state, any entity administering an
17 electronic transit fare collection system and any transit operator participating in that system, or any
18 entity under contract with any of the above entities.

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

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

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

1 47. Defendants BATA, GGB, Xerox, and Conduent provided Plaintiffs' and Class
2 Members' PII, within the meaning of California Streets and Highways Code §31490(o), including
3 their names, physical addresses, social security numbers, travel pattern data including each of
4 Plaintiff's location on a given Toll Bridge, e-mail address, and other PII, to the following
5 Unauthorized Parties: Law Enforcement Agencies, including the San Francisco Police Department
6 and other city, state, county, and federal Law Enforcement Agencies located in the State of California;
7 the California Department of Motor Vehicles ("DMV"); the California Franchise Tax Board ("FTB");
8 Banking Institutions, including, without limitation, Wells Fargo Bank, N.A., JP Morgan Chase Bank,
9 Bank American, N.A.; Car Rental Agencies, including without limitation Ace Rent-A-Car, Advantage,
10 Alamo, Avis, Budget, Dollar, Economy, Enterprise, Europcar, Rent-a-car, Firefly, Fox; out-of-state
11 collection agencies, credit bureaus (including Experian, Transunion, and Equifax) and other
12 unauthorized third persons, marketing company, and promotional opportunities and entities to be
13 ascertained through discovery (Other Unauthorized Parties).

14 48. BATA, GGB, Xerox, and Conduent operate, add enhancements to, control, and make
15 modifications to a Computer Database called Vector such that each defendant is liable directly and
16 derivatively under §31490.

17 49. BATA, GGB, Xerox, and Conduent knowingly enter programs, portal transmissions,
18 portal connections, FTP transfers, and otherwise knowingly provide PII to all the parties listed in this
19 cause of action, such that each defendant is liable directly and derivatively under §31490.

20 50. Specifically, BATA, GGB, Xerox, and Conduent send the following categories of PII
21 to Orange County Transportation Authority, the Transportation Corridor Agencies, SANDAG, RCTC,
22 LACMTA ("Other Agencies"): Transponder hex ID numbers, unique numeric identifier for accounts,
23 license plate state and numbers of vehicles associated with account for active BATA/GGB accounts,
24 start and end date vehicle associated with account for active BATA/GGB accounts, date and time of
25 trip, plaza and lane numeric identifiers, and toll amount ("Agency PII"). Agency PII is sent to the
26 Other Agencies within 14 days of each instance that a Class Member or Plaintiffs drives on one of the
27 Toll Bridges. E-mails produced by BATA in response to FOIA requests made by Plaintiffs revealed
28 that the agencies discussed that sending too much locational PII in these cases is a "breach" of §31490.

1 51. Each category of the Agency PII constitutes PII under *S&H Code Section 31490(o)*.

2 52. BATA, GGB, Xerox and Conduent provide the Agency PII for “non-interoperability”
3 purposes in that all of the Agency PII need not be sent, nor was the Agency PII sent to “create an
4 integrated transit fare payment system” or “an integrated toll payment system.” Instead, the Agency
5 PII was sent to track drivers’ locations, to make reports about the driving public and their locations,
6 for the purpose of establishing unreasonable toll amounts, and for the purpose of assessing excessive
7 fines.

8 53. BATA, GGB, Xerox and Conduent provide PII of Class Members and Plaintiffs to the
9 California DMV. Specifically, BATA, GGB, Xerox and Conduent provide some or all of the
10 following PII of Plaintiffs and Class Members to the California DMV to place unlawful lookups, and
11 holds on drivers’ registration: License plate number, date of toll transaction, unique BATA
12 identification number, violation number, total amount due, first four characters of owners last name
13 “DMV PII.”¹

14 54. Each category of the DMV PII constitutes PII under *S&H Code Section 31490(o)*.

15 55. DMV PII is provided to the DMV within 14 days of each instance that Class Members
16 or the Plaintiffs drives on one of the Toll Bridges in the instance of a “lookup,” and within 90 days
17 after a hold is placed as a knowing business process.

18 56. BATA, GGB, Xerox and Conduent provide the DMV PII for “non-interoperability”
19 purposes in that all of the DMV PII need not be sent, nor was the DMV PII sent to “create an integrated
20 transit fare payment system” or an “integrated toll payment system.” Instead, the DMV PII was
21 improper travel pattern data, to track drivers’ locations, to surveil travel routes, to track consumption
22 habits, traffic, to interfere with property, to improperly place a lien on a vehicle based on an excessive
23 fine, to improperly assess a penalty even when driver information of many Class Members, is in the
24 Vector computer database. BATA, GGB, Xerox, and Conduent also improperly use the Vector system
25 to scrape PII of Plaintiffs and Class Members from the DMV database, including lender information,
26 and other records from drivers.

27 _____

28 ¹ The technology utilized by the Defendants converts the plate image to data before it is transmitted; thus images are not transmitted, but the date is transmitted.

1 57. BATA, GGB, Xerox, and Conduent provide by and through themselves and their
2 vendors (agents) to the following: LexisNexis, Experian, Transunion, the following categories of PII
3 of Plaintiffs and Class Members: name of owner or renter of vehicle, address of owner or renter of
4 vehicle, and Social Security Number (“Credit Inquiry PII”).

5 58. BATA, GGB, Xerox, and Conduent by and through themselves or their agents, make a
6 credit inquiry on the credit of Plaintiffs and Class Members.

7 59. BATA, GGB, Xerox, and Conduent by and through themselves or their agents, transmit
8 reports of the Plaintiffs and Class Members to various third parties, without Plaintiffs and Class
9 Members’ consent, in violation of the Fair Credit Reporting Act (15 U.S.C. § 1681(b)), the Driver
10 Privacy Protection Act, and other California State privacy laws.

11 60. Credit Inquiry PII is provided to the credit bureaus within 180 days of each instance
12 that Class Members or the Plaintiffs drives on one of the Toll Bridges.

13 61. BATA, GGB, Xerox and Conduent provide the Credit Inquiry PII for “non-
14 interoperability” purposes in that all of the Credit Inquiry PII was not provided to “create an integrated
15 transit fare payment system” or an “integrated toll payment system.” Instead, the Credit Inquiry PII
16 was improperly sent for marketing, advertising, location tracking, data sales, credit inquiries/credit
17 modeling, pricing on tolls, and in violations of the FCRA and Rosenthal.

18 62. BATA, GGB, Xerox, and Conduent provide by and through themselves and their
19 vendors (agents) to one of the following: out of state entities and persons including the Arizona DMV
20 and out of State collection companies, the following categories of PII of some Class Members: name
21 of owner or renter of vehicle, address of owner or renter of vehicle, license plate number, and Social
22 Security Number (“Out of State PII”).

23 63. Out of State PII is provided to the credit bureaus within 180 days of each instance that
24 a Class Members drives on one of the Toll Bridges.

25 64. BATA, GGB, Xerox and Conduent provide the Out of State PII for “non-
26 interoperability” purposes in that all of the Out of State PII was not provided to “create an integrated
27 transit fare payment system” or an “integrated toll payment system.” Instead, the Out of State PII was
28

1 improperly sent for location tracking, data sales, credit inquiries/credit modeling, pricing on tolls, in
2 violation of Street & Highway Code §27565 and §31490.

3 65. BATA, GGB, Xerox, and Conduent provide by and through themselves and their
4 vendors (agents) to the Franchise Tax Board, the following categories of PII of Class Members: Social
5 Security Number, last four letters of last name, total amount owed (“FTB PII”).

6 66. Upon information and belief, BATA, GGB, Xerox, and Conduent provide by and
7 through themselves and their vendors (agents) PII of the Plaintiffs and the Class Members to third
8 parties in order to allow credit modeling, data modeling, location tracking, and other purposes not
9 permitted by §31490.

10 67. FTB PII is provided to the California FTB within 180 days of each instance that a Class
11 Members drives on one of the Toll Bridges.

12 68. BATA, GGB, Xerox and Conduent provide the FTB for “non-interoperability”
13 purposes in that all of the FTB PII was not provided to “create an integrated transit fare payment
14 system” or an “integrated toll payment system.” Instead, the FTB PII was improperly sent to interfere
15 with property, to coerce the payment of excessive fines, and for other improper purposes pursuant to
16 §31490.

17 69. The parties that BATA, GGB, Xerox and Conduent provided PII to were not already
18 in possession of the PII, because each creation of PII is a unique and specific event.

19 70. California Streets and Highways Code §31490(i) is not a defense or excuse of liability
20 pursuant to §31490(a) or (h) because §31490(i) refers to, incorporates, and implicates subsection (d)
21 which contemplates a different functionality of §31490.

22 71. By providing the Unauthorized Parties with the PII of Plaintiff and the Class Members,
23 Defendants’ purpose was to track Plaintiffs’ and Class Members’ comings and goings, and to interfere
24 with Plaintiff’s and Class Members’ rights to use their vehicles.

25 72. Defendants did not receive a search warrant from any law enforcement agency under
26 California Streets and Highways Code §31490 prior to making any of the above-referenced
27 transmissions of PII.

28

1 73. Defendants did not have authorization under the transponder agreements with
2 commuters to make any of the above transmissions of PII.

3 74. GGB, BATA, Xerox and Conduent have not completed forms with the DMV to
4 properly send PII. GGB, BATA, Xerox, and Conduent would first file requests (in certain
5 circumstances only) to provide plate numbers to the DMV to obtain information about commuters,
6 even though the named Defendants already had the information of commuters in their Vector system
7 based on their completed transponder agreements, the availability of public information and databases
8 that indicate information for registration of car owners, private investigation, the right to subpoena
9 under California Streets and Highways Code, the right of publication, and other means to obtain
10 information.

11 75. Based on DMV procedures and practices, the DMV did not maintain a database of the
12 plate numbers of Plaintiffs and Class Members. GGB, BATA, Xerox and Conduent, would then
13 provide plate numbers and other PII, subsequently thereto to the DMV to place a hold on commuters'
14 registration, which was an entirely independent request and function from providing plate numbers to
15 obtain information about commuters. In other words, the Defendants did not need to make subsequent
16 transmission of plate numbers to obtain the address of a commuter.

17 76. Based on the fact that GGB, BATA, Xerox, and Conduent provided PII of the Plaintiffs
18 and Class Members to the Unauthorized Parties in violation of California Streets and Highways Code
19 §31490(a), and based on the knowing transmission of the PII to the above third persons, pursuant to
20 §31490(q)(1) Plaintiffs and Class Members are entitled to \$2,500 for each individual violation,
21 attorneys' fees, reasonable costs from GGB, BATA, Xerox and Conduent and for Plaintiff and those
22 Class Members who had their information provided three or more times, \$4,000 for each individual
23 violation, attorney's fees, and reasonable costs from GGB, BATA, Xerox, and Conduent. California
24 Streets and Highways Code §31490(q)(2).

25 **DEFENDANTS ARE LIABLE BECAUSE THE PURPOSE BY WHICH PII WAS**
26 **PROVIDED TO UNAUTHORIZED PARTIES WAS NOT FOR**
27 **“INTEROPERABILITY PURPOSES”**
28

1 77. When Plaintiffs and each of the Class Members drove on the Toll Bridges, each of
2 them was a “user” of the Toll Bridges pursuant to §31490(a).

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

5 79. GGB, BATA, Xerox, and Conduent are each independently, “entities” operating a toll
6 bridge, toll lane or toll highway within the state of California based on their contractual and actual
7 roles in the operations of the joint enterprise.

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

10 81. Defendants provided to the Unauthorized Parties PII for purposes that were not, and
11 could not have been, for “interoperability purposes” in that none of the transmittals were for the “sole
12 purpose of creating an integrated transit fare payment system, integrated toll payment system, or both.”
13 In fact, none of Defendants’ providing of PII to Unauthorized Parties alleged hereinabove had
14 anything to do with creating any system, much less an “integrated transit fare payment system,
15 integrated toll payment system, or both,” but were instead meant to place holds on commuters’ vehicle
16 registrations as an illicit collection device.

17 82. As defined in §31490(m), for purposes of this section: “[E]lectronic toll collection
18 system” is a system where a transponder, camera-based vehicle identification system, or other
19 electronic medium is used to deduct payment of a toll from a subscriber’s account or to establish an
20 obligation to pay a toll, and “electronic transit fare collection system” means a system for issuing an
21 electronic transit pass that enables a transit passenger subscriber to use the transit systems of one or
22 more participating transit operators without having to pay individual fares, where fares are instead
23 deducted from the subscriber’s account as loaded onto the electronic transit pass. The transmissions
24 described above were not provided pursuant to a collection system of interoperability, but were instead
25 disseminated to unlawfully implement impermissible collection devices, place holds through the
26 DMV, interfere with property rights, and to track commuters’ comings and goings. See Streets and
27 Highways Code §27565.
28

1 83. Thus, regardless of whether any of the Unauthorized Parties are themselves
2 “transportation agencies,” the named Defendants are liable for violations of California Streets and
3 Highways Code §31490(a), (h), and (l) because their provisions of Plaintiffs’ and Class Members’ PII
4 were not for “interoperability purposes.”

5 84. Based on the fact that GGB, BATA, Xerox and Conduent provided PII of the Plaintiffs
6 and Class Members to the Unauthorized Parties in violation of California Streets and Highways Code
7 §31490(a), pursuant to §31490(q)(1), Plaintiffs and Class Members are entitled to \$2,500 for each
8 individual violation, attorney’s fees, reasonable costs from GGB, BATA, Xerox an Conduent, and for
9 Plaintiffs and those Class Members who had their information provided three or more times, \$4,000
10 for each individual violation, attorney’s fees, and reasonable costs from GGB, BATA, Xerox and
11 Conduent. California Streets and Highways Code §31490(q)(2).

12 **DEFENDANTS ARE ALTERNATIVELY LIABLE BECAUSE THE**
13 **UNAUTHORIZED PARTIES WERE NOT PERMITTED RECIPIENTS OF PLAINTIFFS’**
14 **AND CLASS MEMBERS’ PII REGARDLESS OF THE PURPOSE**

15 85. Plaintiffs are informed and believes, and on that basis alleges, that GGB, BATA,
16 Xerox and Conduent, were not under contract with any of the Unauthorized Third Parties, within the
17 meaning and purpose of California Streets and Highways Code §31490(l), at the time they provided
18 Plaintiffs’ and Class Members’ PII to the Unauthorized Persons, with the exception of contracts by
19 and between Xerox/Conduent and BATA/GGB.

20 86. Specifically, Plaintiffs are informed and believe, and based thereon allege that GGB,
21 BATA, Xerox and Conduent did not execute any contracts with the DMV at all.

22 87. The DMV is not a “transportation agency.” Specifically, the GGB and BATA were not
23 “under contract” with the DMV for the purposes of California Streets and Highways Code §31490(l).
24 The DMV has not been a signatory to any writing with BATA and GGB concerning BATA and/or
25 GGB providing PII under the unlawful transmissions described above. The DMV has no continuing
26 contractual obligation with any party such that it would be said to be “under contract.”

27 88. Xerox and Conduent are not under contract with the DMV.
28

1 89. None of the Law Enforcement Agencies are “under contract” with GGB, BATA, Xerox
2 and Conduent pursuant to California Streets and Highways Code §31490(l).

3 90. The FTB is not “under contract” with GGB, BATA, Xerox and Conduent under
4 California Streets and Highways Code§31490(l).

5 91. None of the Banking Institutions are “under contract” with GGB, BATA, Xerox and
6 Conduent pursuant to California Streets and Highways Code §31490(l).

7 92. None of the Other Unauthorized Parties are “under contract” with GGB, BATA, Xerox
8 and Conduent pursuant to California Streets and Highways Code §31490(l).

9 93. None of the Credit Bureaus are “under contract” with GGB, BATA, Xerox and
10 Conduent.

11 94. None of the Car Rental Agencies are “under contract” with GGB, BATA, Xerox and
12 Conduent pursuant to California Streets and Highways Code §31490(l).

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

15 96. Consequently, Defendants’ provision of PII to the Unauthorized Parties was in
16 violation of California Streets and Highways Code §31490 for this independent reason, irrespective of
17 whether the PII was provided for interoperability purposes.

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

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

1 104. Defendants are “debt collectors” within the meaning of California Civil Code §1788.2.
2 The tolls, penalties and other debts asserted by the Defendants constitute “consumer debts” pursuant
3 to said section.

4 105. Defendants have violated, and are violating, the Rosenthal Fair Debt Collection
5 Practices Act, California Civil Code §1788, *et seq.*, in that they are making (i) false representations of
6 the true nature of the business or services being rendered by the debt collector (Civil Code
7 §1788.13(i)); and (ii) false representations that the consumer debt may be increased by the addition of
8 attorney’s fees, investigation fees, service fees, finance charges, or other charges if, in fact, such fees
9 or charges may not legally be added to the existing obligation (Civil Code §1788.13(e)).

10 106. Additionally, California Civil Code §1788.17 requires every debt collector to comply
11 with the provisions of §§1692b to 1692j, inclusive, and that the same shall be subject to the remedies
12 in §1692k, of Title 15 of the United States Code. To wit:

13 (a) Section 1692d prohibits a debt collector from engaging in any conduct the natural
14 consequences of which is to harass, oppress or abuse any person in connection with the collection of
15 a debt.

16 (b) Section 1692e(8) prohibits a debt collector from communicating or threatening to
17 communicate to any person credit information which is known, or which should be known to be false,
18 including the failure to communicate that a disputed debt is disputed.

19 (c) Section 1692e(10) prohibits a debt collector from the use of any false representation or
20 deceptive means to collect or attempt to collect any debt or to obtain information concerning a
21 consumer.

22 (d) Section 1692e(11) prohibits a debt collector from failing to disclose (a) in the initial written
23 communication with the consumer and, in addition, if the initial communication with the consumer is
24 oral, in that initial oral communication, that the debt collector is attempting to collect a debt and that
25 any information obtained will be used for that purpose, and (b) in subsequent communications that the
26 communication is from a debt collector.

27 (e) Section 1692g requires additional written notices be provided by debt collectors and
28 provides circumstances under which a debt collector must cease collection of debts when disputed.

1 111. Business & Professions Code §17200 provides: as used in this chapter, unfair
2 competition shall mean and include any unlawful or fraudulent business act or practice and unfair,
3 deceptive, untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with
4 Section 17500) of Part 3 of Division 7 of the Business and Professions Code.

5 112. Business & Professions Code §17204 provides that an action for violation of
6 California’s unfair competition law may be brought by persons who have suffered injury in fact and
7 have lost money or property as a result of such unfair competition, and Bus. & Prof. Code §17203
8 provides that a court may grant injunctive and equitable relief to such persons.

9 113. The unlawful conduct of Defendants Xerox and Conduent, alleged herein, are acts of
10 unfair competition under Bus. & Prof. Code §§17200, *et seq.*, for which Defendants Xerox and
11 Conduent are liable and for which this Court should issue equitable and injunctive relief, including
12 restitution, pursuant to Bus. & Prof. Code §17203.

13 114. Through their conduct, Defendants Xerox and Conduent have engaged in unfair
14 business practices in California by employing and utilizing the practices complained of herein.
15 Defendants Xerox and Conduent’s use of such unfair business practices constitute unfair competition
16 that has provided and continues to provide Defendants with an unfair advantage over their competitors.

17 115. Defendants Xerox and Conduent’s conduct as alleged herein is unlawful, unfair, and
18 fraudulent.

19 116. Defendants Xerox and Conduent’s conduct as alleged herein is “unlawful” in that,
20 among other things, it violates the duties they owe to Plaintiffs and the Class Members.

21 117. Defendants Xerox and Conduent’s conduct as alleged herein is also “unfair” because,
22 among other things, it was designed to deprive Plaintiffs and the Class Members of their
23 constitutionally protected rights and their property for less than adequate consideration.

24 118. Each of the Defendants also furnishes a privacy policy that is not compliant with
25 California Streets and Highways Code § 31490(b), in that each policy fails to identify the third parties
26 to which drivers’ PII is provided as is expressly required by the statute. This practice is therefore
27 unlawful and unfair per § 17200.
28

1 119. Defendants Xerox and Conduent’s scheme, as alleged herein, is also “fraudulent,” in
2 that it is knowingly calculated and likely to mislead. Defendants Xerox and Conduent had actual
3 knowledge the illicit and reckless plans they possessed and concealed from Plaintiffs and the Class
4 Members to obtain and misuse their personal and private information. Defendants Xerox and
5 Conduent have continued to take steps to perpetuate these deceitful practices against the Plaintiffs and
6 the Class Members and other members of the public at large.

7 120. Unless enjoined, Defendants Xerox and Conduent will continue to harm the Plaintiffs,
8 the other Class Members and the general public. Plaintiff and the Class Members have suffered
9 injuries in fact and lost money as a result of Defendants’ conduct, as more specifically alleged above.

10 121. As a result of Defendants Xerox and Conduent’s unfair business practices, they have
11 reaped unfair benefits and illegal profits at the expense of the Plaintiffs and the Class Members.
12 Defendants Xerox and Conduent should be made to disgorge their ill-gotten gains and restore such
13 monies to Plaintiffs and the Class Members. Defendants Xerox and Conduent’s unfair business
14 practices furthermore entitle Plaintiffs and the Class Members herein to obtain preliminary and
15 permanent injunctive relief, including, but not limited to, orders that Defendants Xerox and Conduent
16 cease their complained-of practices and account for, disgorge, and restore to Plaintiffs and the Class
17 Members the compensation unlawfully obtained from them. Pursuant to the California Constitution
18 only, and not the United States Constitution, Plaintiffs seek for themselves, and on behalf of the Class
19 disgorgement of profits obtained by the unlawful transmissions of PII, and declaratory relief and
20 injunctive relief that Xerox, Conduent and BATA be prohibited from further unlawful transmissions
21 of PII.

22 **FOURTH CAUSE OF ACTION**
23 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CIVIL**
24 **CODE §§1750, ET SEQ.**
25 **(Against Xerox, Conduent, and DOES 1-10)**

26 122. Plaintiffs hereby refer to and incorporate by reference each and every allegation
27 contained in the preceding paragraphs of this Complaint.
28

1 123. Defendants Xerox and Conduent are “person[s]” as defined by Civil Code §1761(c).
2 Plaintiffs and the Class Members are consumers within the meaning of Civil Code §1761(d).

3 124. The CLRA applies to Defendants Xerox and Conduent’s conduct because it extends to
4 transactions that are intended to result in the sale or lease of goods or services to consumers, or do
5 result in such sales or leases. The use of the Toll Bridges constitutes such sale or lease of goods or
6 services.

7 125. Defendants Xerox and Conduent had a duty to truthfully disclose how they truly
8 intended to operate Toll Bridges and their related charges and payments, use and disclose personally
9 identifiable information of Plaintiffs and the Class Members, and disclose the omitted facts regarding
10 such use and disclosure. Defendants Xerox and Conduent had exclusive knowledge of material facts
11 not known to Plaintiffs and the Class Members. Specifically, Defendants Xerox and Conduent operate
12 Toll Bridges and related charges and payments in a manner that defrauds the Plaintiffs and the Class
13 Members, unjustly enriches Defendants, and uses and discloses personally identifiable information of
14 Plaintiffs and the Class Members contrary to law and for improper purposes. Defendants Xerox and
15 Conduent, however, actively concealed material facts and did not provide Plaintiffs or the Class
16 Members proper notice of their actual intentions for use and disclosure of Plaintiff’ or Class Members’
17 personally identifiable information.

18 126. The facts, which Defendants Xerox and Conduent misrepresented and concealed as
19 alleged in the preceding paragraphs, were material to Plaintiffs’ and the Class Members’ decisions
20 about whether to use the Toll Bridges (when such use was known) and pay bills rendered by or for
21 Defendants Xerox and Conduent. Defendants Xerox and Conduent are liable under the CLRA for
22 these material misrepresentations and omissions.

23 127. In violation of Civil Code §1770(a)(16), Defendants Xerox and Conduent represented
24 that the subject of a Toll Bridges transaction was supplied in accordance with a previous representation
25 when it was not. Defendants Xerox and Conduent have failed to disclose material facts to Plaintiffs
26 and the Class Members by billing them for services that were not in fact provided, by billing them at
27 rates higher than were disclosed or allowed by law, and/or through billing errors.

28

1 128. Additionally, by their conduct described in this Complaint, Defendants Xerox and
2 Conduent have violated Civil Code §1770(a)(5), (7), (9), (13), (14), (17), and (19).

3 129. Defendants Xerox and Conduent had a duty to disclose the omitted facts because it had
4 exclusive knowledge of material facts not known to Plaintiffs and the Class Members (that they were
5 billing for services that they did not in fact provide and/or that they were billing at rates higher than
6 disclosed or permitted by law), because they actively concealed material facts, and because they did
7 not provide Plaintiffs and the Class Members proper notice of the Toll Bridges, toll charges, penalties,
8 the processes by which charges and penalties could be assessed and contested, and because they
9 otherwise suppressed true material facts.

10 130. Under Civil Code §1780, Plaintiffs and the Class Members seek appropriate equitable
11 relief, including an order enjoining Defendants Xerox and Conduent from the unlawful practices
12 described herein, as well as recovery of attorneys' fees and costs of litigation, restitution of property,
13 actual damages, punitive damages, and any other relief the Court deems proper.

14 131. Additionally, any of the Plaintiffs or Class Members that are senior citizens or disabled
15 persons, as defined in Civil Code §§1780(b)(1) and 1781(f) and (g), may seek and be awarded up to
16 an additional \$5,000 for physical, emotional, or economic damage.

17 **FIFTH CAUSE OF ACTION**

18 **BREACH OF CONTRACT**

19 **(Against All Defendants)**

20 132. Plaintiffs hereby refer to and incorporate by reference each and every allegation
21 contained in the preceding paragraphs of this Complaint.

22 133. The Fastrak license agreement between Kelly and those subscribers similarly situated,
23 provides that "Personally identifiable information provided by you and any data developed as a
24 byproduct of your use of the electronic toll collection program will not be made available to third
25 parties except as described in our Privacy Policy." Kelly entered into the Fastrak agreement with
26 Defendants to drive on the Toll Bridges.

1 134. Defendants have breached the Fastrak agreement by making PII of Kelly and those
2 similarly situated to the Unauthorized Third Parties, all of whom were not identified in the privacy
3 policy as being recipients of PII.

4 135. Plaintiffs are entitled to damages in an amount according to proof, injunctive relief, and
5 all other remedies based on Defendants having provided PII to third parties that were not identified in
6 the Privacy Policy.

7 **SIXTH CAUSE OF ACTION**
8 **NEGLIGENCE, INCLUDING NEGLIGENCE PER SE**
9 **(Against All Defendants)**

10 136. Plaintiffs hereby refer to and incorporate by reference each and every allegation
11 contained in the preceding paragraphs of this Complaint.

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

14 138. Defendants have engaged in a pattern and practice of acts of unfair competition in
15 violation of California's UCL, including the practices alleged herein.

16 139. Defendants also owed a duty to Plaintiffs and the Class Members to not share their
17 personally identifying information in violation of California Streets and Highway Code §31490.
18 Nevertheless, Defendants did share the personally identifying information of Plaintiffs and the Class
19 in a myriad of ways in violation of California Streets and Highway Code §31490, as described above
20 herein. That violation was a substantial factor in bringing about harm to Plaintiffs and the Class.

21 140. As a foreseeable and proximate result of Defendants' negligent acts, Plaintiff and the
22 Class Members were injured, including by having their PII disseminated to unauthorized third parties..

23 141. This injury was directly and substantially caused by Defendants' negligence, as alleged
24 above.

25 **SEVENTH CAUSE OF ACTION**
26 **NEGLIGENT NONCOMPLIANCE WITH THE FCRA, 15 U.S.C. § 1681b**
27 **(Against All Defendants)**

28 178. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous

1 allegations by reference.

2 179. The Credit Inquiry information regarding Plaintiffs that was obtained by Conduent
3 constitutes a “consumer report” as that term is defined in the FCRA.

4 180. The FCRA, 15 U.S.C. § 1681b, restricts a prospective user from obtaining a consumer
5 report unless authorized by the subject consumer or unless the user has a “permissible purpose” as that
6 term is defined and/or contemplated under the FCRA.

7 181. On or around 2016 and thereafter, Xerox, Conduent, BATA/GGB (through themselves
8 and their agents pursuant to documents signed by Xerox/Conduent or BATA/GGB) requested and
9 obtained Plaintiffs’ consumer reports from Experian and/or Equifax and/or LexisNexis and/or
10 Transunion.

11 182. At times material hereto, Defendants had actual knowledge that:

- 12 a. Plaintiffs had no credit accounts open or pending with any of the
13 Defendants; and
14 b. The Defendants were legally prohibited from requesting Plaintiff’s
15 credit information without permissible purpose to do so.

16 183. As such, on each occasion that Defendants requested and obtained a consumer report
17 concerning Plaintiffs as described herein, Defendants had actual knowledge that they did not have a
18 permissible purpose under the FCRA to obtain such information.

19 184. In requesting and obtaining Plaintiffs’ consumer report with actual knowledge that it
20 did not have permissible purpose to do so, Plaintiffs willfully violated the FCRA for each such inquiry
21 that Defendants made.

22 185. As such, on each occasion that Defendants requested and obtained a consumer report
23 concerning Plaintiffs, Defendants knew or should have known that it did not have permissible purpose
24 under the FCRA to obtain such information.

25 186. In requesting and obtaining Plaintiffs’ credit information with actual or constructive
26 knowledge that it did not have permissible purpose to do so. Defendants negligently violated the FCRA
27 for each such inquiry that they made.

28

1 187. After a reasonable time to conduct discovery, Plaintiffs believes that they can prove
2 that all actions taken by employees, agents, or representatives of any type from Defendants were taken
3 within the scope of such individuals' (or entities') employment, agency, or representation.

4 188. As a direct and proximate result of Defendants' violations of the FCRA, Plaintiffs'
5 privacy has been invaded.

6 189. It has been necessary for Plaintiffs to retain the undersigned counsel to prosecute the
7 instant action, for which they are obligated to pay a reasonable attorney's fee.

8 190. All conditions precedent to this action have occurred.

9 **EIGHTH CAUSE OF ACTION**

10 **WILLFUL NONCOMPLIANCE WITH THE FCRA, 15 U.S.C. § 1681B**

11 **(Against All Defendants)**

12 191. Plaintiffs reallege all allegations as if fully set forth herein, and incorporate previous
13 allegations by reference.

14 192. The Credit Inquiry information regarding Plaintiffs that was obtained by Defendants
15 constitutes a "consumer report" as that term is defined in the FCRA.

16 193. The FCRA, 15 U.S.C. § 1681b, restricts a prospective user from obtaining a consumer
17 report unless authorized by the subject consumer or unless the user has a "permissible purpose" as that
18 term is defined and/or contemplated under the FCRA.

19 194. On or around 2016 and thereafter, Xerox, Conduent, BATA/GGB (through themselves
20 and their agents pursuant to documents signed by Xerox/Conduent or BATA/GGB) requested and
21 obtained Plaintiffs' consumer reports from Experian and/or Equifax and/or LexisNexis and/or
22 Transunion.

23 195. At times material hereto, Defendants had actual knowledge that

- 24 a. Plaintiffs had no accounts open or pending with Defendants; and
25 b. The Defendants were legally prohibited from requesting Plaintiffs' credit
26 information without permissible purpose to do so.

1 196. As such, on each occasion that Defendants requested and obtained a consumer report
2 concerning Plaintiffs as described herein, Defendants had actual knowledge that it did not have a
3 permissible purpose under the FCRA to obtain such information.

4 197. In requesting and obtaining Plaintiffs' consumer report with actual knowledge that it did
5 not have permissible purpose to do so, Defendants willfully violated the FCRA for each such inquiry
6 that it made.

7 198. As such, on each occasion that Defendants requested and obtained a consumer report
8 concerning Plaintiffs, Defendants knew or should have known that it did not have permissible purpose
9 under the FCRA to obtain such information.

10 199. In requesting and obtaining Plaintiffs' credit information with actual or constructive
11 knowledge that it did not have permissible purpose to do so. Defendants negligently violated the FCRA
12 for each such inquiry that it made.

13 200. After a reasonable time to conduct discovery, Plaintiffs believe that they can prove that
14 all actions taken by employees, agents, or representatives of any type from Defendants were taken within
15 the scope of such individuals' (or entities') employment, agency, or representation.

16 201. After a reasonable time to conduct discovery, Plaintiffs believe that they can prove that
17 Defendants have received hundreds of disputes from consumers like Plaintiffs, complaining of the
18 practice of obtaining consumer reports on individuals without any permissible purpose to do so.

19 202. After a reasonable time to conduct discovery, Plaintiffs believe that they can prove that,
20 despite their receipt of disputes from consumers, Defendants intentionally, knowingly, and/or recklessly
21 chose not to correct their policies and procedures concerning access to consumer reports without any
22 permissible purpose to do so.

23 203. After a reasonable time to conduct discovery, Plaintiffs believe that they can prove that
24 Defendants have engaged in a pattern and practice of unlawful conduct with respect to the accessing of
25 consumer reports on individuals without any permissible purpose to do so.

26 204. Defendants' conduct reveals a conscious and reckless disregard of Plaintiffs' rights.

27 205. As a direct and proximate result of Defendants' violations of the FCRA, Plaintiffs'
28 privacy has been invaded.

1 portal attached to the Vector system, to scrape drivers' entire motor vehicle record from the DMV
2 including the information concerning their liens, and the Class knowing that they were obtaining their
3 personal information from a motor vehicle record and knew that they had no permissible use under the
4 DPP.

5 215. As a result of Defendants' conduct, Plaintiffs and the Class have suffered harm, and are
6 entitled to recover the damages available under the DPP, including statutory damages, plus costs and
7 attorney's fees, as provided under 18 U.S.C. § 2724(b) of the DPP.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs, and each Class Member, pray for judgment against Defendants as
10 follows:

11 A. That this action and the proposed class be certified and maintained as a class action,
12 appointing Plaintiffs as representatives of the Class, and appointing the attorneys and law firms
13 representing Plaintiffs as counsel for the Class;

14 B. For actual damages, restitution, and all other appropriate legal and equitable relief;

15 C. For declaratory relief;

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

17 E. For civil penalties, as requested herein;

18 F. For attorneys' fees and costs pursuant, *inter alia*, to 42 U.S.C. §1988, Code of Civil
19 Procedure §1021.5, Civil Code §§1788.17 and 1788.30(c), Streets and Highways Code §31490, and
20 15 U.S.C. §1681n(a);

21 G. For appropriate injunctive relief;

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

26 I. A catalyst claim for attorneys' fees based on the Defendants having changed their
27 privacy policy after the filing of this action.

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

1 **DEMAND FOR JURY TRIAL**

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

4 June 20, 2019

Respectfully Submitted,

5
6
7 By: 

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*Attorneys for Plaintiffs Sumatra Kendrick,
Michelle Kelly, William Montgomery And All
Those Similarly Situated*

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PROOF OF SERVICE

At the time of service I was over 18 years of age and not a party to the action captioned above. My business address is 711 Van Ness Avenue, Suite 500, San Francisco, California 94102-3275, and on June 20, 2019, I served the following specified document(s) set forth below:

FIRST AMENDED CONSOLIDATED CLASS ACTION COMPLAINT

I served said document(s) on the person(s) below:

<p>Gary T. Lafayette (SBN 088666) Barbara L. Lyons LAFAYETTE & KUMAGAI LLP 1300 Clay Street, Ste 810 Oakland, California 94612</p> <p><i>Attorneys for Defendants Bay Area Toll Authority; Conduent State & Local Solutions, Inc.; Golden Gate Bridge, Highway and Transportation; Xerox State & Local Solutions, Inc.</i></p>	<p>Kimon Manolius (SBN 154971) kmanolius@hansonbridgett.com Alexandra V. Atencio (SBN 227251) aatencio@hansonbridgett.com Samantha D. Wolff (SBN 240280) swolff@hansonbridgett.com HANSON BRIDGETT LLP 425 Market Street, 26th Floor San Francisco, California 94105 Telephone: (415) 777-3200</p> <p><i>Attorneys for Defendants Bay Area Toll Authority; Conduent State & Local Solutions, Inc.; Golden Gate Bridge, Highway And Transportation</i></p>
<p>Blake J. Lindemann, Esq. (SBN 255747) blake@lawbl.com 433 N. Camden Dr., 4th Fl. Beverly Hills, CA 90210 Tel: 310-279-5269 Fax: 310-300-0267</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Michael J. Flannery (SBN 196266) CUNEO GILBERT & LADUCA, LLP 7733 Forsyth Blvd., Ste 1675 St. Louis, MO 63105 202-789-3960</p> <p><i>Attorney for Plaintiffs</i></p>

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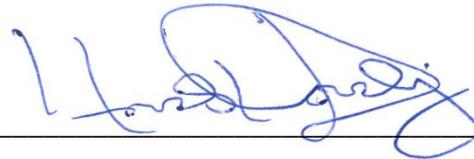
And the person(s) set forth above were served by the following means of service:

BY ELECTRONIC SERVICE. Pursuant to a court order that provides for the electronic service and distribution of documents under CCP § 1010.6(c), I caused the documents to be sent to the parties and their respective counsel via a 3rd party vendor portal located at <https://secure.fileandservexpress.com>

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

June 20, 2019

Signature: _____



Harold Darling