

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ORANGE**

AVERY, et al. Plaintiffs, vs. ORANGE COUNTY TRANSPORTATION AUTHORITY, et al., Defendants

CASE NO: 07CC00004, Consolidated with Case No. 07CC05541

ASSIGNED FOR ALL PURPOSES TO JUDGE RONALD L. BAUER, Dept: CX 103

**NOTICE OF PENDING SETTLEMENT OF CLASS ACTION LITIGATION**

**To: All persons who have been assessed any toll evasion penalty by the San Joaquin Hills Transportation Corridor Agency, and/or the Foothills/Eastern Transportation Corridor Agency (collectively known as “the TCA”), for any violation during the period between January 1, 2003 and October 5, 2009 or by the Orange County Transportation Authority (“OCTA”) for any violation during the period from May 31, 2003 to October 5, 2009 against whom a judgment was entered by or on behalf of the TCA on or after January 1, 2003 or by or on behalf of the OCTA on or after May 31, 2003; or against whom an escalated penalty was assessed by the OCTA after May 31, 2003.**

**PLEASE READ THIS NOTICE CAREFULLY IN ITS ENTIRETY.  
YOUR RIGHTS MAY BE AFFECTED BY LEGAL PROCEEDINGS IN THIS LITIGATION.**

Your rights may be affected by a lawsuit pending in this Court,  
*Avery et al., v. Orange County Transportation Authority, et al.*, Case No. 07CC00004.

Pursuant to the Order dated October 5, 2009 of the Superior Court for the County of Orange,  
**YOU ARE HEREBY NOTIFIED AS FOLLOWS:**

- A proposed settlement (the “Settlement”) has been reached between the parties in this class action pending in the Superior Court of the County of Orange (the “Court”).
- You have received this notice because you have been identified as having incurred penalties during the applicable time frame above, either by the OCTA or the TCA or both. This notice is to inform you of the applicable terms of the Settlement.
- **YOU NEED NOT FILE A CLAIM FORM IN ORDER TO PARTICIPATE IN THIS SETTLEMENT.** If you do nothing, and the Settlement receives final approval from the Court, then you will receive the benefits of a class member and be bound by this Settlement.

**I. SUMMARY OF THE SETTLEMENT**

The class action brings claims alleging that the penalties assessed by the OCTA and TCA for toll violations on toll roads located within Orange County are constitutionally excessive, and the procedures used to collect those penalties do not provide sufficient due process to alleged violators. The Settlement provides for the following:

**A. Who is included in the Settlement?**

The “Settling Class” is any person, whether a TCA or OCTA patron (FasTrak® account holder) or non-patron, who has been assessed any toll evasion penalty by TCA or OCTA for any violation during the period from January 1, 2003 to October 5, 2009 for the TCA, and May 31, 2003 to October 5, 2009 for the OCTA. This Settlement Class includes any individual against whom a judgment was entered from January 1, 2003 for the TCA and May 31, 2003 for the OCTA, up to October 5, 2009, regardless of when the penalties associated with that judgment were assessed. The Settlement Class also includes those individuals who were assessed escalated penalties after May 31, 2003 by OCTA for violations that occurred prior to May 31, 2003.

**B. Who is representing the Settling Class?**

The attorneys for the class (“Class Counsel” or “Plaintiffs’ Counsel”) are:

Anat Levy, Esq.  
Anat Levy & Associates, PC  
8840 Wilshire Blvd., Third Floor  
Beverly Hills, CA 90211  
Tel: (310) 358-3138

Paul Hoffman, Esq.  
Michael Morrison, Esq.  
Schonbrun Desimone Seplow  
Harris & Hoffman, LLP  
7323 Ocean Front Walk  
Venice, CA 90291-3270  
Tel: (310) 396-0731

Anne Richardson, Esq.  
Hadsell Stormer Keeny  
Richardson & Renick, LLP  
128 N. Fair Oaks Ave.  
Pasadena, CA 91103  
Tel: (626) 585-9600

**C. What will I receive from the Settlement?**

The settlement includes: 1) restitution of a portion of penalties (totaling \$1,400,000) paid by eligible class members to the OCTA and TCA; 2) the waiver of 29% of toll penalties assessed by the defendants against eligible class members, but not paid ; 3) changes reducing the amount of penalties imposed for future violations; 4) modifications to Defendants’ policies on penalties for multiple violations arising from a single act; 5) modifications to Defendants’ procedures for communicating account status and violations with account holders; 6) administrative review for challenged violations for all class members who request it, regardless of the date of the violations; 7) reduced deposits for those who request administrative review, including a hardship exception wherein the claimant need not deposit any amount.

**1. Restitution of Toll Evasion Penalties Paid.**

The TCA and OCTA have agreed to pay eligible class members a total of \$1,400,000 in restitution. Class members who are eligible to receive restitution include patrons and non-patrons who were assessed more than \$1,000 in tolls and penalties during the Restitution Class Time Period. The OCTA Restitution Time Period is from May 31, 2003 to October 5, 2009. The TCA Restitution Time Period is from January 1, 2003 to October 5, 2009.

The total amount of money paid by eligible class members who were assessed tolls and penalties exceeding \$1,000 and who paid any penalties up through August 24, 2009 was \$3,042,848 for the OCTA and \$10,817,934.72 for the TCA. Of this, it is estimated that approximately \$1,986,848 was the amount paid *over* \$1,000 for the OCTA and \$6,953,934 for the TCA. The amount exceeding \$1,000 was the amount Plaintiffs contended in their lawsuit was unlawful.

Nevertheless, every class member who was assessed \$1,000 in tolls and penalties, and paid some amount, is entitled to restitution, which will be determined based on the ratio between the total restitution amount per Defendant (\$700,000) and the total amount of penalties paid by the eligible group. That percentage will be applied to the total amount of penalties paid by each eligible group member to determine the restitution amount for that person (the "Restitution Percentage").

Although the final percentages have not yet been determined, it is estimated that the restitution percentage will be approximately 17% for class members assessed penalties in excess of \$1,000 by the OCTA and approximately 4.437% of the entire amount paid for the class members assessed penalties in excess of \$1,000 by the TCA, although it represents a larger percentage of the amount actually paid by class members over \$1,000.

Subject to approval by the Court, any uncashed checks will go first to payment of the Claims Administrator, and any remainder shall be distributed to a charitable organization to be agreed upon between Plaintiffs’ counsel and Defendants’ counsel.

Please note that every class member will be entitled to request additional restitution in an administrative proceeding subject to the section I(C)(3) below.

**2. Waiver of Outstanding Toll Evasion Penalties Assessed But Not Yet Paid.**

OCTA and TCA, respectively, have each agreed to waive 29% of the unpaid toll evasion penalties for each class member who has been assessed a total of more than \$1,000 in tolls and penalties by either agency during the applicable "Penalties Time Period." The OCTA Penalties Time Period is from May 31, 2003 to October 5, 2009. The Penalties Time Period for the TCA is from January 1, 2003 to October 5, 2009. Under the terms of the Settlement Agreement, OCTA will waive approximately \$32,000,000 in penalties and the TCA will waive approximately \$9,000,000 in penalties for a total of \$41,000,000 waived in outstanding penalties.

### **3. Administrative Review of Past Violations and Penalties**

In addition to eligible class members receiving restitution and waivers for violations and penalties already paid, the Agreement provides that all Class Members will be entitled to seek additional restitution and waiver of assessed and unpaid toll evasion penalties pursuant to the "Administrative Review" provisions of this Agreement. This is without regard to the length of time since the violations were incurred or the penalties imposed provided that it be requested within 180 days of the Court's final approval of this Settlement.

### **4. New Policies for Administrative Review**

Under the settlement, the administrative hearing officers conducting the reviews will be provided with specific guidance that s/he should consider any fact which may show that a) the violation was the result of an innocent mistake, that multiple violations all arose from a single inadvertent cause, such as a lost, stolen, expired credit card, or bank account that was cancelled by a customer; b) the penalties imposed will cause an undue burden; c) any other circumstance which may bear upon the culpability of the person seeking review or the cumulative amount of the penalties imposed. Moreover, OCTA and TCA will add a provision to their guidelines that the first time a customer fails to notify the agency of a lost or stolen, expired, or customer-cancelled debit or credit card, the agency should consider waiving the associated penalties.

### **5. Future Maximum Penalties**

OCTA and TCA have agreed that until at least January 1, 2016, the total penalties imposed for any single toll violation shall be no greater than 20 times the assessing agency's highest system toll in effect as of the date on which the violation occurs. Currently, OCTA's maximum fines are as much as 52 times the highest underlying toll.

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

OCTA and TCA have agreed to notify each of their respective toll account holders of the expiration of the account holder's payment card, or underfunded account balance for those who pay with cash, 30 days prior to the expiration date (or such lesser time in advance as may be left once OCTA or TCA learns of the impending expiration or underfunded cash balance). Defendants have agreed to give notice by each of the following methods: (a) U.S. mail at the most recent address provided for the account by the account holder; (b) e-mail to the most recent e-mail provided by the account holder (if any); and (c) automated phone call to the telephone number provided by the account holder (if any).

In addition, Defendants have agreed to take substantive efforts to encourage communications with commuters by e-mail.

OCTA and TCA have agreed to give at least 10 days' notice before toll account suspension or closure by each of the following means: (a) U.S. mail at the most recent address provided for the account by the account holder; (b) e-mail to the most recent e-mail, if any, provided by the account holder; and (c) automated phone call to the telephone number, if any, provided by the account holder.

Defendants will also revise account statements to reduce potential confusion.

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

As part of the settlement, Defendants have agreed to improve their notice procedures.

### **8. Future Administrative Review Procedures**

Under the settlement agreement, the required posting in order to obtain an administrative hearing has been drastically reduced. For toll account patrons, the maximum amount of tolls plus penalties to be deposited in order to obtain second level administrative review shall be \$250. For non-patrons, the maximum amount of tolls plus penalties to be deposited shall be the tolls, plus either (a) \$250 or (b) \$250 plus 10% of penalties above \$1,000, whichever is greater. A hardship exception to the deposit will be allowed by a commuter seeking an exception to the deposit requirement for a second level administrative review. In order to obtain the exception, the commuter must simply complete a streamlined application establishing that he or she cannot afford to pay the deposit.

For all future violations, Defendants have agreed to allow administrative review to be requested beyond the time required by state law.

## **9. Additional Amendments to Defendants' Assessment, Collection, and Enforcement Practices**

Currently, Defendants use some or all of the following means to collect unpaid penalties: 1) place a pre-judgment DMV hold on the vehicle registration; (b) intercept commuters' tax refunds and lottery winnings prior to obtaining judgment; (c) obtain an automatic judgment without any hearing or notice to the commuter.

The parties have agreed to the following additional changes to Defendants' assessment, collection, and enforcement practices:

- a. DMV Hold** – If OCTA or TCA places a DMV hold, and the commuter seeks administrative review, that review will be expedited and take place within 30 days, provided that the commuter cooperates in setting a hearing within that time frame.
- b. Franchise Tax Board (“FTB”) Intercept** – Defendants will provide notice a minimum of 45 days prior to filing a FTB intercept advising the commuter of his right to seek administrative review and that review should be requested within 15 days.
- c. Standstill During Review** – If a commuter seeks an administrative review, then until such review and any appeal therefrom is concluded, no further penalties will accrue for the violation(s) at issue.
- d. Recordkeeping** -- Defendants agree to use their best efforts to maintain a complete and accurate paper and/or electronic trail of communications with commuters relating to violations.
- e. Bankruptcy** – Provided either Defendant is listed as a creditor and advised of a bankruptcy filing, it shall file a proof of claim in the bankruptcy proceeding, if and when permitted, specifically advising the commuter regarding said Defendant's position on the non-dischargeability of debts for toll evasion penalties and citing the code section they contend supports non-dischargeability.

## **10. Time Frames**

The parties have agreed that Defendants will maintain the agreed-upon changes to the procedures until January 1, 2016, unless and until (1) the Defendant making the change implements measures that will afford at least the equivalent notice and opportunity for hearing to the procedure that has been modified; and (2) the Defendant making the change has notified Plaintiffs' Counsel of any such modification at least 20 business days prior to its implementation.

### **D. What if I do not want to participate in the Settlement?**

If you do not want to participate in the Settlement, you may file an Opt Out as described below in paragraph III(B)(1). If you want to object, you may do so as described below in paragraph III(B)(2). Class members who did not submit requests to opt out by January 19, 2010 will be bound by the Settlement Agreement if it is approved by the Court.

### **E. What do I do to request an Administrative Review?**

Once the settlement has been approved, you may request an Administrative Review of your case by sending in a written request to the TCA or the OCTA. In addition, forms will be placed on the websites of the OCTA and TCA at [www.averytollsettlement.com](http://www.averytollsettlement.com).

### **F. Release of Claims**

As of the Effective Date, all Class Members who have not been properly excluded from the Settlement Class (“Releasers”) will release the Orange County Transportation Authority (“OCTA”), its Chief Executive Officer, Arthur Leahy, Law Enforcement Systems (LES), the Foothill/Eastern Transportation Corridor Agency and the San Joaquin Hills Transportation Corridor Agency (collectively, the “TCA”); their respective Chairmen Jim Dahl and Lance McLean, and VESystems (VES) (individually and collectively “Releasees”) from any and all claims arising out, and that could have arisen out of, the matters that are alleged in the Action, which could have been asserted in the Action, and/or that are within the scope of this Agreement, in exchange for the benefits of this Agreement.

That means that if you are a member of the Settling Class, and the Court approves the Settlement, you will release all claims you may have against the OCTA and/or the TCA which pertain or relate to the kinds of claims which were brought in the Lawsuit, and you will accordingly forfeit the right to bring or participate in any such claim. However, if the Settlement is approved, you will receive any Settlement payment and/or waiver of amounts owed to which you may be entitled, as well as become entitled to a new Administrative Hearing, regardless of when the penalties were incurred.

## **G. Class Representatives**

The settlement provides that in addition to their share as participating members of the Settling Class, and subject to the Court's approval, the Named Plaintiffs will receive an additional enhancement, as follows:

Each of those who had accounts with the TCA (Edmundson, Roldan and Geach) will receive either: 1) \$5,000 if no tolls or penalties are currently due; or 2) forgiveness of their outstanding tolls and penalties up to \$25,000.

Each of those who had accounts with the OCTA (Avery, Gonzalez, Sempertegui, Young, Murray, Woods and Sepeda) will be relieved of all their outstanding penalties, but will remain liable for the tolls still outstanding. The waivers are in addition to whatever payment the named plaintiffs are entitled to recover as claimants. The enhancements are intended to compensate these individuals fairly in relationship to the rest of the class in light of the additional burdens and risks they have undertaken by assisting in the prosecution of the lawsuit.

## **H. Attorneys' Fees and Costs**

Class Counsel will seek approval from the Court for payment of attorneys' fees and costs incurred, based on the time and expenses Class Counsel spent and prevailing billing rates, in the amount of one million, six hundred thousand dollars (\$1,600,000). Class Counsel are also entitled, as part of the Settlement Agreement, to request up to 30% of the restitution fund, but has agreed to forego that compensation. If approved by the Court, these fees will be paid separately by the OCTA, TCA, and Law Enforcement Systems (LES) and will not come out of the amounts available to the Settling Class. This amount constitutes somewhat less than the total amount actually billed by Plaintiffs' Counsel at their usual billable rates. Plaintiffs' counsel believes that the amount requested is fair and reasonable, and Defendants have not opposed the request. The amount awarded as fees and costs must be approved by the Court.

## **II. PLAINTIFFS AND CLASS COUNSEL SUPPORT THE SETTLEMENT**

Plaintiffs Pamela Mathews Avery, Yolanda Edmondson, Jeffrey Edmondson, Rachelle Geach, Maria Gonzalez, Pablo Gonzalez, Ruth Arlene Murray (deceased, now represented by her husband, Stan Murray), Jeff Murray, Michael Roldan, Cynthia Roldan, Bill Sempertegui, Jennifer Sempertegui, Brian Young, and Stephanie Young, as well as Jocelyn Woods and Rosemarie Sepeda ("Plaintiffs") as Class Representatives and Class Counsel support this Settlement. Their reasons include the risks involved in whether the case would be certified as a class and the risks involved in a trial of this matter, and the attendant delays and uncertainties associated with litigation. Based on their experience litigating similar class actions, Class Counsel believe that further proceedings in this case, including litigating the class certification, trial, and the likely appeals, would be expensive and protracted. No one can confidently predict how the various legal questions at issue, including the amount of damages and the precise form of injunctive relief, would be ultimately resolved. Therefore, upon careful consideration of all of the facts and circumstances of the case, Plaintiffs and Class Counsel believe that the Settlement is fair, adequate, and reasonable.

## **III. WHAT ARE YOUR RIGHTS AS A MEMBER OF THE SETTLING CLASS**

Assuming the settlement is approved, you need not do anything to receive your portion of any restitution and/or waiver of penalties to which you may be entitled.

### **A. Commenting in Favor of the Settlement**

You may, but are not required to, comment in favor of the Settlement. If you wish to comment in favor of the Settlement, your comments must be in writing and postmarked via first class mail, on or before January 19, 2010, to all of the following:

E. George Joseph, Esq.  
Nossaman, Guthner, Knox & Elliot, LLP  
18101 Von Karman, Ste. 1800  
Irvine, CA 92612-0177

Don Barker, Esq.  
Law Offices of Donald M. Barker  
2151 Michelson Drive, Ste. 140  
Irvine, CA 92612

M. Lois Bobak, Esq.  
Woodruff, Spradlin & Smart  
555 Anton Blvd., #1200  
Costa Mesa, CA 92626

Anne Richardson, Esq.  
Hadsell Stormer Keeny  
Richardson & Renick, LLP  
128 N. Fair Oaks Ave.  
Pasadena, CA 91103

Your written comments must include your full name, address, and must reference this case, *Avery et al., v. Orange County Transportation Authority, et al.*, Case No. 07CC00004.

## **B. Exclusions From and Objecting to the Settlement**

If you are dissatisfied with any of the terms of the Settlement, you may either opt-out of the Settlement, or object to the Settlement.

### **1. Opting Out of the Settlement**

IF YOU DO NOT WANT TO BE A MEMBER OF THE SETTLING CLASS, you MUST fully complete and return the attached written request for exclusion from the class to the Claims Administrator at the following address: Claims Administrator, c/o Rust Consulting, Inc., PO Box 2246, Faribault, MN 55021-1646. The written opt-out MUST be postmarked no later than January 19, 2010.

### **2. Objecting to the Settlement**

Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness or adequacy of this proposed settlement, must file with the Court a statement of objection by January 19, 2010. That statement must include each and every specific reason, if any, for each objection, including any and all legal support and any and all evidence in support of the objection. A copy of the statement must also be mailed to the Claims Administrator at the address noted above and the attorneys listed above in Section III(A) by the same date.

Class Members may object on their own or through an attorney hired at their own expense. Your written objections must include your full name, address, and the dates and amounts of all tolls and penalties you have incurred. In addition, in order to have your objection considered, you (or your attorney, if you are represented by an attorney) must be present at the Final Approval Hearing, which is currently scheduled for February 16, 2010, at 10:30 a.m., in the Superior Court for the County of Orange, 751 W. Santa Ana Blvd., Santa Ana, California, in Department CX 103 before the Honorable Ronald L. Bauer. Any attorney representing you must file a Notice of Appearance by no later than January 19, 2010. Note: the Final Approval Hearing may be postponed without further notice to the Class so it is advisable to check with the court clerk if you wish to appear.

Any member of the Settling Class who does not opt out or object to the Settlement in the manner described above will be deemed to have waived any objections and will be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. If the Court rejects your objection, you will still be bound by the Settlement.

## **IV. FINAL SETTLEMENT APPROVAL HEARING**

The Court will hold a final approval hearing in the Superior Court for the County of Orange, 751 W. Santa Ana Blvd., Santa Ana, California, in Department CX 103 before the Honorable Ronald L. Bauer, on February 16, 2010 at 10:30 a.m. to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court will also be asked to approve Class Counsel's request for costs and attorneys' fees and the enhancements paid to the Class Representatives. The hearing may be postponed without further notice to the Class. It is not necessary for you to appear at this hearing unless you intend to object to the Settlement.

## **V. GETTING MORE INFORMATION**

The above is a summary of the basic terms of the Proposed Settlement. For the precise terms of the Settlement, you are referred to the Settlement Agreement, which will be on file with the Court. The pleadings and other records in this matter including the Proposed Settlement, may be examined at any time during regular business hours in the County of Orange Superior Court, or you may contact the plaintiffs' counsel at the numbers listed in Section I(B). **PLEASE DO NOT CONTACT THE COURT, DEFENDANTS' COUNSEL, OR OCTA OR THE TCA FOR INFORMATION REGARDING THIS SETTLEMENT.**

**By Order of the Court.**

Dated: October 5, 2009

/s/ \_\_\_\_\_  
Hon. Ronald L. Bauer

**REQUEST TO OPT OUT**

I HEREBY OPT OUT OF THE SETTLEMENT AGREEMENT REACHED IN *AVERY ET AL., V. ORANGE COUNTY TRANSPORTATION AUTHORITY, ET AL.*, CASE NO. 07CC00004.

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_ ZIP CODE: \_\_\_\_\_

DAYTIME PHONE: ( \_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

ALT. PHONE: ( \_\_\_\_ ) \_\_\_\_\_ - \_\_\_\_\_

EMAIL: \_\_\_\_\_

I UNDERSTAND THAT BY OPTING OUT, I WILL NOT RECEIVE THE BENEFITS IN THE SETTLEMENT AGREEMENT AS SUMMARIZED IN THE NOTICE OF SETTLEMENT AGREEMENT.

SIGNED \_\_\_\_\_ DATED: \_\_\_\_\_

***PLEASE MAIL THIS REQUEST NO LATER THAN JANUARY 19, 2010 TO:***

CLAIMS ADMINISTRATOR  
C/O RUST CONSULTING, INC.  
PO BOX 2246  
FARIBAULT, MN 55021-1646