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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

SEATTLE DIVISION

AVERIL ROTHROCK, on behalf of herself)
and others similarly situated,)

Plaintiff,)

v.)

VIOLATION MANAGEMENT SERVICES,)
INC., a Montana Corporation; and FOX RENT)
A CAR, INC., a California Corporation,)

Defendants)

NO.

CLASS ACTION COMPLAINT

INTRODUCTION

1. This is a class action complaint on behalf of Averil Rothrock, a Washington resident, and all Washington residents similarly situated, who have been victimized through a common course of the same or substantially similar misconduct by the defendants, Violation Management Services, Inc. (VMS) and Fox Rent A Car, Inc. (Fox) as set out more fully in this complaint.

1 2. As alleged in more detail below, VMS and/or Fox have long been engaging in the
2 unfair, deceptive, and otherwise unlawful practice of charging and collecting exorbitant sums of
3 money—above and beyond any amount to which they are actually entitled—from rental car
4 customers who incur routine automatic highway tolls during the course of vehicle rentals from Fox.
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6 3. Specifically, customers who rent vehicles from Fox will frequently incur highway
7 tolls when using public highways that utilize modern automatic toll collection systems. Such
8 automatic toll collection systems are designed such that drivers are required to proceed non-stop
9 through toll highways without paying a toll at the time of use. Drivers do not have a choice of
10 paying the toll at the time of actual use; rather, automated equipment records the vehicle’s passage
11 through the toll highway, and the owner of the vehicle is later billed for the toll by highway
12 authorities. Toll billings of this nature are not “violations,” “infractions,” “fines,” “penalties,” or
13 an evasion of a toll. They are simply invoices for tolls incurred during the use of certain public
14 roadways. Such tolls are typically nominal in amount—ranging from less than one dollar to a few
15 dollars at most.
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19 4. Absent alternative arrangements, a rental car company that rents a car to a customer
20 who then uses an automatic toll highway will receive a bill for tolls incurred by their customers
21 during the course of the rental. Rental car companies whose customers may reasonably be
22 expected to use toll highways have several options available to ensure that they do not incur toll
23 charges in the first instance and/or that they are able to recoup the actual cost of toll charges
24 incurred by customers during the course of the rental. For example, the Public Highway Authority
25 for the State of Colorado, which operates Public Highway E-470, prominently advertises the fact
26 that rental car companies can (and do) register their fleets’ license plates with “EXpress Toll” so
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1 that their renters' tolls will be automatically applied to the rental agreement. Alternatively, rental
2 car companies that receive a bill for tolls incurred in connection with a customer's rental may
3 provide information regarding the rental to the issuing authority so that the toll can be collected by
4 the issuing authority directly from the customer. Rental car companies also have the option of
5 paying the toll and then collecting the actual cost of the toll from the customer.
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7 5. Fox and/or VMS, however, have conspired to turn Fox customers' tolls into an
8 illegal profit center for themselves. Specifically, Fox has elected not to take advantage of EXpress
9 Toll, instead choosing to receive toll billings from issuing authorities for customers who incur such
10 tolls during the rental period. Then, rather than simply providing the issuing authority with
11 information about the customer's rental (so that the toll can be collected directly from the
12 customer), or giving the customer notice of the toll and an opportunity to pay or contest it, Fox has
13 retained VMS to act as its alleged "administ[rator] and process[or]" of such tolls. Pursuant to this
14 arrangement, VMS unilaterally charges customers' credit cards for the amount of the tolls, plus an
15 exorbitant "service fee"—possibly varying in amount but *sometimes exceeding 1600% of the actual*
16 *toll*. This "service fee" is not authorized by customers, is not properly disclosed to customers, far
17 exceeds any actual cost to Fox and/or VMS for the collection of the toll, is arbitrary and
18 unreasonable, and is accompanied by numerous false and deceptive statements about the alleged
19 right to collect the "service fee." The "service fee" is nothing other than an illegal scam to collect
20 from customers amounts that they do not owe. Indeed, VMS makes no bones about its practices,
21 having indicated on its website that its business is to turn the collection of such tolls "into a
22 profitable customer service solution." VMS further shares the spoils of its illegally-collected
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1 “service fees” with the rental car companies with whom it contracts, offering to pay them a
2 kickback in the form of a “summons incentive . . . for each service fee collected” from customers.

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4 6. VMS and/or Fox have no legal right to charge such service fees and, in so doing,
5 have conspired to injure numerous Fox customers—the vast majority of whom do not reside in the
6 state where the car is rented, but who are residents of other states travelling on vacation or
7 business. This lawsuit seeks to vindicate the rights of Washington residents who have been injured
8 by Fox and/or VMS through a common course of conduct in blatant violation of the Washington
9 Consumer Protection Act and the common law.
10

11 **PARTIES**

12 7. Plaintiff Averil Rothrock is an individual residing in King County, Washington.

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14 8. Defendant Fox Rent A Car, Inc. is a California corporation transacting systematic
15 and continuous business in the State of Washington including King County, Washington. Fox also
16 does business in a variety of other western states including Arizona, California, Colorado,
17 Missouri, Nevada and Utah. Fox is headquartered in Los Angeles, California. A copy of this
18 Complaint, as well as the summons and civil case schedule has been, or will be, duly and properly
19 served on Fox’s registered agents, Joe Knight, 21104 Pacific Hwy. So., SeaTac, WA 98188 and
20 Masoud A. Mirtaorabi, 5500 W. Century Blvd., Los Angeles, CA 90045.
21

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23 9. Defendant Violation Management Services, Inc. is a Montana Corporation
24 transacting systematic and continuous business in the State of Washington including King County,
25 Washington. VMS also does business in 49 other states. Indeed, a March 4, 2008 press release by
26 VMS advertises that it “operates in all 50 states, Canada and the Caribbean.” A February 8, 2011
27 press release boasts that VMS has a “worldwide customer base” and of “having processed over 2.5
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1 million individual violations for a total of \$150 million in fines and penalties, on behalf of operators
2 world-wide.” VMS’s executive offices are located in Nashville, Tennessee. Its principal
3 operations center is located in Great Falls, Montana. A copy of this Complaint, as well as the
4 summons and civil case schedule has been, or will be, duly and properly served on VMS’s
5 registered agent, Dennis Round, 1004 11th St. N., Great Falls, MT 59401.

7 **JURISDICTION AND VENUE**

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9 10. This Court has personal jurisdiction against the defendants, Fox and VMS, because
10 both defendants transact systematic and continuous business in the State of Washington and because
11 the actions which form the basis for this complaint occurred in, and were directed against the
12 plaintiff in King County, Washington. Venue is proper in King County, Washington because a
13 substantial portion of the unlawful acts described in this complaint occurred in and were directed
14 against the plaintiff in King County, Washington.

16 **GENERAL ALLEGATIONS REGARDING** 17 **DEFENDANTS’ UNLAWFUL CONDUCT**

18 11. On or about February 18, 2011, Ms. Rothrock rented a vehicle from Fox at Fox’s
19 Denver Airport location. At the time of the rental, Ms. Rothrock entered into a rental agreement
20 with Fox, designated as Rental Agreement No. FXDEN-8559. Among other pertinent provisions,
21 Ms. Rothrock agreed that she would “pay for all *parking violations, fines, and penalties*, plus all
22 *costs incurred* in the event [she] fails to make *such payments*.” (Emphases added). On the face of
23 the Rental Agreement, Ms. Rothrock further acknowledged, in pertinent part, as follows: “I
24 hereby authorize FOX Rent A Car to release my rental and credit card charge information to
25 Violation Management Service (VMS) for the *exclusive* purpose of processing and billing for *fines*,

1 *penalties*, plus a service charge of *up to \$40.00* associated, with EACH *unpaid* parking or toll
2 *violation* incurred during the term of this rental (sic).” (Emphases added).

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4 12. The vehicle rented by Ms. Rothrock was not enrolled in “EXpress Toll” or
5 otherwise set up so that Fox’s renters’ tolls could be directly applied to the rental agreement.
6 During the term of the rental agreement, Ms. Rothrock traveled on Colorado State Highway E-
7 470—a public roadway near the City of Denver, Colorado. Highway E-470 is an unmanned toll
8 highway, portions of which are subject to automatic toll collection systems that do not provide
9 drivers with the opportunity to pay the toll at the actual time of use. Fox could reasonably expect
10 that its renters, including Ms. Rothrock, would use this highway in the normal course of their car
11 rental. Ms. Rothrock was required to proceed non-stop through the toll highway without paying a
12 toll at the time of use. Pursuant to standard procedure, automated equipment recorded the rental
13 vehicle’s passage through the toll road. According to a notice later sent by VMS to Ms. Rothrock,
14 the issuing authority recorded two tolls in the amount of \$3.00 each associated with the passage of
15 Ms. Rothrock’s vehicle through the toll portions of the highway. One such toll occurred on
16 February 20, 2011 at 10:37 a.m. The second such toll occurred nine minutes later, at 10:46 a.m.
17 These tolls were not “violations,” “infractions,” “fines,” “penalties,” or evasions of tolls. It was
18 lawful, normal and expected that Ms. Rothrock would pass through the toll area, subject to later
19 invoicing for the two \$3.00 tolls. Moreover, the tolls were not overdue, delinquent, or otherwise
20 “unpaid” and would have been paid by Ms. Rothrock promptly upon invoicing by the issuing
21 authority or upon notification by Fox that payment was due from her.
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27 13. Ms. Rothrock returned the rental vehicle on or about February 20, 2011 and later
28 returned to her place of residence in King County, Washington.

1 14. After she returned her vehicle to Fox, the issuing authority in charge of toll billings
2 provided notification to Fox of the two \$3.00 tolls described above. Upon receiving such notice,
3 Fox could have provided the issuing authority with information about Ms. Rothrock's rental so that
4 she could be advised of and pay the tolls directly. It did not do so. Nor did it inform Ms.
5 Rothrock of the tolls, invoice Ms. Rothrock for the tolls incurred, seek to collect the actual cost of
6 the tolls, or otherwise notify her of the tolls so that she could pay the tolls to the issuing authority,
7 contest the tolls or even be informed of them.
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10 15. Instead, and consistent with its normal and usual practice, Fox provided Ms.
11 Rothrock's credit card and other rental information to VMS. Fox did this even though Ms.
12 Rothrock had only authorized the release of such information for the "*exclusive*" purpose of
13 processing and billing for "*fin*es," "*penalties*," and "*unpaid parking or toll violation[s]*" and even
14 though the two \$3.00 tolls invoiced by the issuing authority were not "*fin*es," "*penalties*," or
15 "*unpaid parking or toll violations*." (Emphases added).
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18 16. Approximately six weeks after returning her rental vehicle, after she had returned to
19 her place of residence in King County, Washington, VMS proceeded to take unilateral action
20 against Ms. Rothrock by directing two printed letters to her home address in Seattle, Washington.
21 These letters informed her that she was being charged for each of the \$3.00 tolls described above,
22 plus "service charges" exceeding 1600% of the actual tolls. Indeed, the letters informed her that
23 her credit card was automatically billed *fifty dollars* for each \$3.00 toll incurred, for a total of *one*
24 *hundred dollars* in "service charges" on only \$6.00 in tolls.
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26 17. The letters directed to Ms. Rothrock contain numerous false, deceptive, fraudulent,
27 and misleading statements that were designed to deceive Ms. Rothrock and others similarly situated
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1 into believing that VMS was somehow authorized to take the action it took and collect the money it
2 collected when, in fact, it had no such authority.

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4 18. Specifically, the two letters, which are materially identical (but purport to separately
5 apply to each of the tolls) state, in pertinent part, as follows:

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- VMS has been notified of a violation(s) issued to the vehicle (License Plate No. CA-6MEK504) you rented From Feb 18, 2011 through Feb 20, 2011.

8 The foregoing statement is false, deceptive, fraudulent and misleading in that VMS was not notified
9 of a “violation” but merely a toll, as no “violation” was committed.

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- In an attempt to limit [Fox’s] liability and reduce [the] risk of asset seizure, we have taken the following step(s): VMS has paid the fine and current penalties to prevent any further enforcement action. Do not send payment to the issuing authority (IA) (emphasis in original).

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14 The foregoing statement is false, deceptive, fraudulent and misleading in that there was no “risk of
15 asset seizure” to Fox and that the real reason VMS paid the tolls (if it even did so) was so that it
16 could purport to charge Ms. Rothrock a “service” fee of fifty dollars on each \$3.00 toll.
17 Moreover, contrary to its explicit representations, VMS did not pay any “fine” or “current
18 penalties” insofar as there was no “fine” or “penalty” but merely a toll.

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- We have billed your credit card for all appropriate fines, penalties, interest, and the appropriate service fee (serv. fee) [of fifty dollars for each \$3.00 toll].

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22 The foregoing statement is false, deceptive, fraudulent and misleading in that Ms. Rothrock was
23 not billed for “all appropriate fines, penalties, interest and the appropriate service fee.” In fact, the
24 amounts that were purported to have been billed to her credit card were not for any “fines” or
25 “penalties” or “interest” at all. Moreover, the fifty-dollar “service fee” purportedly billed to Ms.
26 Rothrock was not “appropriate” and was not authorized or agreed to by her. Indeed, Ms.
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1 Rothrock did not authorize any “service fee” for a mere highway toll and, even if a service fee *had*
2 *been* authorized (which it was not), the highest authorized fee under the express terms of the rental
3 agreement was forty dollars—not fifty dollars. Further compounding this assortment of false,
4 deceptive, fraudulent and misleading statements was the fact that VMS expressly stated, “[w]e have
5 billed your credit card” In fact, although Ms. Rothrock was led to believe by the letters that
6 her credit *was billed* in the amounts described in the letter, she later learned that her credit card
7 was not billed until April 12, 2011—approximately 11 days *after* VMS told her that it had already
8 done so. Telling Ms. Rothrock that her credit card *had been* billed—when it had not been and was
9 only billed approximately 11 days later—was designed to lead Ms. Rothrock to believe it would be
10 futile to contest the unauthorized charges and to discourage her from taking appropriate action such
11 as: (a) advising her credit card company not to accept charges billed by VMS described in the
12 notice; (b) seeking confirmation of the toll and/or payment from the issuing authority; (c) disputing
13 the charges from VMS; or (d) taking other appropriate action designed to prevent her credit card
14 from being billed.

- 15 • Under the terms of the rental agreement you signed, (paragraph 11) and the disclosure
16 statement on the front of the contract, you have authorized VMS to charge your credit card,
17 provided at the time of the rental, for all associated violation costs, including a service fee.

18 The foregoing statement is false, deceptive, fraudulent and misleading in that the rental agreement
19 does not contain a paragraph numbered “11.” On the second page of the rental agreement, if one
20 counts to the 11th paragraph, the paragraph relates only to “parking violations” and makes no
21 mention whatsoever of tolls or credit card charges or a service fee of any kind or to VMS.
22 Moreover, there is no paragraph on the front of the rental contract titled “disclosure statement” or
23 containing those words. And, with regard to the only language on the front of the contract that
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1 even mentions VMS, no authorization is given for the charging of Ms. Rothrock's credit card for
2 simple tolls or for service fees in connection with tolls, and there is no authorization to charge her
3 in the amounts billed.
4

- 5 • Per the rental agreement, you are legally obligated to pay any and all parking, and/or other
6 traffic-related violations received during the time of your rental, including service fees.

7 The foregoing statement is false, deceptive, fraudulent and misleading in that the letters from VMS
8 falsely equates being legally obligated to pay for "parking and/or other traffic related violations"
9 with tolls and/or service fees charged by VMS in connection with such tolls, when, in fact, there is
10 no obligation to pay any service fee to VMS in connection with tolls, which are different than
11 parking and/or traffic related violations.
12

- 13 • Under those terms, VMS has billed your credit card (last four digits [XXXX]), for the
14 violations listed below.

15 The foregoing statement is false, deceptive, fraudulent and misleading in that, as of the date of the
16 letter, and despite the representation that VMS "has" billed your credit card, Ms. Rothrock's credit
17 card was not, in fact, billed at the time of the letter. In fact, although Ms. Rothrock was led to
18 believe by the letters that her credit *was billed* in the amounts described in the letter, she later
19 learned that her credit card was not billed until April 12, 2011—approximately 11 days *after* VMS
20 told her that it had already done so. As set forth above, telling Ms. Rothrock that her credit card
21 *had been* billed—when it had not been and was only billed approximately 11 days later—was
22 designed to lead Ms. Rothrock to believe it would be futile to contest the unauthorized charges and
23 to discourage her from taking appropriate action such as: (a) advising her credit card company not
24 to accept charges billed by VMS described in the notice; (b) seeking confirmation of the toll and/or
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1 payment from the issuing authority; (c) disputing the charges from VMS; or (d) taking other
2 appropriate action designed to prevent her credit card from being billed.

- 3 • Near the bottom of the letter, VMS purports to describe the “Details of Fines” to which the
4 letter pertains by identifying the issuing authority, “IA Citation #” and other information.

5 This description is false, deceptive, fraudulent and misleading in that there were no “fines” issued
6 in connection with Ms. Rothrock’s car rental, but merely tolls. Further, the notice purports to
7 refer to the issuing authority’s “citation” number when, in fact, there was no citation issued but
8 merely an invoice for tolls.
9

10 19. The foregoing is not necessarily a complete description of each and every false,
11 deceptive, fraudulent and misleading statements made in the April 1, 2011 letters to Ms. Rothrock,
12 but examples of some of the ways in which VMS misrepresented its alleged right to collect two
13 service fees of \$50.00 each on two \$3.00 tolls allegedly incurred in connection with Ms.
14 Rothrock’s vehicle rental.
15

16 20. On or about April 12, 2011, while Ms. Rothrock was in King County, Washington
17 subject to the protection of the Washington Consumer Protection Act and the common law of the
18 State of Washington, VMS illegally billed Ms. Rothrock’s credit card in the amount of \$106.00.
19 \$100 of this charge was for the alleged “service fees” for VMS, and \$6.00 was for the two tolls
20 allegedly incurred by Ms. Rothrock. By illegally charging Ms. Rothrock’s credit card for sums
21 that VMS was not entitled to charge, VMS financially injured Ms. Rothrock.
22

23 21. On information and belief, VMS has paid, or will pay, a kickback to Fox in the form
24 of monetary compensation as a result of the sums illegally procured from Ms. Rothrock. Fox is
25 well aware, or should be aware, of the fact that VMS has no right to charge the foregoing service
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1 fees, including the service fees charged to Ms. Rothrock, but permits, encourages and authorizes
2 VMS to do so that it will continue to receive financial kickbacks to which it is not entitled. As a
3 co-conspirator in the illegal acts of VMS, Fox is liable for all acts of VMS as alleged in this
4 complaint. In addition, or in the alternative, VMS is acting as an agent for Fox and, as such, Fox
5 is liable for all acts of VMS as alleged in this complaint.
6

7 22. The acts alleged in this complaint are unfair or deceptive, occur and have occurred
8 in trade or commerce, affect the public interest, and have caused injury to the business or property
9 of the plaintiff and other putative class members as alleged herein.
10

11 CAUSES OF ACTION

12 As a result of the allegations contained in this complaint, defendants are liable as follows:

13 23. Violations of the Washington Consumer Protection Act. For the acts alleged in this
14 complaint, the defendants are liable for violations of the Washington Consumer Protection Act,
15 RCW 19.86 et seq.
16

17 24. Conversion. For the acts alleged in this complaint, defendants are liable for the tort
18 of conversion.
19

20 25. Unjust Enrichment. For the acts alleged in this complaint, the defendants have
21 obtained and retained significant monies to which they have no lawful claim and have accordingly
22 been unjustly enriched beyond the bounds of any contractual or other rights.
23

24 CLASS ACTION ALLEGATIONS

25 26. Plaintiff seeks to maintain this action as a class action because, as discussed below,
26 plaintiff believes that many other Washington residents have been similarly injured by the same or
27 substantially similar acts of the defendants as alleged herein. In all material respects, the rental
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1 contract signed by Ms. Rothrock and the letters received from VMS were identical to the rental
2 contracts signed by other Fox renters and the letters received from VMS by renters who reside in
3 Washington and who incurred tolls during the rental period. The actions taken by the defendants
4 against Ms. Rothrock and the injuries sustained by her were materially identical to the actions taken
5 by the defendants against other Washington residents and the injuries sustained by them.

7 27. Plaintiff generally asks this Court to certify as a class all Washington residents or
8 entities who, within the applicable limitations period, have been charged a “service fee” by VMS
9 in connection with the incurrence or alleged incurrence of automatic highway tolls during the
10 course of a vehicle rental from Fox. The precise class definition will be proposed in connection
11 with a motion for class certification.
12

14 28. The class is so numerous that joinder of all member is impracticable. While the
15 exact number and identities of members of the class are unknown to plaintiff at this time, putative
16 class members can be discovered and notified of this action via publication and/or U.S. mail, at
17 addresses which defendants should have in their business records. There are questions of law and
18 fact common to all members of the class or classes. Defendants have acted on grounds generally
19 applicable to the class or classes as a whole, such that class-wide relief is appropriate. The claims
20 of the representative parties are typical of the claims of the class. The representative plaintiff will
21 fairly and adequately protect the interests of the class.
22

24 29. The prosecution of separate actions by individual members of the class would create
25 a risk of inconsistent or varying adjudications with respect to individual members of the class which
26 would establish incompatible standards of conduct for the defendants. Moreover, adjudication with
27 respect to individual members of the class would as a practical matter be dispositive of the interests
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1 of the other members not parties to the adjudications and/or substantially impair or impede their
2 ability to protect their interests.

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4 30. The defendants have acted on grounds generally applicable to the class thereby
5 making appropriate final injunctive or other applicable relief with respect to class as a whole.

6 31. Common questions of law and/or fact common to the members of the class
7 predominate over any questions affecting only individual members. Moreover, a class action is
8 superior to other available methods for the fair and efficient adjudication of the controversy.
9

10 **PRAYER FOR RELIEF**

11 WHEREFORE, the plaintiff prays that the Court grant the following relief:

12 A. Certification of this action as a class action;

13
14 B. All damages available to Ms. Rothrock and the class members, including, but not
15 limited to, actual damages, all amounts collected by the defendants as alleged “service fees” for
16 tolls allegedly incurred, and the disgorgement of all sums collected over and above actual tolls
17 incurred;

18
19 C. Treble damages for each and every violation of the Washington Consumer Protection
20 Act, both on behalf of Ms. Rothrock and all putative class members as authorized under RCW
21 19.86.090;

22
23 D. Attorneys’ fees and costs of suit pursuant to RCW 19.86.090 and/or other applicable
24 law;

25 E. Prejudgment interest;

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27 F. Injunctive relief as appropriate to enjoin the unlawful conduct of the defendants as
28 alleged herein; and

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G. Any such other relief that this Court deems just and equitable.

DATED this 23 day of May, 2011.

BUDGE & HEIPT, P.L.L.C.

/s/ Erik J. Heipt
Erik J. Heipt, WSBA # 28113
Attorney for Plaintiff and the Class Members