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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

HOWARD YERGER, DONALD BORODKIN,  
OBERT COLSON, JOHN DRIESSE, GORDON  
FRANK, DUNCAN FULLER, DR. CARMEN  
OCCHIUZZI, and AMY THEOBALD,  
individually, and on behalf of all others similarly  
situated,

Plaintiffs,

v.  
MASSACHUSETTS TURNPIKE AUTHORITY,

Defendant.

Civil Action No.

**COMPLAINT AND  
DEMAND FOR JURY TRIAL**

Plaintiffs Howard Yerger, Donald Borodkin, Robert Colson, John Driesse, Gordon Frank, Duncan Fuller, Dr. Carmen Occhiuzzi, And Amy Theobald, individually, and on behalf of all others similarly situated, by way of Complaint against Defendant Massachusetts Turnpike Authority, say:

**NATURE OF THE ACTION**

1. This is a class action brought by plaintiffs individually and on behalf of all other similarly situated persons in the United States whom Defendant has discriminated against by

charging them higher tolls than other identically-situated persons at four toll plazas in the Boston metropolitan region. The sole difference between the plaintiffs and other electronic toll-payers is that the plaintiffs – and their fellow class members – are engaged in interstate commerce because they use an out-of-state electronic toll system, E-ZPass, whereas those charged lower tolls are engaged in intrastate commerce because they use the in-state, Massachusetts system operated by Defendant known as “Fast Lane.” E-ZPass is the electronic toll collection system of New Jersey and nine other northeastern states from Delaware to Maine other than Massachusetts; FAST LANE is the electronic toll collection system of Defendant, the Massachusetts Turnpike Authority.

2. Defendant encourages E-ZPass users to use Defendant’s electronic toll lanes and in fact maintains enormous signs at each of the toll plazas at issue here declaring “E-ZPass Accepted.” *See* Photographs attached hereto as Exhs. 1-4. However, in violation of the United States Constitution, Defendant discriminates against all E-ZPass users by charging them higher tolls than FAST LANE users even though all electronic toll users are identically situated, use the roads and electronic toll plazas in identical fashion, and bring identical benefits to society and to Defendant. Defendant’s discriminatory tolls, which have been imposed since July 1, 2002, are charged to the plaintiffs and class members on their E-ZPass bills issued by the New Jersey or other E-ZPass state transportation agency and then transferred to Defendant under contractual arrangements between each E-ZPass state’s transportation agency and Defendant.

3. By discriminating against plaintiffs and the class members with higher tolls based solely upon their use of an out-of-state system, defendant has discriminated against plaintiffs and members of the class in violation of: (1) the Fourteenth Amendment’s Equal Protection Clause; (2) the interstate Commerce Clause, Article I, § 8, cl. 3; (3) the Privileges and Immunities Clause,

Article IV, § 2; and (4) plaintiffs' civil rights, 42 U.S.C. § 1983. Plaintiffs seek refunds, for themselves and the members of a class, of their unconstitutional overcharges at the four toll plazas.

**PARTIES**

4. Plaintiff Howard Yerger is a citizen of New Jersey and resides in Wodcliff Lake, New Jersey. He has an E-ZPass transponder issued by New Jersey E-ZPass and maintains an active account with New Jersey E-ZPass. Plaintiff Yerger works as a regional sales manager for a tool company and frequently travels to Boston for business. Defendant has repeatedly discriminated against Yerger by charging him higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for identical usage of the roads and electronic toll plazas.

5. Plaintiff Donald Borodkin is a citizen of New Jersey and resides in Fair Lawn, New Jersey. He has two an E-ZPass transponders issued by New Jersey E-ZPass on a single New Jersey E-ZPass account that is active. Defendant has repeatedly discriminated against Borodkin by charging him higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for identical usage of the roads and electronic toll plazas.

6. Plaintiff Robert Colson is a citizen of New Hampshire and resides in Manchester, New Hampshire. He has an E-ZPass transponder issued by the New Hampshire Department of Transportation and maintains an active account with New Hampshire E-ZPass. Defendant has repeatedly discriminated against Colson by charging him higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for identical usage of the roads and electronic toll plazas.

7. Plaintiff John Driesse is a citizen of New Jersey and resides in Butler, New Jersey. He has an E-ZPass transponder issued by New Jersey E-ZPass and maintains an active account with New Jersey E-ZPass. Defendant has repeatedly discriminated against Driesse by charging him

higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for for identical usage of the roads and electronic toll plazas.

8. Plaintiff Gordon Frank is a citizen of New Jersey and resides in Ramsey, New Jersey. He has an E-ZPass transponder issued by New Jersey E-ZPass and maintains an active account with New Jersey E-ZPass. When he first began using E-ZPass he lived in New Jersey. He later moved to Sudbury, Massachusetts and then, approximately two years ago, moved back to New Jersey. He has a daughter who currently attends Boston College. Defendant has repeatedly discriminated against Frank by charging him higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for identical usage of the roads and electronic toll plazas.

9. Plaintiff Duncan Fuller is a citizen of Massachusetts and resides in Framingham, Massachusetts. He has an E-ZPass transponder issued by New York E-ZPass and maintains an active account with New York E-ZPass. Plaintiff Fuller has been using E-ZPass since before FAST LANE existed. He frequently travels from Framingham, Massachusetts to New York State to visit relatives in upstate New York and uses E-ZPass at New York toll plazas on these trips. Defendant has repeatedly discriminated against Fuller by charging him higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for identical usage of the roads and electronic toll plazas.

10. Plaintiff Dr. Carmen Occhiuzzi is a citizen of New Jersey and resides in North Haledon, New Jersey. He has four E-ZPass transponders on a single New Jersey E-ZPass account that is active. Defendant has repeatedly discriminated against Occhiuzzi by charging him higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for identical usage of the roads and electronic toll plazas.

11. Plaintiff Amy Theobald is a citizen of New Jersey and in Nutley, New Jersey. She has an E-ZPass transponder issued by New York E-ZPass and maintains an active account with New York E-ZPass. Plaintiff Theobald has traveled from New Jersey to Boston in the course of her employment because she is a salesperson whose sales territory includes the Boston area. Defendant has repeatedly discriminated against Theobald by charging her higher tolls at the four MTA toll plazas at issue here than it charges FAST LANE users for identical usage of the roads and electronic toll plazas.

12. Defendant Massachusetts Turnpike Authority (“MTA”) is a “body politic and corporate” established under the laws of the Commonwealth of Massachusetts. Mass. Gen Laws ch. 81A, § 1 (2007). It is charged with the construction and maintenance of the Massachusetts Turnpike, an interstate highway connecting Boston to the Berkshires in Massachusetts. The MTA’s exercise of these statutory powers has been deemed to be a “governmental function.” Mass. Gen. Laws ch. 81A, § 1. It is authorized “to sue and be sued in its own name.” Mass. Gen Laws ch. 81A, § 4. Its principal place of business is located at the State Transportation Building, 10 Park Plaza, Suite 4160, Boston, MA 02116.

### **JURISDICTION AND VENUE**

13. Subject matter jurisdiction is proper in this Court pursuant to 28 U.S.C. §§ 1331 and 1343 as the claims arise under the United States Constitution, Article I, § 8, cl. 3, the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983. Declaratory relief is authorized under 28 U.S.C. §§ 2201 and 2202.

14. Venue is proper in this District pursuant to 28 U.S.C. § 1391(b-c) because MTA is subject to personal jurisdiction in this District and therefore “resides” in this District.

**FACTUAL ALLEGATIONS**

**The Massachusetts Turnpike's Importance to Interstate Commerce**

15. Interstate 90, also known as the Massachusetts Turnpike, is a 138-mile long highway that is part of the United States Interstate roadway system and is the primary east-west highway connecting Boston to points west of the city. Interstate 90 now extends easterly past Interstate 93 in downtown Boston and ends at Logan International Airport in East Boston.

16. The Massachusetts Turnpike is a major artery of interstate commerce and is a primary route for interstate motor vehicle travelers to Boston from points west, southwest and northwest. A traveler must pass through the Allston-Brighton toll plaza in each direction to enter and leave the City of Boston via the Massachusetts Turnpike.

17. The City of Boston is the largest city in Massachusetts and New England and is a major hub of interstate commerce.

18. There is a large quantity of interstate traffic between Boston and other states, including and especially the New York City metropolitan region, including northern New Jersey.

19. Logan International Airport is the busiest airport in New England and is an important conduit for interstate commerce in New England. The two primary means of access to Logan International Airport are the Sumner-Callahan Tunnel ("Sumner Tunnel") and the Ted Williams Tunnel; these tunnels connect downtown Boston and the Massachusetts Turnpike, respectively, to East Boston and Logan International Airport.

20. There are many colleges and universities located in the Boston area. Many students attending these colleges and universities are from E-ZPass states and use E-ZPass in their cars at the four toll plazas in question. Many students are dropped off in the Boston area at the beginning of the semester by parents who drive through the toll plazas in question using E-ZPass.

**The FAST LANE And E-ZPass Programs**

21. FAST LANE is an electronic toll collection system operated by MTA that enables drivers to pass through toll plazas without having to stop and pay cash. Vehicles in the FAST LANE system are equipped with an electronic transponder that typically is mounted to the windshield and signals that a vehicle is going through a toll plaza. The cost of the toll is then automatically charged to the transponder owner.

22. According to the terms and conditions of the FAST LANE contract, the MTA may levy penalties and fines on users of the FAST LANE system. For example, FAST LANE Program term and condition No. 5, entitled “Violations and ‘Video Toll’ Administrative Fees” states that “if your account balance falls below \$0.00 you will be subject to a fine and penalties for unauthorized use of the FAST LANE under 730 C.M.R. 7.04 et. seq.” Condition No. 5(b), [http://www.massturnpike.com/forms/fastlane\\_indvapp.pdf](http://www.massturnpike.com/forms/fastlane_indvapp.pdf). Condition No. 5(g) states:

Failure to pay or appeal violation fines within the time period and in the manner described on the violation notice may result in additional Violation Administrative/Late Fees, the termination of your account, the non-renewal of your driver’s license and vehicle registration by the Registry of Motor Vehicles (RMV), and an RMV Non-Renewal “Marking Fee,” along with any other legal action that the MTA is authorized to pursue to recover monies owed.

[http://www.massturnpike.com/forms/fastlane\\_indvapp.pdf](http://www.massturnpike.com/forms/fastlane_indvapp.pdf).

23. The MTA “may pursue such civil or criminal action as it deems appropriate to collect the fine initially assessed in the violation notice as well as such additional fines or penalties as the Authority may assess in accordance with 730 C.M.R. 7.04(5)(g)1.” 730 Mass. C.M.R. 7.04(5)(g)(2).

24. E-ZPass is the automated toll collection system of Delaware, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Virginia, and West Virginia.<sup>1</sup> E-ZPass is

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<sup>1</sup> <http://www.EZPass.com/static/info/facilities.shtml>.

administered by government transportation agencies in those states. E-ZPass is interoperable with the MTA's FAST LANE automated toll collection system. E-ZPass also is interoperable with Indiana's electronic toll collection system, I-Zoom, and Illinois' system, I-PASS. E-ZPass users enter an agreement with a particular E-ZPass program administered by one of the E-ZPass states. Most often an E-ZPass user will sign up with the E-ZPass program administered by her own state but it is not unusual for E-ZPass users to sign up with an E-ZPass program administered by another state, such as is the case with Plaintiff Theobald, who lives in New Jersey and uses New York E-ZPass. All Massachusetts residents who use E-ZPass must sign up with a sister state because Massachusetts does not offer E-ZPass; thus, for example, Plaintiff Fuller is a Massachusetts citizen and uses New York E-ZPass.

25. Approximately one-third of electronic toll users on the Massachusetts Turnpike use E-ZPass.

26. E-ZPass utilizes a transponder similar to that used by FAST LANE. In New Jersey, an E-ZPass user who signs up for an E-ZPass account and chooses to pay the account balance by credit card is not charged for an E-ZPass transponder. Such an E-ZPass user who chooses to pay her E-ZPass account balance using a check or cash is charged a \$10.00 refundable deposit for each E-ZPass transponder.<sup>2</sup>

27. Defendant charges \$25.95 for a FAST LANE transponder, and up until December 10, 2007, charged \$30.55. Some E-ZPass States charge nothing for transponders and others charge varying amounts from \$10.00 to \$25.00.

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<sup>2</sup> E-ZPass Private Agreement Terms and Conditions, [http://www.ezpassnj.com/static/terms/i\\_terms.pdf](http://www.ezpassnj.com/static/terms/i_terms.pdf).

28. Individual E-ZPass users may request up to four transponders per account.<sup>3</sup> It is common for E-ZPass users to obtain multiple-transponders on a single E-ZPass account so that multiple family members may each have a transponder in their car. For example, plaintiff Occhiuzzi has four transponders, including one for each of his three daughters, one of whom recently attended law school in Boston. Occhiuzzi's situation is common given that Boston has a large number of colleges and universities that attract students from out-of-state; many such students show up with an E-ZPass transponder from the family's account, use the Boston area road ways – including the MHS and the four toll plazas at issue here – in the same fashion as FAST LANE users, return home on breaks where they use E-ZPass on their home state's roads, and eventually leave Massachusetts altogether upon graduation.

#### **The MTA's Discriminatory Fast Lane Discount Program**

29. The Massachusetts Turnpike is comprised of two highway systems – the Western Turnpike and the Metropolitan Highway System (“MHS”). Defendant charges E-ZPass and FAST LANE users the same tolls on the Western Turnpike portion of the Massachusetts Turnpike, which spans the area from the western border of Massachusetts to Route 128 in the Boston suburb of Weston. However, the MTA maintains four toll plazas along the 12-mile MHS at which it discriminates against E-ZPass users in favor of FAST LANE users by charging E-ZPass users higher tolls. These four toll plazas are located at: Route 128; Allston-Brighton; the Ted Williams Tunnel; and the Sumner Tunnel.

30. All four of these toll plazas are located in the Boston metropolitan region. The Route 128 plaza is an entrance and exit for the Massachusetts Turnpike and is located in Weston, Massachusetts; drivers must pay both entering and exiting at Route 128. The Allston-Brighton toll

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<sup>3</sup> Tag FAQs, <http://www.ezpassnj.com/static/faq/tag.shtml>.

plaza is located in the City of Boston and is an entrance and exit for the Massachusetts Turnpike; drivers must pay both entering and exiting at Allston-Brighton and also must pay for passing through the plaza in either direction in order to stay on the Turnpike. The Ted Williams and Sumner Tunnel Plazas are located in East Boston and drivers must pay heading west, i.e., into the City of Boston from points east, such as Logan Airport. All four toll plazas require payment of a flat fee.

31. The Massachusetts legislature has authorized the MTA to charge and collect tolls on the Western Turnpike and the MHS as a source of revenue for funding the cost overruns of the Central Artery/Third Harbor Tunnel Project (the “Big Dig”) that has buried part of Interstate 93 beneath the City of Boston and extended Interstate 90 to Logan International Airport. Mass. Gen. Laws ch. 81A, § 4(I-j) (2005). By statute, only the MTA is authorized to fix and revise tolls for the Turnpike and no other government entity in the state may supervise, regulate, approve or disapprove the tolls. Mass. Gen. Laws ch. 81A, § 10(a) (2007). As part of the Big Dig, the MTA is responsible for approximately \$1.5 billion of the nearly \$6 billion cost of completing the Interstate 90 section.

32. The genesis of the MTA’s discriminatory Fast Lane Discount Program was in 1997. In March, 1997, Governor William Weld signed the Metropolitan Highway Systems bill which, among other things, authorized a toll increase that was scheduled to go into effect on January 1, 2002. Under the law, Massachusetts Turnpike tolls were scheduled to increase from 50 cents to \$1.00 at the Allston-Brighton and Route 128 toll plazas, and from \$2.00 to \$3.00 at the Ted Williams Tunnel and the Sumner Tunnel. The additional revenue, estimated at \$60 million per year, would pay for bonds issued to finance the Big Dig.

33. Although toll hikes were authorized in the March, 1997 law, the MTA board was required to approve them. Mass. Gen Laws ch. 81A, § 4(i-j) (2005).

34. On or about November 1, 2001, the MTA board of directors voted to postpone for six months the proposed toll hikes, initially set to go into effect on January 1, 2002, and rescheduled them to go into effect on July 1, 2002.

35. In response to widespread public anger regarding the planned toll hikes, Defendant, on or about June 20, 2002, agreed to halve the fee hike for state residents who drive passenger cars equipped with a FAST LANE transponder through the electronic toll system at the Allston-Brighton and Route 128 toll plazas, and to discount the tolls at the Ted Williams and Sumner Tunnels which connect Logan International Airport to downtown Boston.

36. Under this initial discount program approved by MTA on or about June 20, 2002, all Massachusetts residents who participate in the FAST LANE program were scheduled to be charged 75 cents (rather than \$1.00) at the Allston-Brighton and Route 128 toll plazas, and \$2.50 (rather than \$3.00) at the Ted Williams and Sumner Tunnels, effective Monday, July 1, 2002 (hereinafter the “Resident-Only Fast Lane Discount Program”).

37. On July 1, 2002, the MTA Resident-Only Fast Lane Discount Program went into effect.

38. Immediately after the announcement of the Resident-Only Fast Lane Discount Program, concerns arose about the constitutionality of the Resident-Only Fast Lane Discount Program. On July 3, 2002, the Boston Globe reported in an article titled, Mass-only Discount Not Legal, Some Say, that the MTA’s “plan to offer a discount only to state residents with a FAST LANE transponder, touted as a way to offset the toll increases that took effect this week, may violate the interstate commerce clause of the US Constitution.”

39. On or about July 3, 2002, Defendant replaced the Resident-Only Discount Program with the Fast Lane Discount Program or FLDP. The FLDP was effective retroactive to July 1, 2002.

40. Under the FLDP, the discounts remain the same. However, to receive the discount one must participate in MTA's FAST LANE program.

41. Under the FLDP, E-ZPass transponder users are charged 25 cents more at the Allston-Brighton and Route 128 toll plazas than FAST LANE users. Thus, on a round-trip from west of Route 128 to downtown Boston, which necessitates use of both the Route 128 and the Allston-Brighton Toll Plazas, MTA charges travelers with E-ZPass transponders \$1.00 (4 toll transactions times 25 cents) more than it charges travelers who participate in MTA's own FAST LANE system to use the same 12-mile section of road. Similarly, under the FLDP, MTA charges E-ZPass transponder users 50 cents more at the Ted Williams and Sumner toll plazas than those equipped with FAST LANE transponders. Thus, if the previously described round trip were extended to Logan airport, MTA charges travelers with E-ZPass transponders \$1.50 more than it charges travelers who participate in MTA's own FAST LANE system to use the same 15-mile section of road.

42. Plaintiffs and members of the class who use E-ZPass transponders to pay these tolls do not receive the discounts.

43. Plaintiff Yerger has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if he had been a FAST LANE user, he would have received the discount. For example, on March 6, 2008, Yerger's vehicle passed through the Allston-Brighton electronic toll booths and was charged \$1.25 whereas a FAST LANE customer would have been charged only \$1.00. On March 6, 2008, Yerger's vehicle passed through the Ted Williams Tunnel electronic toll booths and was charged \$3.50 whereas a FAST LANE customer would have been charged only \$3.00. On June 10, 2008, Yerger's vehicle passed through the Sumner Tunnel electronic toll booths and was charged \$3.50 whereas a FAST LANE customer

would have been charged only \$3.00. He was billed for these transactions pursuant to a contractual arrangement between MTA and New Jersey E-ZPass and he paid the charges.

44. Plaintiff Borodkin has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if he had been a FAST LANE user, he would have received the discount. For example, on January 7, 2007, Borodkin and his wife drove to Boston to drop their son off at college and Borodkin's vehicle passed through the Allston-Brighton electronic toll booths two times and was charged \$1.00 each time whereas a FAST LANE customer would have been charged only \$0.75 each time. He was billed for these transactions pursuant to a contractual arrangement between MTA and New Jersey E-ZPass and he paid the charges.

45. Plaintiff Colson has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if he had been a FAST LANE user, he would have received the discount. For example, on March 2, 2007 and July 12, 2007, Colson's vehicle passed through the Sumner Tunnel electronic toll booths and was charged \$3.00 each time whereas a FAST LANE customer would have been charged only \$2.50 each time. He was billed for these transactions pursuant to a contractual arrangement between MTA and the New Hampshire Department of Transportation and he paid the charges.

46. Plaintiff Driesse has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if he had been a FAST LANE user, he would have received the discount. For example, on April 6, 2008, Driesse's vehicle passed through the Allston-Brighton electronic toll booths and was charged \$1.25 whereas a FAST LANE customer would have been charged only \$1.00. On August 16 and 17, 2008, Driesse's vehicle passed through the Allston-Brighton electronic toll booths and was charged \$1.25 each time whereas a FAST LANE

customer would have been charged only \$1.00 each time. He was billed for these transactions pursuant to a contractual arrangement between MTA and New Jersey E-ZPass and he paid the charges.

47. Plaintiff Frank has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if he had been a FAST LANE user, he would have received the discount. For example, on October 7, 2008, Frank's vehicle passed through the Allston-Brighton electronic toll booths two times and was charged \$1.25 each time whereas a FAST LANE customer would have been charged only \$1.00 each time. He was billed for these transactions pursuant to a contractual arrangement between MTA and New Jersey E-ZPass and he paid the charges.

48. Plaintiff Fuller has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if he had been a FAST LANE user, he would have received the discount. For example, on March 19, 2007, Fuller's vehicle passed through the Allston-Brighton electronic toll booths two times and was charged \$1.00 each time whereas a FAST LANE customer would have been charged only \$0.75 each time. On February 5, 2008, Fuller's vehicle also passed through the Allston-Brighton electronic toll booths and was charged \$1.25 whereas a FAST LANE customer would have been charged only \$1.00. He was billed for these transactions pursuant to a contractual arrangement between MTA and New York E-ZPass and he paid the charges.

49. Plaintiff Occhiuzzi has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if he had been a FAST LANE user, he would have received the discount. For example, on May 10, 2008, Occhiuzzi's vehicle passed through the Allston-Brighton electronic toll booths two times and was charged \$1.25 each

time whereas a FAST LANE customer would have been charged only \$1.00 each time. On May 8, 2008, Dr. Occhiuzzi's vehicle, driven by his daughter, who is a student at New England School of Law, passed through the Allston-Brighton electronic toll booths and was charged \$1.25 whereas a FAST LANE customer would have been charged only \$1.00. He was billed for these transactions pursuant to a contractual arrangement between MTA and New Jersey E-ZPass and he paid the charges.

50. Plaintiff Theobald has paid the full, undiscounted tolls for use of the MTA's automated toll collection system on numerous occasions on which, if she had been a FAST LANE user, she would have received the discount. For example, on January 30, 2006, Theobald's vehicle passed through the Allston-Brighton electronic toll booths and was charged \$1.00 whereas a FAST LANE customer would have been charged only \$0.75. On February 13, 2007, Theobald's vehicle passed through the Allston-Brighton electronic toll booths two times and was charged \$1.00 for each pass whereas a FAST LANE customer would have been charged only \$0.75. On February 13, 2007, Theobald's vehicle passed through the Ted Williams Tunnel electronic toll booths and was charged \$3.00 whereas a FAST LANE customer would have been charged only \$2.50. She was billed for these transactions pursuant to a contractual arrangement between MTA and New York E-ZPass and she paid the charges.

51. There is no warning posted at the Route 128, Allston-Brighton, Ted Williams Tunnel or Sumner Tunnel toll plazas that an E-ZPass transponder user does not receive the discounts available to participants in MTA's FAST LANE program. In fact, as shown in photographs 1-4 attached hereto as exhibits, each of the toll plazas in question prominently invites E-ZPass members to use their transponders with enormous signs stating "E-ZPass Accepted." A diagram posted on the

MTA's website also depicts the signs stating "E-ZPass Accepted."<sup>4</sup> Moreover, MTA permits itself to be listed on the New Jersey E-ZPass web site as one of the "States With E-ZPass," see <http://www.ezpassnj.com/static/info/facilities.shtml>, and as a participating E-ZPass facility that expressly lists the "Massachusetts Turnpike, Boston Extension [which includes the Allston-Brighton and Route 128 toll plazas], Ted Williams Tunnel, Callahan & Sumner Tunnels" as tollways where E-ZPass may be used, see <http://www.ezpass.com/static/info/facilities.shtml>, but does not reveal the discriminatory discount program. In addition, the MTA permits itself to be listed on the E-ZPass Interagency Group website as one of the States with E-ZPass but does not reveal the discriminatory discount program and indeed gives the misleading impression that Massachusetts is an E-ZPass state. See E-ZPass Interagency Group map, <http://www.e-zpassiag.com/IAG%20Map%202008-10-08.pdf>. The Interagency Group is the central coordinating organization for E-ZPass states.

52. On or about October 29, 2007, the MTA board of directors approved a new toll hike. Effective January 1, 2008, the MTA increased the tolls from \$1.00 to \$1.25 at the Allston-Brighton and Route 128 toll plazas, and from \$3.00 to \$3.50 at the Ted Williams Tunnel and the Sumner Tunnel. The Fast Lane Discount Program continues to apply after these toll increases went into effect on January 1, 2008. E-ZPass transponder users are still charged 25 cents more at the Allston-Brighton and Route 128 toll plazas than those equipped with FAST LANE transponders. E-ZPass transponder users are still charged 50 cents more at the Ted Williams and Sumner Tunnels than those equipped with FAST LANE transponders.

53. Interoperability is a key goal of electronic toll collection systems in order to further the goals of such systems in light of the frequency of interstate motor vehicle travel for work and

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<sup>4</sup> See FAST LANE Toll Plaza, <http://www.masspike.com/travel/fastlane/tollplaza.html>.

leisure in today's world. A discriminatory discount that applies to the in-state electronic transponder users and is denied to users of sister states' systems, however, not only fails to further the goals of an electronic discount program but actively undermines them. Such goals include relieving traffic congestion, increasing efficiency and increasing interoperability. Moreover, a discriminatory discount program creates friction between sister States, erects needless and senseless barriers to interstate commerce, and even presents a safety hazard by requiring drivers to juggle multiple transponders from different states as they approach toll plazas.

54. In 2003, the only year for which figures are publicly available, over 17.6 million vehicles passed through the toll booths at the Ted Williams and/or Sumner Tunnels, approximately 40 percent of which used an electronic transponder issued by either FAST LANE or E-ZPass. In the same year, over 50 million vehicles passed through the Allston-Brighton toll plazas, approximately 54 percent of which used electronic transponders issued by either FAST LANE or E-ZPass. Upon information and belief, these absolute numbers and percentages have increased each year and thus the number of persons using E-ZPass at the toll plazas in question increases each year.

55. In the 18 months from July, 2002 through December, 2003, the FLDP Program cost the MTA \$14.5 million. From July, 2002 through December, 2006, the FLDP Program cost the MTA over \$49 million.

56. Total revenues for the MTA for 2006 were approximately \$357 million, of which 84 percent was toll revenue. Total expenses for MTA for 2006 were approximately \$407 million.

57. When a vehicle carries more than one transponder, double billing problems inevitably arise. For example, a driver with both FAST LANE and E-ZPass transponders would need to place the E-ZPass transponder into a metal foil bag when approaching an MTA toll plaza in order to

prevent the E-ZPass transponder from registering. This process is both inconvenient and a highly dangerous distraction to drivers.

58. The problems inherent in an electronic toll program that discriminates against an out-of-state system were recently demonstrated by a battle between Illinois and Indiana over toll discounts. In 2007 Indiana announced a plan to offer toll discounts only to users of the Indiana system, I-Zoom and to deny discounts to other electronic transponder system users, including those using the Illinois system, I-PASS, as well as those using E-ZPass. Illinois officials threatened to retaliate by denying discounts previously available to I-Zoom users on Illinois toll roads and further threatened to suspend the accounts of I-Zoom users, which would render their transponders unusable in Illinois. Indiana offered to resolve the controversy by extending the discounts to I-PASS users who log onto the I-Zoom web site each time they wanted to claim a discount; Illinois rejected this offer. Finally, Governor Mitch Daniels of Indiana requested the state transportation agency to stop the discriminatory conduct and offer the same discounts to I-PASS users as enjoyed by I-Zoom users. Governor Daniels stated that extending the discounts equally would mean that drivers could acquire just one transponder rather than having to have both an I-Zoom and I-PASS transponder in order to obtain the discounts offered in both states. This would avoid double billing problems that would inevitably arise from having two or more transponders in one vehicle. Further, he stated, it would enhance public safety because drivers would not have to switch transponders while driving. Finally, the Governor observed that extending the discounts to I-PASS users would further the goals of the I-Zoom system, i.e., relieving traffic congestion, increasing operating efficiency, and promoting interoperability. The Indiana transportation agency complied and issued a ruling extending the discounts to users of all electronic transponder systems, including I-PASS, E-ZPass and FAST LANE.

**MTA's Contacts With New Jersey**

59. Defendant transacts business within New Jersey. New Jersey E-ZPass registrants enter into contracts with New Jersey E-ZPass which operates the E-ZPass system in New Jersey. Every time that a vehicle with a New Jersey E-ZPass transponder passes through the Allston-Brighton, Route 128, Ted Williams Tunnel or Sumner Tunnel toll plazas, the corresponding New Jersey E-ZPass account is charged the undiscounted toll. The MTA then recovers this money from New Jersey E-ZPass, which administers the E-ZPass accounts. Upon information and belief, pursuant to its statutory authority to enter into contracts with “state, local or regional public agencies and authorities,” Mass. Gen. Laws ch. 81A, § 4(r) (2005), defendant has entered into contracts with New Jersey E-ZPass (and/or the state agency or agencies in New Jersey that operate E-ZPass) in order to transfer these funds between itself and New Jersey E-ZPass. Defendant has transacted business and continues to transact business in the negotiation and ongoing administration of its contractual relationship with New Jersey E-ZPass. Every time a vehicle with a New Jersey E-ZPass transponder passes through the Allston-Brighton, Route 128, Ted Williams Tunnel and/or Sumner Tunnel toll plazas, Defendant transacts business in New Jersey by charging a New Jersey E-ZPass account pursuant to Defendant’s contractual relationship with New Jersey E-ZPass. The New Jersey Plaintiffs’ cause of action arises from Defendant’s transaction of business in New Jersey.

60. Defendant has committed tortious acts causing injury to property within New Jersey. Defendant’s conduct in discriminatorily charging higher tolls to New Jersey E-ZPass users than it charges FAST LANE users causes injury to the New Jersey plaintiffs in New Jersey.

61. Defendant is engaged in a continuous and systematic course of doing business in New Jersey through the negotiation and ongoing implementation of the MTA’s contractual relationship with New Jersey E-ZPass. Further, there are millions of New Jersey E-ZPass members and

Defendant solicits their business through the FAST LANE and New Jersey E-ZPass web sites, where it is advertized that E-ZPass transponders are accepted at Defendant's toll facilities. *See* FAST LANE Toll Plaza, <http://www.masspike.com/travel/fastlane/tollplaza.html>; Turnpike History, <http://www.masspike.com/aboutus/history.html> ("Today, nearly 60 percent of all toll transactions are processed via FAST LANE, which is fully compatible with the E-ZPass system in use throughout the Northeast and Mid-Atlantic States."). Defendant does business with many of these New Jersey E-ZPass members on a regular basis by charging their New Jersey E-ZPass (and other) accounts every time they use their transponders at a Massachusetts toll plaza, including plazas that have no discount program in effect for any drivers as well as the toll plazas at issue in this case.

62. Defendant also solicits New Jersey residents to become members of FAST LANE through its web site and other means, including through the discriminatory discount program at issue in this case. Defendant maintains an interoperable web site, [http://www.massturnpike.com/travel/fastlane/fastlane\\_signup.html](http://www.massturnpike.com/travel/fastlane/fastlane_signup.html), that anyone, including New Jersey residents, may use to join the FAST LANE Program online. In addition to providing the required personal information, a person who wishes to sign-up online to become a FAST LANE member can pay the required fees online by credit card. In this way, the MTA's interactive web site is used for financial transactions with persons in New Jersey, including the online sale of Defendant's FAST LANE transponder. In addition, once a user becomes a FAST LANE member, he or she may sign in to Defendant's web site to update their account information (e.g., address, credit card information, phone number), update their vehicle information, and check their available FAST LANE account balance.

63. The MTA is a current full member of the E-ZPass Interagency Group ("IAG") and, upon information and belief, attends meetings of the IAG in New Jersey. The IAG is the central

coordinating entity for all E-ZPass states and is located in Atlantic City, New Jersey. Steve Jacques, an MTA employee, is an IAG Executive Committee member. The IAG website misleadingly advertises that Massachusetts is an “E-ZPass” state when in fact the Defendant maintains a separate system. The web site also fails to disclose the discriminatory discount available to FAST LANE users and denied to E-ZPass users. *See* IAG Mission Statement, <http://www.e-zpassiag.com/iagmission.html>, E-ZPass Interagency Group map, <http://www.e-zpassiag.com/IAG%20Map%202008-10-08.pdf>.

64. The MTA is a current full member of the I-95 Corridor Coalition and, upon information and belief, attends meetings of the coalition in New Jersey. The I-95 Corridor Coalition is an alliance of transportation agencies, toll authorities, and related organizations, including law enforcement, from the State of Maine to the State of Florida, with affiliate members in Canada. It provides a forum for key decisions for policy makers to address transportation management and operations issues of common interest with respect to Interstate 95, a north-south interstate highway. MTA is entitled to a seat on the Executive Board of the I-95 Corridor Coalition, and representation on the Steering Committee, Program Track Committees, and/or any special task forces. Each full member, including MTA, is accorded one vote on matters requiring a vote. The I-95 Corridor Coalition and its various committees have held numerous meetings in New Jersey, including the I-95 Travel Information Services Program Track Committee in Newark, NJ on September 23, 2008. Upon information and belief, MTA attends meetings of the coalition in New Jersey. For example, MTA is a member of the Coordinated Incident Management (“CIM”) Committee.<sup>5</sup> The CIM Committee held a meeting in Woodbridge, NJ on July 17, 2008.<sup>6</sup>

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<sup>5</sup> *See* <http://www.i95coalition.net/i95/Home/MembershipSearch/tabid/109/Default.aspx>.

<sup>6</sup>

**CLASS ACTION ALLEGATIONS**

65. Plaintiffs bring this cause of action individually and pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3) on behalf of all class members defined as follows:

All travelers who paid the full undiscounted fare using an E-ZPass transponder at the Allston-Brighton, Route 128, Ted Williams Tunnel, and/or Sumner Tunnel toll plazas from July 1, 2002 to the present.

66. Excluded from the class are: the defendant, any parent, subsidiary, affiliate, or controlled person of defendant, as well as the officers, directors, agents, servants, or employees of defendant, and the immediate family members of any such persons; any persons who previously have litigated the validity of the Fast Lane Discount Program against MTA; any judge or magistrate assigned to this case and his or her immediate family members and employees; and plaintiffs' counsel.

67. This action meets all requirements for class action certification in that:

a. The class is so numerous as to make joinder impracticable. Boston is a major metropolitan city, tourist destination and commuter commerce center to which thousands of interstate travelers arrive by motor vehicle each day, thereby utilizing the toll plazas subject to the Fast Lane Discount Program. The New York E-ZPass program alone has issued approximately 9.8 million electronic transponders, a number that has tripled since 1999. As of 2006, there were 3.3 million transponders issued by the New Jersey E-ZPass Program, a figure that, upon information and belief, has increased substantially since that time. Upon information and belief and based upon limited publicly available data, each day thousands of motorists using E-ZPass transponders pass through the Allston-Brighton, Route 128, Ted Williams Tunnel, and Sumner Tunnel toll plazas.

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<http://www.i95coalition.net/i95/Library/MeetingMinutes/tabid/143/ctl/CategoryView/mid/533/categoryId/8/Coordinated-Incident-Management-Committee.aspx>.

b. There are questions of law or fact that are common to the class which predominate over any questions affecting only individual members. The common questions of law or fact include whether defendant: i) in enacting and administering the Fast Lane Discount Program, has violated the interstate Commerce Clause of the United States Constitution Article I, § 8, cl. 3 which prohibits the Commonwealth of Massachusetts and its agencies, including defendant, from discriminating against out-of-state residents through the use of non-uniform tolls; ii) in enacting and administering the Fast Lane Discount Program, has violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; iii) improperly charged travelers with E-ZPass transponders the full undiscounted toll; iv) violated plaintiffs' and members of the class' civil rights pursuant to 42 U.S.C. § 1983; and v) to what extent the members of the Class have sustained damages and the proper measure of such damages;

c. Plaintiffs' claims are typical of the claims of the members of the class because defendant overcharged plaintiffs for tolls in violation of his constitutional rights in the exact same manner as it violated the rights of the class. Defendant's conduct has equally harmed plaintiffs and all other members of the putative class. Further, plaintiffs' claims are typical because they and members of the class share a common relationship with defendant as persons who paid the discriminatory tolls using E-ZPass and as victims of defendant's unconstitutional practices. Thus, their claims and injuries, as well as those of the class, are based on the same legal claims;

d. Plaintiffs are proper class representatives who will fully and adequately protect the interests of the members of the class. Plaintiffs have retained competent counsel with prior experience in class action litigation. Plaintiffs have no interest antagonistic with, contrary to, or in conflict with the members of the class he seeks to represent; and

e. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because joinder of all members of the class is impracticable. Further, the prosecution of separate actions by individual members of the class would create a risk of inconsistent and varying adjudications concerning the subject of this action. Furthermore, as damages suffered by individual members of the class may be relatively small, the expense and burden of individual litigation may make it impossible for most members individually to redress the wrongs done to them. The likelihood of individual members of the class prosecuting separate claims is remote. No unusual difficulties are likely to be encountered in the management of this action as a class action.

### **FRAUDULENT CONCEALMENT**

68. The MTA fraudulently concealed the causes of action contained herein from the knowledge of the plaintiffs and the class. The MTA has wrongly and intentionally concealed the existence of the causes of action contained herein through affirmative acts.

69. For example, the MTA erected enormous signs stating “E-ZPass Accepted” at all of the toll booths at issue. *See* Photographs attached hereto as Exhs. 1-4. A diagram posted on the MTA’s website also depicts the signs stating “E-ZPass Accepted.”<sup>7</sup> In addition, the MTA’s web site states: “Today, nearly 60 percent of all toll transactions are processed via FAST LANE, which is fully compatible with the E-ZPass system in use throughout the Northeast and Mid-Atlantic States.”<sup>8</sup> The MTA has affirmatively concealed the existence of the causes of action herein through the use of the “E-ZPass Accepted” signs and other conduct.

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<sup>7</sup> FAST LANE Toll Plaza, <http://www.masspike.com/travel/fastlane/tollplaza.html>.

<sup>8</sup> Turnpike History, <http://www.masspike.com/aboutus/history.html>.

70. Moreover, MTA permits itself to be listed on the New Jersey E-ZPass web site as one of the “States With E-ZPass,” *see* <http://www.ezpassnj.com/static/info/facilities.shtml>, and as a participating E-ZPass facility that expressly lists the “Massachusetts Turnpike, Boston Extension [which includes the Allston-Brighton and Route 128 toll plazas], Ted Williams Tunnel, Callahan & Sumner Tunnels” as tollways where E-ZPass may be used, *see* <http://www.ezpass.com/static/info/facilities.shtml>, but does not reveal the discriminatory discount program. In addition, the MTA misleadingly permits itself to be listed on the E-ZPass Interagency Group website as one of the States with E-ZPass when in fact it is not an E-ZPass state; further this web site does not reveal the discriminatory discount program. *See* E-ZPass Interagency Group map, <http://www.e-zpassiag.com/IAG%20Map%202008-10-08.pdf>. MTA is an IAG member and one of MTA’s employees is an IAG Executive Committee member.

71. Because of Defendant’s actions, plaintiffs and the members of the class were misled into using the four toll plazas at issue without knowing that Defendant discriminates against them as E-ZPass users by charging them higher tolls than it charges to identically-situated FAST LANE users.

**COUNT I**  
**(Violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. Section 1983)**

72. Plaintiff repeats the allegations set forth in paragraphs 1 through 71 above as if fully set forth herein.

73. The Fourteenth Amendment to the United States Constitution states in relevant part that no State shall “deny to any person within its jurisdiction the equal protection of the laws.”

74. The Fast Lane Discount Program arbitrarily charges E-ZPass transponder holders higher tolls than FAST LANE transponder holders to use the same stretch of highway. It is wholly

arbitrary to distinguish among users of the highway according to the type of transponder used by a traveler passing through one of the toll plazas. The purposes of the toll would be identically served by levying the same toll on both E-ZPass transponder holders and FAST LANE transponder holders. This disparate treatment does not advance any legitimate governmental purpose. MTA's classification does not reflect pre-existing differences between E-ZPass transponder users and FAST LANE transponder users. The only difference between E-ZPass and FAST LANE transponder users is that the former have a transponder issued by an out-of-state entity while the latter have one issued by an in-state entity. This difference is unrelated to the purposes of the electronic toll system. The Fast Lane Discount Program therefore violates the Equal Protection Clause in the Fourteenth Amendment to the United States Constitution.

75. Defendant, acting under color of law, instituted, authorized, ratified, permitted and acquiesced in the enactment and enforcement of the Fast Lane Discount Program which violates plaintiff's rights under the Equal Protection Clause and 42 U.S.C. § 1983.

76. As a direct and proximate result of defendant's violation of plaintiff's and class members' constitutional rights, plaintiff and the members of the class have sustained ascertainable damages related to the collection of the undiscounted tolls and/or costs of the Fast Lane Discount Program in an amount to be determined at trial plus their reasonable attorney's fees and costs.

**COUNT II**  
**(Violation of the Commerce Clause Article I, § 8, cl. 3 of the United States  
Constitution and 42 U.S.C. Section 1983)**

77. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 76 above as if fully set forth herein.

78. The Commerce Clause of the United States Constitution Article I, § 8, cl. 3 prohibits the Commonwealth of Massachusetts and its agencies, including Defendant, from discriminating against interstate commerce or against out-of-state residents through the use of non-uniform tolls.

79. MTA, by providing the Fast Lane Discount Program for FAST LANE transponder users only and not E-ZPass transponder users, has violated the Commerce Clause and 42 U.S.C. § 1983.

80. The Fast Lane Discount Program discriminates against interstate commerce in favor of intrastate commerce and is invalid per se. Each and every electronic toll transaction between Defendant and an E-ZPass user at one of the four toll plazas at issue is an interstate transaction and is treated less favorably than each and every intrastate electronic toll transaction, i.e., between Defendant and a FAST LANE user. E-ZPass is the out-of-state system and FAST LANE is the in-state system. The Fast Lane Discount Program thus discriminates against interstate commerce in favor of intrastate commerce and is invalid per se under the Commerce Clause. This discrimination is not demonstrably justified by a valid factor unrelated to economic protectionism.

81. In the alternative, the Fast Lane Discount Program has a discriminatory effect. It imposes a discriminatory burden on interstate commerce incommensurate with the putative local benefits of the Program. The Program encourages intrastate transactions (purchase and use of FAST LANE transponders), discourages interstate transactions (purchase and use of E-ZPass transponders) and thereby unfairly burdens interstate commerce regardless of where the holders of the transponders live. The interests that the Program seeks to advance could be promoted as well, and in fact better, with a non-discriminatory program.

82. A further, additional, discriminatory effect is that E-ZPass transponder holders are more likely to reside in one of the E-ZPass states and FAST LANE transponder holders are more

likely to live in Massachusetts. E-ZPass transponder holders are more likely to travel across state lines to travel through the Massachusetts Turnpike Authority's toll plazas. For years the Massachusetts Turnpike Authority has been charging E-ZPass transponder holders significantly more to use the same stretch of highway. The burden on interstate commerce is excessive in relation to any putative local benefits. FAST LANE transponder holders, the vast majority of whom are Massachusetts residents, pay the discounted tolls. E-ZPass transponder holders, the vast majority of which are non-Massachusetts residents, pay the undiscounted tolls. The Program thus favors in-state interests, persons and intrastate transactions at the expense of out-of-state interests, persons and interstate transactions. The class alleging a claim under the variant of the Commerce Clause claim alleged in this paragraph is hereby modified to exclude E-ZPass users who are also Massachusetts citizens and Plaintiff Fuller does not seek to serve as a class representative for the variant of the Commerce Clause claim alleged in this paragraph.

83. The Fast Lane Discount Program is not based upon a fair approximation of use or privilege for use of the facilities for whose benefit they are imposed. The Program is excessive in comparison with the government benefit conferred and in relation to the costs incurred by the MTA.

84. Interstate regulatory gridlock would occur if every state adopted a program similar to the MTA's Fast Lane Discount Program. In such a situation, a traveler would be required to own 50 different transponders and use them accordingly to secure the benefit conferred under each electronic toll collection system. Even if such programs were adopted just by the six New England states and New York – a regional typified by large populations, heavily traveled roads and spatially compact states – an interstate traveler would need seven different transponders to accommodate each state's attempt to discriminatorily promote its own program.

85. Defendant, acting under color of law, instituted, authorized, ratified, permitted and acquiesced in the enactment and enforcement of the Fast Lane Discount Program which violates plaintiff's rights under the Commerce Clause, and 42 U.S.C. § 1983.

86. As a direct and proximate result of defendant's violation of plaintiff's and class members' constitutional rights, plaintiff and the members of the class have sustained ascertainable damages related to the collection of the undiscounted tolls and/or costs of the FAST LANE program in an amount to be determined at trial plus their reasonable attorney's fees and costs.

**COUNT III**  
**(Violation of the Privileges and Immunities Clause, Article IV, § 2, of the United States Constitution and 42 U.S.C. Section 1983)**

87. Plaintiff repeats and realleges each of the allegations set forth in paragraphs 1 through 86 above as if fully set forth herein.

88. The Privileges and Immunities Clause, Article IV, § 2, provides: "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."

89. The Privileges and Immunities Clause prohibits the MTA from charging E-ZPass transponder holders higher tolls than FAST LANE transponder holders to use the same stretch of highway.

90. The Privileges and Immunities Clause insures that a citizen of one State who travels into another State is accorded the same privileges enjoyed by a citizen of that State. Thus, the Privileges and Immunities Clause prohibits a State and its agencies, including defendant, from creating classifications that are but proxies for differential treatment against out-of-state residents. MTA's Fast Lane Discount Program is but a proxy for differential treatment against out-of-state residents because the vast majority of E-ZPass transponder holders are non-Massachusetts residents

and these E-ZPass transponder holders pay the undiscounted tolls. At the same time, FAST LANE transponder holders, the vast majority of which are Massachusetts residents, pay the discounted tolls.

91. The Privileges and Immunities Clause prohibits a State and its agencies, including defendant, from creating any classification that has the practical effect of discriminating against out-of-state residents. MTA's Fast Lane Discount Program has the practical effect of discriminating against out-of-state residents because the vast majority of E-ZPass transponder holders are non-Massachusetts residents and these E-ZPass transponder holders pay the undiscounted tolls. At the same time, FAST LANE transponder holders, the vast majority of which are Massachusetts residents, pay the discounted tolls.

92. Defendant, acting under color of law, instituted, authorized, ratified, permitted and acquiesced in the enactment and enforcement of the Fast Lane Discount Program which violates plaintiff's rights under the Privileges and Immunities Clause, and 42 U.S.C. § 1983.

93. As a direct and proximate result of defendant's violation of plaintiff's and class members' constitutional rights, plaintiff and the members of the class have sustained ascertainable damages related to the collection of the undiscounted tolls and/or costs of the Fast Lane Discount Program in an amount to be determined at trial plus their reasonable attorney's fees and costs.

94. The class alleging a claim under the Privileges and Immunities Clause is hereby modified to exclude E-ZPass users who are also Massachusetts citizens and Plaintiff Fuller does not seek to serve as a class representative for this claim.

WHEREFORE, the Plaintiffs, on their own behalfs and on behalf of the members of the Class, pray that judgment be entered against defendant as follows:

a. Declaring this action to be a class action properly maintained pursuant to Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure;

- b. Declaring the Fast Lane Discount Program to be unconstitutional;
- c. Awarding damages to the Plaintiffs and the members of the Class, with prejudgment interest;
- d. Awarding the Plaintiffs and the members of the class their costs and expenses of this litigation, including reasonable attorneys' fees pursuant to 28 U.S.C. § 1988, experts' fees and other costs and disbursements; and
- e. Awarding the Plaintiffs and the members of the class such other and further relief as this Court deems just and proper.

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**DEMAND FOR JURY TRIAL**

Plaintiffs hereby demand a trial by jury as to all issues so triable.

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Route 128: Entering I-90 eastbound from I-95/128 northbound.



Sumner Tunnel entrance.



Williams Tunnel entrance.



Allston-Brighton toll continuing on I-90 westbound.