

4. Defendant, Gila, LLC, is a limited liability company organized and existing under the laws of the State of Texas and with its principal place of business in the State of Texas. Gila LLC also does business using the name “Municipal Services Bureau” or “MSB.”

5. This Court has personal jurisdiction over each of the Defendants because they each do business in the State of Indiana, including the transactions at issue in this litigation, and maintain their registered agents in Marion County, Indiana.

THE RIVERLINK TOLLING SYSTEM

6. RiverLink is the Tolling System for the Louisville-Southern Indiana Ohio River Bridges Project, a collaborative effort between the States of Indiana and Kentucky to build, improve, and maintain multiple major bridges over the Ohio River that connect Kentucky and Southern Indiana (the “Toll Bridges”), including the new Abraham Lincoln Bridge in downtown Louisville (I-65), the revamping of the existing Kennedy Bridge in downtown Louisville (also I-65), a new East End Bridge connecting the extension of the Snyder Freeway (I-265) with Southern Indiana (state road 265) and the rebuilding of the I-65, I-64 and I-71 interchanges.

7. The RiverLink system uses all-electronic tolling, meaning no toll booths. The RiverLink system is operated and administered by a Toll Services Provider (“TSP”).

8. Drivers and motorists with prepaid accounts and transponders are supposed to pay the lowest toll rates when using the RiverLink system. For these customers, sensors read the transponder and deduct the appropriate toll when the motorist crosses one of the Toll Bridges.

9. For Unregistered Vehicle Account (“UVA”) consumers – drivers without prepaid RiverLink accounts, or with inadequate balances to pay the toll on an existing account - cameras capture license plates and an invoice (the “1st Toll Notice”) is then supposed to be created and

mailed to the registered vehicle owner as identified by the Indiana Bureau of Motor Vehicles (“IN BMV”) and Kentucky Motor Vehicle Licensing (“KY MVL”).

10. The 1st Toll Notice may not include any administrative fees or penalties, but may only provide notice of and invoice the motorist for the toll that is due for use of the Tolling Bridge.

11. If a motorist does not pay the toll within thirty (30) days after receipt of the 1st Toll Notice, the TSP is then authorized to send a “2nd Toll Notice” that includes both the unpaid toll(s) and the assessment of an additional \$5.00 administrative fee/penalty.

12. If the 2nd Toll Notice is not then paid within thirty (30) days, the TSP is then authorized to send a “Violation Notice” that includes the unpaid toll(s), \$5.00 administrative fee/penalty, and an additional \$25.00 violation penalty/fee.

13. If the Violation Notice is not then paid within thirty (30) days, the TSP is then authorized to send a “Collection Notice” that includes the unpaid toll(s), \$5.00 administrative fee/penalty, \$25.00 violation penalty/fee, and an additional \$30.00 collections penalty/fee.

14. If the Collection Notice is not paid, additional fees may then be assessed, collections efforts (including litigation) may be taken, and the TSP can also direct that a hold be placed on the motorist’s vehicle registration with the IN BMV and/or KY MVL that will not be lifted until the toll and fees/penalties are paid.

DEFENDANTS’ CONDUCT AS TOLL SERVICES PROVIDER

15. After considering various proposals submitted in response to a Request for Proposals, Defendant Kapsch TrafficCom USA, Inc. was awarded a contract (the “Toll Services Agreement” or “TSA”) to act as the Toll Services Provider (“TSP”).

16. Kapsch then hired Defendant GILA, LLC to act as its agent and act on its behalf to provide various services including image review, account and transponder management, payment

processing, invoicing and video billing, violation processing, and collection and court processing services, relating to RiverLink.

17. Together, Kapsch and GILA were responsible for and implemented the toll invoicing system for RiverLink.

18. In its role as TSP, Kapsch owes a fiduciary duty to each user of the Riverlink bridges and system under the Toll Services Agreement.

19. GILA agreed via its contract with Kapsch that GILA's performance of the subcontracted work would be subject to all responsibilities of the TSP as set forth in the TSA.

20. GILA thus also owes a fiduciary duty that is owed by the TSP to users of the RiverLink bridges and system.

21. In performing their duties as TSP to provide notice and invoices for tolls, fees and penalties that were assessed to users of the RiverLink bridges and system, Kapsch and GILA operated under the name "RiverLink" rather than their own business names such that it is impossible for users of the RiverLink system to distinguish between the actions of one or the other.

22. However, upon information and belief, Kapsch and GILA were responsible for services and actions relating to providing notice of tolls, fees and penalties and otherwise invoicing users for their use of the RiverLink bridges and system, including as is at issue in this litigation.

23. Pursuant to the § 7.4 of the TSA, Kapsch is vicariously liable for all actions, omissions, negligence, willful misconduct, or breach of law or contract, of GILA in performing services relating to the RiverLink system.

24. For these reasons, and subject to additional discovery on these issues, Kapsch and GILA are each wholly liable for the unlawful actions at issue in this litigation, performed to meet

the obligations of the TSP under the TSA, and will therefore jointly be referenced as “Defendants” herein.

25. Defendants began to assess and invoice tolls for motorists using the Toll Bridges beginning on December 30, 2016 and through the present date.

26. As set forth in the Business Rules adopted by the States, pursuant to Indiana statutory authority, to govern the TSP, Defendants were required to set the due date for any 1st Toll Notice for 35 days after the generation of that invoice.

27. The purpose of this 35-day period, as set forth in the Business Rules, is to allow “5 days for invoice generation, quality control and review, and mailing + 30 Days for Customer to make payment.”

28. However, Defendants did not provide this period of time to even a single user of the RiverLink Bridges over the years they acted as the TSP.

29. In fact, Gila programmed the RiverLink invoicing software to set due dates for just 29 days, or less, after the date on which a 1st Toll Notice was generated.

30. “Generated” in this context does not mean printed or mailed, but means the sending of an electronic file of information to a print-house to insert into a template form and create an electronic file of the 1st Toll Notice.

31. A PDF would then be created using this electronic file and provided to Defendants for review/approval before printing and mailing.

32. 1st Toll Notices were not reviewed, printed, and mailed for days or weeks after generation (if at all).

33. Because of this failure to comply with the requirements of the Business Rules by Defendants, no user of the RiverLink Toll Bridges has been provided the required period of time to pay a 1st Toll Notice.

34. Defendants further took actions that ensured this fact would be concealed from users of the RiverLink Toll Bridges.

35. For example, Gila's invoicing software was programmed to put an "Invoice Date" on each 1st Toll Notice that was at least one day before the date on which that invoice was generated.

36. Further, this Invoice Date was not updated to account for the days or weeks between generation of the invoice and the actual review, printing, and mailing of the invoice.

37. Invoices also were sent in envelopes that utilized a bulk postage process that does not identify the date postage was purchased or the envelope was mailed.

38. Thus, the recipient of an RiverLink invoice would have no way of knowing when that invoice was mailed except for the "Invoice Date" contained on the invoice – a date that was inexplicably set for a date before even the date on which the invoice was generated as an electronic image (let alone the date on which it was subsequently reviewed, printed and/or mailed).

39. To make matters worse, Defendants routinely did not send motorists the required 1st Toll Notice, 2nd Toll Notice, Violation Notices, or Collection Notice before imposing escalating penalties onto Riverlink users.

40. Instead, they inappropriately sent 2nd Toll Notices, Violation Notices, or Collection Notices (the second, third, and fourth levels of invoicing contemplated by the State-approved Business Rules governing the TSP's invoicing process), which imposed additional fees and/or penalties that were unlawful due to Defendants failure to provide a 1st Toll Notice (or subsequent

notices) that allowed drivers to pay the toll within the period of time required by the States and prior to the imposition of any additional fees or penalties.

41. Defendants' failure to send appropriate notice before sending 2nd Toll Notices, Violation Notices, and/or Collection Notices is widespread and affects a large portion of motorists using the RiverLink system.

42. Upon information and belief, Defendants' have inappropriately charged motorists penalties as part of a scheme with the intent to defraud and mislead, and/or have otherwise failed to cure their misconduct despite notice of the same and opportunity.

43. Plaintiffs bring this action on behalf of themselves and other similarly situated consumers to (i) reimburse them for the damages caused by Defendants' conduct, (ii) halt the dissemination of Defendants' false, misleading and deceptive invoicing system, (iii) correct false impressions and beliefs that have been created in the minds of consumers by Defendants relating to the toll payment process and notice requirements, and (iv) otherwise obtain redress for those who have been inaccurately or wrongfully assessed administrative penalties and fees without prior notice.

44. Specifically, Plaintiff, Outzen, received a "2nd Toll Notice" that was dated 11/13/2017 in relation to use of the Toll Bridges on May 26 and June 3, 2017, and that included an administrative fee of \$5.00 that is expressly not allowed for a 1st Toll Notice by law and Defendants' contract with the States.

45. Plaintiff, Outzen, did not receive a 1st Toll Notice or otherwise any invoice or notice that a toll was due and owed for use of the Toll Bridges, nor was she provided thirty (30) days to pay a 1st Notice after receipt.

46. Plaintiff, Outzen, was thus assessed a fee and/or penalty without any notice of a toll being due or opportunity to pay that toll within thirty days (of receipt of a 1st Toll Notice) in order to avoid assessment of a fee and/or penalty such as those assessed by Defendants in the 2nd Toll Notice sent to Plaintiff Outzen.

47. This Notice was also falsely identified as a “2nd Toll Notice” when in fact no 1st Toll Notice had been provided to Plaintiff Outzen, and the Notice was not, in fact, a “2nd” Toll Notice.

48. This Notices further misled Plaintiff, Outzen, as to whether a 1st Toll Notice had been sent by assessing a \$5.00 late fee that the 2nd Toll Notice indicated would only be charged where a 1st Toll Notice had been previously provided to Plaintiff and the toll had then not been paid in the thirty day period after said 1st Toll Notice.

49. Plaintiff, Outzen, did not know or have reason to believe that she was inappropriately and unlawfully charged an administrative fee in the 11/13/2017 “2nd Toll Notice” until January of 2020.

50. Plaintiff, Ardaiole, received a 2nd Toll Notice that was dated April 13, 2017 in relation to use of the Toll Bridges on February 13 and 14, 2017, and that included an administrative fee of \$5.00 that may only be lawfully assessed after a 1st Toll Notice is generated and provided to the user with a due date that is thirty-five (35) days after the date on which the 1st Toll Notice was generated.

51. Plaintiff, Ardaiole, was not provided a 1st Toll Notice that complied with these requirements.

52. Plaintiff, Ardaiole, did not know or have reason to believe that he was inappropriately and unlawfully charged an administrative fee until January of 2020.

53. Each of Plaintiffs, Outzen and Ardaiole, paid the penalties/fees contained in the “2nd Toll Notices” they received in reliance on Defendants’ representations and to avoid additional penalties and fees that would otherwise be assessed and that included even the placement of a Vehicle Registration Hold on Plaintiffs’ vehicle(s) at the BMV and actions by a collection agency against Plaintiffs.

54. Defendants have known since invoicing began for the RiverLink Toll Bridges that they were not providing the required amount of time in calculating a “Due Date” for notices and invoices to UVA consumers.

55. Defendants have also known since at least 2017 that they were assessing fees and penalties for failure to pay RiverLink invoices that had not actually been printed and mailed, but have not informed the RiverLink users of this fact.

56. Upon information and belief, by late spring or early summer of 2018 and on multiple occasions thereafter, Defendants conducted an analysis that resulted in the identification of hundreds of thousands of users of the RiverLink Toll Bridges who had been assessed millions of dollars in fees and penalties based on their failure to pay 1st Toll Notices, 2nd Toll Notices, and Violation Notices that had never actually been printed or mailed.

57. However, despite their superior and long-held knowledge of this fact and obligation to refund amounts that were erroneously charged, Defendants have not refunded those unlawfully assessed fees and penalties even to this day (and despite their contractual agreement with the States to bear the expense of any refunds or amounts owed to UVA consumers due to errors in billing by the TSP).

58. Instead, Defendants have placed their own business and financial interests before the interests of the users of the RiverLink Toll Bridges.

59. Such conduct is in direct violation of the fiduciary duty Defendants owe to the users of the RiverLink Toll Bridges.

60. Defendants have received a number of benefits due to their wrongful billing practices and misconduct as alleged herein, including but not limited to such benefits as:

- i. Defendants are paid for their work from the unlawfully imposed fees and penalties.
- ii. Collection of wrongfully-charged fees and penalties that were then cited as evidence of Defendants' success in operating the RiverLink Toll Bridges, used to fund the payments owed to Defendants under the contract with the States, and a basis for additional contract(s) with the States and/or other entities in need of a toll system operator;
- iii. Using the wrongfully-charged fees and penalties as an impetus for UVA consumers to contact RiverLink and provide opportunity for Defendants to attempt to convince those users to convert to a registered account to avoid additional such "late" fees and/or in exchange for "waiver" of the unlawful fees (and thus lowering the overhead and operating costs of Defendants and increasing their profit margin(s) due to the increase in registered and pre-paid accounts);
- iv. The increased number of individuals who are likely to, or do in fact, advance through the levels of invoicing/penalties within the RiverLink invoicing system in conjunction with Gila's right to a 10% contingency fee of all amounts collected (tolls, fees, and penalties) from a UVA consumer who

does not pay a Collections Notice (the fourth level of invoicing) by its stated due date;

- v. Interest-free use of the wrongly-assessed fees and penalties after payment (and even if Defendants eventually did refund or waive any such amount(s)).

61. All conditions precedent to Plaintiffs' claims and the claims of the Class have occurred, have been performed, or have been excused or waived.

CLASS DEFINITION AND ALLEGATIONS

62. Plaintiffs bring this action on behalf of themselves and members of a Class defined as:

Main Class: All individuals and entities to whom Defendants assessed administrative fees, violation fees, collections fees, and/or penalties arising from their use of the Riverlink Connect Tolling System using Unregistered Video Accounts.

Subclass 1: All individuals and entities to whom Defendants did not send a 1st Toll Notice, and/or any subsequent notice/invoice, before assessing administrative fees, violation fees, and/or collections fees associated with the next respective level of invoicing as set forth in the RiverLink Business Rules.

63. *Numerosity.* The members of the Class are so numerous that joinder of all members of the Class is impracticable. Upon information and belief, the proposed Class contains hundreds or even thousands of motorists who were wrongfully assessed administrative penalties and fees without notice and whom have been damaged by Defendants' conduct as alleged herein. Individual joinder of each such Class member would be impractical. The precise number of Class members is unknown to Plaintiff at this time.

64. *Existence and Predominance of Common Questions of Law and Fact.* This action involves common questions of law and fact, which predominate over any questions affecting

individual Class members. These common legal and factual questions include, but are not limited to, the following:

- (a) Whether Defendants' representations discussed above are misleading, or objectively reasonably likely to deceive;
- (b) whether Defendants' alleged conduct violates public policy;
- (c) whether the alleged conduct constitutes violations of the laws asserted;
- (e) whether Plaintiff and Class members have sustained monetary loss and the proper measure of that loss; and
- (f) whether Plaintiff and Class members are entitled to other appropriate remedies, including injunctive relief.

65. **Typicality.** Plaintiffs' claims are typical of the claims of the members of the Class because, *inter alia*, all Class members were injured through the uniform misconduct described above and were subject to Defendants' wrongful assessment of administrative penalties and fees without notice. Plaintiffs are advancing the same claims and legal theories on behalf of themselves and all members of the Class. Plaintiffs are representatives of the Class and have standing to advance these claims because they were subject to and injured by Defendants' conduct in a manner such that they suffered damages that were proximately caused by Defendants' misrepresentations and unlawful acts.

66. **Adequacy of Representation.** Plaintiffs each wish to represent the Class because Plaintiffs feel that they have been deceived and wrongfully assessed administrative penalties and fees without notice, wish to obtain redress for the wrongs that have been done to Plaintiffs, and also wish to ensure Defendants are not allowed to perpetrate similar wrongs on other consumers and motorists. Plaintiffs will fairly and adequately protect the interests of the members of the Class

and do not have interests that conflict with or are antagonistic to the interests of the Class member. Plaintiffs have retained counsel experienced in complex consumer class action litigation and knowledgeable of applicable law to claims for the Class, and Plaintiffs intends to prosecute this action vigorously.

67. ***Superiority.*** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members is relatively small compared to the burden and expense that would be entailed by individual litigation of their claims against Defendants, including the necessity of extensive discovery and the likely need for and use of expert witnesses in relation to the issues raised in this litigation. It would be virtually impossible for the Class, on an individual basis, to obtain effective redress for the wrongs done to them. Furthermore, even if Class members could afford such individualized litigation, the court system would be overwhelmed by such redundant litigation of the same factual issues set forth in this Complaint. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances here.

68. Plaintiffs seeks preliminary and permanent injunctive and equitable relief on behalf of the entire Class, on grounds generally applicable to the entire Class, to enjoin and prevent Defendants from engaging in the acts described, and requiring Defendants to provide full restitution to Plaintiffs and all other Class members.

69. Unless a Class is certified, Defendants will retain monies received and/or have no obligation to remedy injuries caused as a result of its conduct and in relation to Plaintiffs and Class members. Unless a Class-wide injunction is issued, Defendants will continue to commit the violations alleged, and the members of the Class and the general public will continue to be deceived and wrongfully assessed administrative penalties and fees without notice.

70. Defendants have acted and refused to act on grounds generally applicable to the Class, making appropriate final injunctive relief with respect to the Class as a whole.

Count I: Unjust Enrichment

71. Plaintiffs incorporate by reference and re-alleges each and every allegation set forth in paragraphs 1 through 70 above as if fully set forth herein.

72. A measurable benefit was conferred on Defendants by Plaintiffs and members of the putative Class including those amounts paid for penalties and/or administrative fees assessed or invoiced to Plaintiffs and members of the putative Class.

73. This benefit was conferred on Defendants at their own behest and was based on Defendants' representation that they had provided a 1st Toll Notice and/or other notices that went unpaid and authorized Defendants to assess additional fees and/or penalties.

74. It would be unjust for Defendants to retain this benefit because Defendants did not actually provide notice as represented and required to assess the additional fees and/or penalties.

75. Due to the unjust enrichment of Defendants, Plaintiffs and members of the putative Class are entitled to a judgment for damages in an amount equal to the value of the benefit conferred on Defendants, as will be determined at trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants in favor of Plaintiffs and the putative Class members for all damages recoverable under the applicable law, for costs, for

pre- and post-judgment interest, and for all other relief just and proper in the premises.

Count II: Money Had and Received

76. Plaintiffs incorporate by reference and realleges each and every allegation set forth in paragraphs 1 through 75 above as though fully set forth herein.

77. Defendants received money from Plaintiffs and the putative Class members, in relation to 2nd Toll Notices and other toll notices to Plaintiffs and the putative Class members that were sent without sending the required 1st Toll Notice and that contained fees and/or penalties that may only be assessed after a 1st Toll Notice is received by a vehicle owner and then not paid within thirty days.

78. The circumstances are such that Defendants, in equity and good conscience, ought not to retain that money, as Defendants failed to provide notice that was required to allow opportunity for payment of any tolls owed without assessment of the additional fees or penalties that Defendants included in invoices such as the 2nd Toll Notice.

79. Further, Defendants misrepresented whether such 1st Toll Notice had been sent by identifying an invoice that purported to be the “2nd Toll Notice” and deceived Plaintiff, Outzen, and the other putative Class members as to whether they had been provided notice (when they had not).

80. The money provided to Defendants by Plaintiffs, and members of the putative Class, was provided by mistake of fact, without consideration, and/or upon consideration that has failed, and accordingly belongs and should be returned to Plaintiff and the putative Class members.

WHEREFORE, Plaintiffs pray for judgment against Defendants in favor of Plaintiffs and the putative Class members for all damages recoverable under the applicable law, for costs, for pre- and post-judgment interest, and for all other relief just and proper in the premises.

Count III: Fraud

81. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 through 80 above as if fully set forth herein.

82. Plaintiffs brings this claim individually and on behalf of the Class.

83. Defendants made numerous material representations of past or existing fact that were false, including statements regarding whether and when prior notice of tolls had been provided to Plaintiffs and other Class members as set forth above in greater detail.

84. Defendants made these false material representations of past or existing fact with knowledge or reckless ignorance of their falsity.

85. Plaintiffs and the Class members each relied upon the false material representations of fact by Defendant, and this reliance proximately caused injury to Plaintiffs and the Class members in the amounts paid for administrative penalties and fees that were unjustified and wrongfully assessed.

86. Plaintiffs and the Class members are entitled to damages in an amount to be determined at trial as compensation for the injuries they suffered.

WHEREFORE, Plaintiffs prays for judgment against Defendants in favor of Plaintiffs and the Class members for actual, consequential, exemplary, and/or statutory damages, for attorney fees and costs, for pre- and post-judgment interest, and for all other relief just and proper in the premises.

Count IV: Violation of Deceptive Consumer Sales Act

87. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 through 86 above as if fully set forth herein.

88. Plaintiffs bring this claim individually and on behalf of the Class.

89. As set forth in the Indiana Deceptive Consumer Sales Act, Indiana Code § 24-5-0.5-2, Plaintiffs and the Class members are persons who engaged in consumer transactions with Defendants, suppliers.

90. Defendants' conduct, as described more fully above, constitutes a deceptive act.

91. Defendants' deceptive acts were willfully done by Defendants as part of a scheme, artifice, or device with intent to defraud and mislead Plaintiff and the Class members, and thus constitute incurable deceptive acts as set forth under Indiana law.

92. Plaintiffs and the Class members have been damaged by Defendants' deceptive acts and are entitled to a judgment for these damages in an amount to be determined at trial.

93. Plaintiffs and the Class members are further entitled to statutory damages, treble damages and attorneys' fees as set forth in Indiana Code § 24-5-0.5-4.

94. Further, it is believed that discovery in this litigation will reveal that consumers in other States than Indiana have had their consumer rights violated, as set forth in consumer protection laws in those other States, by Defendants' actions. To the extent that those other States' consumer protection laws require the same legal elements and issues as the Indiana Deceptive Consumer Sales Act (and it is determined the IDCSA does not apply to all Class members' claims) such that common questions of law exist amongst the Class, Plaintiffs anticipate amending this Complaint to set forth claims under those Consumer Fraud Acts.

WHEREFORE, Plaintiff prays for judgment against Defendants in favor of Plaintiffs and the Class members for actual, consequential, exemplary and/or statutory damages, for attorney fees and costs, for pre- and post-judgment interest, and for all other relief just and proper in the premises.

Count V: Deception or Intentional Misrepresentation

95. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 through 94 above as if fully set forth herein.

96. Plaintiff brings this claim individually and on behalf of the Class.

97. Defendants knowingly or intentionally made false or misleading written statements to Plaintiff and the Class members regarding the notice provided in relation to tolls owed for use of the toll bridge, including specifically false statements regarding whether and when prior invoices and notice had been sent and that Defendants were authorized to assess penalties and/or administrative fees under applicable law.

98. Defendants made these false or misleading written statements with the intent to obtain property belonging to Plaintiff and the Class members including but not limited to the money identified as being owed in the invoices sent by Defendants.

99. Defendants further made these deceptive statements along with an assertion that Plaintiffs and the Class members, if they did not pay the amounts invoiced, would be assessed additional fees or penalties.

100. Defendants' conduct constitutes deception and/or intentional misrepresentation.

101. As a direct and proximate result of Defendants' deception, Plaintiffs and the Class members have sustained pecuniary loss in an amount to be proven at trial and are entitled to a judgment for those damages.

102. Pursuant to Indiana Code § 34-24-3-1, Plaintiffs are also entitled to recover additional damages in an amount three times Plaintiff's actual pecuniary loss resulting from Defendants' deception. Plaintiff is also entitled to recover reasonable attorney fees and expenses.

WHEREFORE, Plaintiff prays for judgment against Defendants in favor of Plaintiff and the Class members for actual, consequential, exemplary and/or statutory damages, for attorney fees and costs, for pre- and post-judgment interest, and for all other relief just and proper in the premises.

Count VI: Negligence (Including Negligent Misrepresentation and Negligence Per Se)

103. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 through 102 above as if fully set forth herein.

104. Plaintiffs bring this claim individually and on behalf of the Class and as an alternative to claims arising out of fraudulent conduct.

105. Defendants had a duty to use care when invoicing Plaintiffs and other members of the putative Class in a manner that was accurate and in accordance with the notice and fee provisions required of Defendants by applicable law and Defendants' contracts.

106. Defendants breached these duties of care by negligently making false and misleading representations regarding whether and when a 1st Toll Notice had been sent prior to assessing an administrative penalty/fee and issuing a 2nd Toll Notice, without reasonable grounds for believing that the false and misleading representations were true.

107. Defendants made these statements for purposes of inducing Plaintiffs and the Class Members to rely on the false and misleading statements and pay the wrongful administrative fee/penalty due to that reliance and for fear of additional penalties/fees and/or a hold being placed on their vehicle registrations.

108. Plaintiffs and the Class members reviewed and then justifiably believed and relied upon Defendants' false and misleading statements, and in doing so suffered damages proximately caused by Defendants' breach of duty.

109. Defendants further committed negligence *per se* through violation of state statutes and regulations including those governing Defendants' ability to assess fees and/or penalties as a TSP for the Toll Bridges as well as Indiana's Deceptive Consumer Sales Act.

110. In relation to the Negligence *per se*, Plaintiffs and the Class members have suffered damages proximately caused by violation of these statutes and regulations, are individuals in a class of persons that were meant to be protected by these various statutes and regulations, and the injuries Plaintiff and the Class members have suffered were of the type the statutes and regulations were meant to prevent.

111. Plaintiffs and the Class members have suffered damages proximately caused by Defendants' negligence and breach of duty in an amount to be determined at trial.

WHEREFORE, Plaintiffs pray for judgment against Defendants in favor of Plaintiffs and the Class members for actual, consequential and exemplary damages, for attorney fees and costs, for pre- and post-judgment interest, and for all other relief just and proper in the premises.

Count VII: Constructive Fraud

112. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 through 111 above as if fully set forth herein.

113. Plaintiffs bring this claim individually and on behalf of the Class.

114. Defendants owed Plaintiffs and the putative Class members a duty due to their relationship as the TSP for the Toll Bridges and as the sole party in control of information about, and the ability to confirm, whether and when toll notices had been sent to Plaintiffs and the putative Class members.

115. Defendants violated that duty by making deceptive material misrepresentations of past or existing facts or remaining silent when a duty to speak existed, including for example specifically by failing to inform Plaintiff and the putative Class members that Defendants had not sent required prior toll notices before sending later toll notices that included fees and/or penalties for failure to pay the prior toll notices (that had never been sent by Defendants or received by Plaintiff and the putative Class members).

116. Plaintiffs and the putative Class members relied on Defendants deceptive material misrepresentations of past or existing facts and/or silence when a duty to speak existed.

117. Plaintiffs and the putative Class members suffered injury as a proximate result thereof.

118. Defendants gained an advantage at the expense of Plaintiffs and the putative Class

members, including but not limited to amounts invoiced and/or paid for fees and/or penalties arising out of the alleged failure to pay the 1st Toll Notice in a timely manner when the 1st Toll Notice had, in reality, actually never been sent to or received by Plaintiffs and the putative Class members such that they had an opportunity to pay it in a timely manner and avoid additional fees and/or penalties.

119. Plaintiffs and the putative Class members are entitled to an award of damages, in an amount to be determined at trial, to compensate them for their injuries.

WHEREFORE, Plaintiffs pray for judgment against Defendants in favor of Plaintiffs and the putative Class members for actual, consequential, exemplary and/or statutory damages, for attorney fees and costs, for pre- and post-judgment interest, and for all other relief just and proper in the premises.

Count VIII: Breach of Fiduciary Duty

120. Plaintiffs incorporate by reference and re-allege each and every allegation set forth in paragraphs 1 through 119 above as if fully set forth herein.

121. Plaintiffs bring this claim individually and on behalf of the Class.

122. In their roles fulfilling the duties of the TSP, Defendants assumed and owed a fiduciary duty to Plaintiffs and members of the putative Class as users of the RiverLink Toll Bridges.

123. Defendants breached this duty by assessing, charging, invoicing, collecting, and keeping penalties and fees from Plaintiffs and members of the putative Class that were inaccurate and that failed to adhere to notice requirements as set forth above in greater detail.

124. Plaintiffs and members of the putative Class suffered damages proximately caused by Defendants' breach of fiduciary duty.

125. Plaintiffs and members of the putative Class are entitled to an award of damages, in an amount to be determined at trial, to compensate them for their injuries.

WHEREFORE, Plaintiffs prays for judgment against Defendants in favor of Plaintiff and the putative Class members for actual, consequential, exemplary and/or statutory damages, for attorney fees and costs, for pre- and post-judgment interest, and for all other relief just and proper in the premises.

PRAYER FOR RELIEF

Wherefore, Plaintiff prays for a judgment:

- A. Certifying the Class as requested herein;
- B. Awarding damages to Plaintiffs and the proposed Class members;
- C. Awarding restitution and disgorgement of Defendants' revenues to Plaintiffs and the proposed Class members;
- D. Awarding injunctive relief as permitted by law or equity, including: enjoining Defendants from continuing the unlawful practices as set forth herein, and directing Defendants to identify, with Court supervision, victims of its conduct and pay them all money it is required to pay;
- E. Awarding statutory and punitive damages, as appropriate;
- F. Ordering Defendants to engage in a corrective advertising campaign;
- G. Awarding attorneys' fees and costs; and
- H. Providing such further relief as may be just and proper.

Respectfully submitted,

COX LAW OFFICE

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DEMAND FOR JURY TRIAL

Come now the Plaintiffs, by counsel, and demand a trial by jury on all issues so triable.

/s/ Jacob R. Cox _____
Jacob R. Cox

CERTIFICATE OF SERVICE

I hereby certify that on March 27, 2020, a copy of the foregoing document, along with an Appearance of Counsel and Summons to the Defendants, were filed electronically. Copies of these filings will be served via Certified U.S. Mail, First Class, postage prepaid, on Defendants at the following service addresses of record:

GILA, LLC
c/o Corporation Service Company
135 N. Pennsylvania Street, Suite 1610
Indianapolis, IN 46204

Kapsch Trafficcom USA, Inc.
c/o CT Corporation System (Registered Agent)
150 W. Market Street, Suite 800
Indianapolis, IN 46204

/s/ Jacob R. Cox _____
Jacob R. Cox