

1 MARC D. JOSEPH (State Bar No. 135595)  
RICHARD T. DRURY (State Bar No. 163559)  
2 ADAMS BROADWELL JOSEPH & CARDOZO  
601 Gateway Blvd., Suite 1000  
3 South San Francisco, CA 94080  
4 Telephone: (650) 589-1660  
Facsimile: (650) 589-5062

**ENDORSED  
FILED**  
San Francisco County Superior Court

JUL 16 2007

GORDON PARK-LI, Clerk  
BY BERNADETTE THOMPSON  
Deputy Clerk

5 [Additional Counsel Listed on Next Page]

6 Attorneys for Plaintiffs ENVIRONMENTAL LAW FOUNDATION,  
7 OUR CHILDREN'S EARTH FOUNDATION, and  
8 COMMUNITIES FOR A BETTER ENVIRONMENT

9  
10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

12  
13 ENVIRONMENTAL LAW FOUNDATION; OUR  
CHILDREN'S EARTH FOUNDATION; and  
14 COMMUNITIES FOR A BETTER  
ENVIRONMENT, On Behalf of the General Public  
15 Plaintiffs,

16 v.

17 LAIDLAW TRANSIT INC. dba LAIDLAW  
18 EDUCATION SERVICES; LAIDLAW TRANSIT  
SERVICES, INC.; DURHAM SCHOOL  
19 SERVICES, L.P.; and DOES 1 through 100,  
inclusive

20 Respondents,

CASE NO.: CGC-06-451832

**SECOND AMENDED COMPLAINT  
FOR CIVIL PENALTIES,  
STATUTORY, EQUITABLE AND  
INJUNCTIVE RELIEF BASED  
UPON:**

(1) Violation of Cal. Health & Safety  
Code § 25249.6 *et seq.*

Complaint filed: May 2, 2006

1 JAMES R. WHEATON (State Bar No. 115230)  
LYNNE R. SAXTON (State Bar No. 226210)  
2 ENVIRONMENTAL LAW FOUNDATION  
1736 Franklin, 9<sup>th</sup> Floor  
3 Oakland, CA 94612  
4 Telephone: (510) 208-4555  
Facsimile: (510) 208-4562

5 MICHAEL COSTA (State Bar No. 219416)  
6 OUR CHILDREN'S EARTH FOUNDATION  
100 First Street, Suite 100-367  
7 San Francisco, CA 94105  
8 Telephone: (415) 896-5289  
Facsimile: (815) 642-9181

9 ADRIENNE L. BLOCH (State Bar No. 215471)  
10 SHANA LAZEROW (State Bar No. 195491)  
COMMUNITIES FOR A BETTER ENVIRONMENT  
11 1440 Broadway, Suite 701  
Oakland, CA 94612  
12 Telephone: (510) 302-0430  
13 Facsimile: (510) 302-0438

1 Plaintiffs, by and through their attorneys, bring this action on behalf of the general public  
2 on information and belief, except those allegations that pertain to the named plaintiffs or to their  
3 attorneys (which are alleged on personal knowledge), and hereby allege as follows:

4 **INTRODUCTION**

5 **(The Hazards of Diesel Engine Exhaust)**

6 1. This action seeks, among other remedies, civil penalties and injunctive relief to  
7 redress the actions of defendants that cause widespread exposure of children and school bus  
8 drivers to diesel engine exhaust, a chemical known to the State of California to cause cancer in  
9 humans. Specifically, plaintiffs challenge defendants' operation of school buses for public and  
10 private schools and school districts throughout the State of California that emit diesel engine  
11 exhaust, in the process exposing drivers and passengers to diesel engine exhaust from the buses  
12 without adequate prior warning. Defendants' actions, including but not limited to their failure to  
13 provide warnings, violate California Health & Safety Code §§ 25249.6 *et seq.*

14 2. Diesel engine exhaust poses a significant health threat, particularly to children and  
15 bus drivers. Diesel exhaust and the many chemicals, gases and particulates that it contains have  
16 been linked to decreases in lung function, cancer, asthma exacerbations, and premature death.  
17 The scientific evidence associating diesel exhaust and human health problems is quite extensive.  
18 In fact, the excess cancer risk in California from diesel particles is higher than any other Toxic  
19 Air Contaminant identified by California's Office of Environmental Health Hazard Assessment  
20 ("OEHHA").

21 3. Proposition 65 requires that consumers be warned before they are exposed to  
22 substances that cause cancer. (The Safe Drinking Water and Toxic Enforcement Act, California  
23 Health and Safety Code § 25249.6, *et seq.*, also known as "Proposition 65"). On October 1,  
24 1990, diesel engine exhaust was declared to be a carcinogen subject to Proposition 65. On  
25 October 1, 1991, the warning requirements under Proposition 65 became effective for diesel  
26 engine exhaust. *See* Health and Safety Code § 25249.10(b).

27 4. By exposing school children and bus drivers to diesel engine exhaust without  
28

1 providing any warning, defendants have violated and will continue to violate Proposition 65.  
2 Plaintiffs are therefore entitled to civil penalties. Additionally, by committing the acts set forth  
3 herein, defendants have violated, and unless enjoined will continue to violate, Proposition 65.  
4 Therefore, plaintiffs are entitled to injunctive relief to compel defendants to comply with  
5 Proposition 65 in the operation of their diesel buses, including its requirement that the drivers  
6 and passengers of defendants' buses be provided with a clear and reasonable warning that  
7 defendants' diesel buses emit a chemical known to the State of California to cause cancer.

#### 8 PARTIES

9 5. Plaintiff ENVIRONMENTAL LAW FOUNDATION ("ELF") is a California  
10 nonprofit organization founded on Earth Day in 1991. ELF has a longstanding interest in  
11 reducing health hazards to the public posed by diesel engine exhaust, and particularly to protect  
12 those with the least choice and greatest vulnerability to toxic risks: children and inner city  
13 dwellers. ELF is dedicated to the preservation and enhancement of human health and the  
14 environment. ELF brings this action pursuant to California Health and Safety Code § 25249.7(d)  
15 in the interest of the general public.

16 6. Plaintiff OUR CHILDREN'S EARTH FOUNDATION ("OCE") is a California  
17 nonprofit organization dedicated to protecting the public, especially children, from the harmful  
18 effects of air and water pollution. OCE has an interest in reducing the harmful effects of toxic  
19 air pollution. OCE brings this action pursuant to California Health and Safety Code  
20 § 25249.7(d) in the interest of the general public.

21 7. Plaintiff COMMUNITIES FOR A BETTER ENVIRONMENT ("CBE") is an  
22 environmental health and justice non-profit organization dedicated to promoting clean air, clean  
23 water and the development of toxin-free communities. CBE has a long-standing interest in  
24 reducing health hazards to the public posed by toxic chemicals. Founded in 1978, CBE  
25 combines grassroots organizing and education with scientific research and legal action in the  
26 service of environmental health and justice. CBE brings this action pursuant to California Health  
27 and Safety Code § 25249.7(d) in the interest of the general public.

1 8. ELF, OCE and CBE (collectively, "Plaintiffs") bring this action in the public interest  
2 as allowed under California law, as approved by the voters, in Health and Safety Code section  
3 25249.7(d). Plaintiffs do not allege, nor have they suffered, an injury cognizable under Article  
4 III of the United States Constitution.

5 9. Defendant LAIDLAW TRANSIT INC., doing business as LAIDLAW EDUCATION  
6 SERVICES ("Laidlaw"), is a Delaware corporation and a "person in the course of doing  
7 business" within the meaning of Health and Safety 25249.11 with its principal place of business  
8 located at 55 Shuman Boulevard, #400, Naperville, Illinois 60563. Laidlaw operates diesel  
9 school buses for schools throughout the State of California that expose riders and drivers to  
10 diesel engine exhaust.

11 10. Defendant LAIDLAW TRANSIT SERVICES, INC. ("Laidlaw Transit Services") is a  
12 "person in the course of doing business" within the meaning of Health and Safety 25249.11 with  
13 its principal place of business located at 55 Shuman Boulevard, #400, Naperville, Illinois 60563.  
14 Laidlaw Transit Services operates diesel school buses for schools throughout the State of  
15 California that expose riders and drivers to diesel engine exhaust. LAIDLAW TRANSIT INC.,  
16 doing business as LAIDLAW EDUCATION SERVICES; LAIDLAW TRANSIT SERVICES,  
17 INC. are collectively referred to as "Laidlaw".

18 11. Defendant DURHAM SCHOOL SERVICES, L.P. ("Durham") is a "person in the  
19 course of doing business" within the meaning of Health and Safety 25249.11 with its principal  
20 place of business at 9011 Mountain Ridge Drive, Suite 200, Austin, Texas 78759. Durham  
21 operates diesel school buses for schools throughout the State of California that expose riders and  
22 drivers to diesel engine exhaust.

23 12. The true names and capacities of defendants sued herein under California Code of  
24 Civil Procedure § 474 as DOE defendants 1 through 100, inclusive, are presently unknown to  
25 Plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs will seek to  
26 amend this Complaint and include these Doe defendants' true names and capacities when they  
27 are ascertained. Each of the fictitiously named defendants is responsible in some manner for the  
28

1 conduct alleged herein and for the injuries suffered by the general public.

2 13. Laidlaw, Durham and defendants DOES 1 through 100 (collectively, "Defendants")  
3 each have employed ten (10) or more persons at all times relevant to this action.

4 14. In doing the things alleged in the cause of action into which this paragraph is  
5 incorporated by reference, each and every Laidlaw Defendant was acting within the course and  
6 scope of his agency or employment, and was acting with the consent, permission, and  
7 authorization of each of the remaining Laidlaw Defendants. All actions of each Laidlaw  
8 Defendant alleged in the causes of action into which this paragraph is incorporated by reference  
9 were ratified and approved by every other Laidlaw Defendant or their officers or managing  
10 agents, and by agreeing to actively conceal the true facts as alleged herein. Alternatively,  
11 Laidlaw Defendants aided, conspired with and/or facilitated the wrongful conduct of other  
12 Laidlaw Defendants.

13 **JURISDICTION AND VENUE**

14 15. This Court has jurisdiction over all causes of action asserted herein pursuant to the  
15 California Constitution, Article VI, Section 10, because this case is a cause not given by statute  
16 to other trial courts.

17 16. This Court has jurisdiction over Defendants named herein because Defendants either  
18 are located in this State or are foreign corporations authorized to do business in California and  
19 registered with the California Secretary of State, or who do sufficient business in California,  
20 have sufficient minimum contacts with California, or otherwise intentionally avail themselves of  
21 the markets within California through the operation of their diesel buses and the promotion, sale  
22 and marketing of their diesel buses for use in California to render the exercise of jurisdiction by  
23 the California courts permissible under traditional notions of fair play and substantial justice.

24 17. Venue is proper in this Court because the exposure occurred in this County, a  
25 substantial portion of the activities complained of herein occurred here, contracts relating to the  
26 operation of vehicles causing the exposure were entered into, made and were to be performed in  
27 this County, and Defendants have received substantial compensation from the operation of the

1 vehicles causing the exposure at issue in this County by doing business here and exposing San  
2 Francisco school children and bus drivers in San Francisco to a known carcinogen which had an  
3 effect in this County.

4 18. With respect to violations of Health and Safety Code § 25249.6, *et seq.*, on May 16,  
5 2005, pursuant to Health and Safety Code § 25249.7, Plaintiffs ELF and OCE mailed notices of  
6 Laidlaw's violations of section 25249.6 of Proposition 65, as alleged herein. On June 30, 2006  
7 Plaintiff CBE mailed notices of violations of section 25249.6 of Proposition 65 by each of the  
8 Defendants, as alleged herein. On June 30, 2006 Plaintiffs ELF, OCE and CBE mailed notices  
9 of Durham's violations of section 25249.6 of Proposition 65, as alleged herein.

10 19. On April 23, 2007 Plaintiffs ELF, OCE and CBE mailed notices of violations by  
11 Durham and Laidlaw of section 25249.6 of Proposition 65 specifically with respect to bus  
12 drivers, as alleged herein. Because the April 23, 2007 notices of violation concerned  
13 occupational exposure, the notices also complied with the regulations that harmonize state and  
14 federal occupational health requirements. *See* 8 Cal. Code Regulations 338.

15 20. The "Notices of Violation of Proposition 65" were mailed to each of the Defendants,  
16 as well as to the California Attorney General, the District Attorney of every county in California,  
17 and the City Attorneys of any cities with populations according to the most recent decennial  
18 census of over 750,000. Each notice included a certificate of merit executed by Plaintiffs'  
19 attorneys stating that the person executing the certificate had consulted with one or more persons  
20 with relevant and appropriate experience or expertise who has reviewed the facts, studies or  
21 other data regarding exposure to the listed chemical that is the subject of the notice, and that,  
22 based on that information, the person executing the certificate believes there is a reasonable and  
23 meritorious case for this private action. Factual information sufficient to establish the bases of  
24 the certificates of merit has been attached to the certificates of merit served on the California  
25 Attorney General.

26 21. None of these public prosecutors has commenced and is diligently prosecuting an  
27 action against the violations at issue herein, although the notice period provided in § 25249.7 has  
28

1 elapsed since such notice was provided.

2 **STATUTORY AND REGULATORY BACKGROUND**

3 22. The Safe Drinking Water and Toxic Enforcement Act of 1986 is an initiative statute  
4 passed as Proposition 65 by a vote of the People in 1986.

5 23. Proposition 65 provides the circumstances under which persons must be warned  
6 before they are exposed to chemicals that cause cancer, birth defects, or other reproductive harm.  
7 Health and Safety Code § 25249.6 states the warning requirement:

8 No person in the course of doing business shall knowingly and intentionally  
9 expose any individual to a chemical known to the state to cause cancer or  
10 reproductive toxicity without first giving clear and reasonable warning to such  
11 individual, except as provided in section 25249.10.

12 24. Proposition 65 establishes a procedure by which the Governor lists chemicals known  
13 to the state to cause cancer. Health and Safety Code § 25249.8. Pursuant to this authority, on  
14 October 1, 1990 diesel engine exhaust was placed on the list of carcinogens.

15 25. The warning requirements under Proposition 65 for a given chemical go into effect  
16 one year after the Governor places that chemical on the list. Health and Safety Code  
17 § 25249.10(b). Therefore, diesel engine exhaust became subject to a Proposition 65 warning on  
18 October 1, 1991.

19 //

20 **FACTS**

21 **What is Diesel Engine Exhaust?**

22 26. Diesel engine exhaust is a complex mixture of gases and fine particles formed by the  
23 combustion of diesel fuel. Many known and potential cancer-causing substances such as arsenic,  
24 benzene, formaldehyde, nickel and polycyclic aromatic hydrocarbons are present in the exhaust  
25 gases, some of which are bound to the surfaces of the diesel-exhaust particles. The exhaust  
26 contains more than 40 substances that California Air Resources Board ("ARB") has identified as  
27 Toxic Air Contaminants.



1 27. Diesel exhaust particles are small enough (less than 10 microns in diameter, about  
2 one-seventh of the width of a human hair) to be inhaled deep into the lungs, where they can  
3 affect lung performance and cause damage over time.

4 28. The small size of the particles in diesel exhaust and the large number of toxic  
5 chemicals it contains make diesel exhaust a particularly potent threat to the human body.

6 29. Up to 85% of fine particles remain in the lungs 24 hours after initial exposure. This  
7 means that diesel exhaust has easy, long-lasting access to the most sensitive parts of the lungs.

#### 8 **What are the Health Effects of Diesel Engine Exhaust?**

9 30. Numerous human epidemiological studies have demonstrated that diesel exhaust  
10 increases cancer risk. In fact, long-term exposure to diesel exhaust particles poses the highest  
11 cancer risk of any toxic air contaminant evaluated by OEHHA.

12 31. The ARB estimates that about seventy percent (70%) of the cancer risk that the  
13 average Californian faces from breathing toxic air pollutants stems from diesel exhaust particles.

14 32. Diesel exhaust is associated with a wide range of health effects beyond cancer,  
15 including neurological effects, a weakened immune system, respiratory disease and  
16 cardiovascular disease.

17 33. Short-term exposure to diesel exhaust causes inflammation in the bloodstream and  
18 thickening of the blood, symptoms which are associated with cardiovascular disease and heart  
19 attacks. Short-term exposure can even have immediate effects like dizziness, headaches, light-  
20 headedness, and nausea. People who inhale diesel exhaust can experience nasal irritation,  
21 breathing difficulties, coughing and chest tightness.

22 34. Long-term exposure to diesel exhaust has been associated with other respiratory  
23 effects including chronic inflammation of lung tissue. Several studies have also linked diesel  
24 exhaust particles to asthma, suggesting that these particles can increase the severity of respiratory  
25 symptoms in individuals with pre-existing conditions like asthma.

26 35. Children, the elderly, individuals with asthma, cardiopulmonary disease and other  
27 lung diseases, and individuals with chronic heart diseases are particularly susceptible to the  
28

1 effects of diesel exhaust. Evidence continues to mount that children, especially those with  
2 asthma, are exceptionally sensitive to the effects of fine particle pollution, such as diesel exhaust.

3 36. Diesel exhaust affects children more than adults because children inhale more  
4 pollutants per pound of body weight than adults and children have faster rate of respiration,  
5 narrower airways, and a less mature ability to metabolize, detoxify, and excrete toxins.

6 Exposures that occur in childhood are of special concern because children's developmental  
7 processes can easily be disrupted and the resulting dysfunctions may be irreversible. In addition,  
8 exposures that occur earlier in life appear more likely to lead to disease than do exposures later  
9 in life.

10 37. There is no known safe level of exposure to diesel exhaust for children, especially  
11 those with respiratory illness.

#### 12 **How are Children and Bus Drivers Exposed to Diesel Engine Exhaust?**

13 38. Out of the six million school children in California, approximately one million are  
14 transported by school buses.

15 39. A recent study concluded that the average school bus is nine years old and emits  
16 nearly two times more pollution per mile than a big rig truck.

17 40. Studies by the ARB and others have established that much of a bus' own diesel  
18 exhaust enters the cabin and exposes passengers and drivers through a phenomenon called "self-  
19 pollution."

20 41. A child or driver in a diesel school bus may be exposed to as much as four times the  
21 level of toxic diesel exhaust as someone riding in a car traveling the same route immediately  
22 ahead of it.

23 42. A recent study conducted in the Los Angeles area found that children riding on diesel  
24 school buses inhale roughly one million times more school bus exhaust (by mass) than non-riders  
25 in the general population.

26 43. Children and drivers on school buses are exposed to levels of diesel exhaust that are  
27 five to ten times higher than background levels.

1 44. Closing the bus' windows simply makes the situation worse. Concentrations of diesel  
2 vehicle-related pollutants are significantly higher on board a conventional diesel bus when the  
3 windows are closed due to the intrusion of the bus' own exhaust.

4 **Additional Facts**

5 45. Defendants operate their diesel buses across the State of California and promote, sell  
6 and market their diesel buses for the transportation in California of school-age children.

7 46. The diesel buses at issue in this Complaint release diesel engine exhaust into the  
8 interior passenger area of the buses, which results in human exposure to the diesel engine  
9 exhaust without prior warning.

10 47. Defendants have not warned or informed the public that their buses expose  
11 passengers to diesel engine exhaust, a chemical known to the State of California to cause cancer.  
12 Defendants have also promoted and marketed their diesel buses for use without any warning  
13 regarding the exposure to diesel engine exhaust. Further, Defendants have failed to provide  
14 adequate warnings to all of their employees who drive diesel buses that these buses expose the  
15 employees to diesel engine exhaust, a chemical known to the State of California to cause cancer.  
16 Thus, Defendants have, in the course of doing business, knowingly and intentionally exposed  
17 individuals to a chemical known to the State of California to cause cancer without providing a  
18 clear and reasonable warning, as required by California Health and Safety Code §§ 25249.6 and  
19 25249.11(f). As a direct result of Defendants' acts and omissions, Defendants' employees and  
20 the general public in California are being regularly, unlawfully, and involuntarily exposed to  
21 diesel engine exhaust, a known carcinogen, without a clear and reasonable warning.

22 **FIRST CAUSE OF ACTION**

23 **(California Health and Safety Code §§ 25249.6 *et seq.***

24 **Exposure of Bus Riders to Diesel Engine Exhaust Without Adequate Warning.**

25 **By All Plaintiffs Against All Defendants)**

26 48. Plaintiffs incorporate by reference all of the above paragraphs as if fully set forth  
27 herein.

1           49. The people of the State of California have declared in Proposition 65 their right "[t]o  
2 be informed about exposure to chemicals that cause cancer, birth defects or other reproductive  
3 harm." Cal. Health & Saf. Code §25249.5, (Proposition 65), Note § 1(b).

4           50. To carry out those statutory purposes, Proposition 65 requires that a clear and  
5 reasonable warning be given by persons who, in the course of doing business, knowingly and  
6 intentionally expose any individual to a chemical known to the State of California to cause  
7 cancer.

8           51. On October 1, 1990, diesel engine exhaust was listed as a chemical known to the  
9 State of California to cause cancer. No warning needs to be given concerning a chemical so  
10 listed until one year after the chemical first appears on the list. Cal. Health & Saf. Code  
11 § 25249.10(b). Therefore, on October 1, 1991, diesel engine exhaust became subject to the  
12 warning requirements of Proposition 65.

13           52. Proposition 65 provides that any person "violating or threatening to violate" the  
14 statute may be enjoined in any court of competent jurisdiction. *Id.*, § 25249.7. In addition,  
15 violators are liable for civil penalties of up to \$2,500 per day per violation, recoverable in a civil  
16 action. *Id.*, § 25249.7(b).

17           53. Defendants have engaged and continue to engage in conduct that violates Health and  
18 Safety Code § 25249.6. This conduct includes the operation of their diesel buses and the  
19 promotion, sale and marketing of their diesel buses for use in California, the foreseeable use of  
20 which results in exposing the riding public to diesel engine exhaust, known to the State of  
21 California to cause cancer, without first providing a clear and reasonable warning pursuant to  
22 Health and Safety Code §§ 25249.6 and 25249.11(f). Defendants have, therefore, in the course  
23 of doing business, knowingly and intentionally exposed individuals to a chemical known to the  
24 State of California to cause cancer without first providing a clear and reasonable warning.

25           54. By the above-described acts, Defendants are liable for a civil penalty of up to \$2,500  
26 per day per individual exposure to diesel engine exhaust through the use of Defendants' school  
27 buses, pursuant to Health and Safety Code § 25249.7(b).

1 **SECOND CAUSE OF ACTION**

2 **(California Health and Safety Code §§ 25249.6 et seq.; 22 Cal.Code Regs. §12601(c)**

3 **Exposure of Employees to Diesel Engine Exhaust Without Adequate Warning.**

4 **By All Plaintiffs Against All Defendants)**

5 55. Plaintiffs incorporate by reference all of the above paragraphs as if fully set forth  
6 herein.

7 56. The people of the State of California have declared in Proposition 65 their right “[t]o  
8 be informed about exposure to chemicals that cause cancer, birth defects or other reproductive  
9 harm.” Cal. Health & Saf. Code §25249.5, (Proposition 65), Note § 1(b).

10 57. To carry out those statutory purposes, Proposition 65 requires that a clear and  
11 reasonable warning be given by persons who, in the course of doing business, knowingly and  
12 intentionally expose any individual to a chemical known to the State of California to cause  
13 cancer.

14 58. Proposition 65’s requirements for warnings in the occupational setting have been  
15 incorporated into California’s occupational safety and health plan established pursuant to the  
16 Occupational Safety and Health Act. 8 Cal.Code Regs. §5194.

17 59. The regulations promulgated under Proposition 65 define “occupational exposure” as  
18 “an exposure in the work place of the employer causing the exposure to any employee.” 22  
19 Cal.Code Regs. §12601(c).

20 60. When such an exposure is likely to occur, the employer must provide a clear and  
21 adequate warning to the employees. *Id.*

22 61. On October 1, 1990, diesel engine exhaust was listed as a chemical known to the  
23 State of California to cause cancer. No warning needs to be given concerning a chemical so  
24 listed until one year after the chemical first appears on the list. Cal. Health & Saf. Code  
25 § 25249.10(b). Therefore, on October 1, 1991, diesel engine exhaust became subject to the  
26 warning requirements of Proposition 65.

1           62. Proposition 65 provides that any person "violating or threatening to violate" the  
2 statute may be enjoined in any court of competent jurisdiction. *Id.*, § 25249.7. In addition,  
3 violators are liable for civil penalties of up to \$2,500 per day per violation, recoverable in a civil  
4 action. *Id.*, § 25249.7(b).

5           63. Defendants have engaged and continue to engage in conduct that violates Health and  
6 Safety Code § 25249.6. This conduct includes the operation of their diesel buses and the  
7 promotion, sale and marketing of their diesel buses for use in California, the foreseeable use of  
8 which results in exposing their employees to diesel engine exhaust, known to the State of  
9 California to cause cancer, without first providing a clear and reasonable warning pursuant to  
10 Health and Safety Code §§ 25249.6 and 25249.11(f). Defendants have, therefore, in the course  
11 of doing business, knowingly and intentionally exposed individuals to a chemical known to the  
12 State of California to cause cancer without first providing a clear and reasonable warning.

13           64. By the above-described acts, Defendants are liable for a civil penalty of up to \$2,500  
14 per day per individual exposure to diesel engine exhaust through the use of Defendants' school  
15 buses, pursuant to Health and Safety Code § 25249.7(b).

16 ///

#### 17           **THE NEED FOR INJUNCTIVE RELIEF**

18           65. By committing the acts alleged herein, Defendants have caused irreparable harm for  
19 which there is no plain, speedy, or adequate remedy at law. In the absence of equitable relief, the  
20 general public will continue to be unwarned and involuntarily exposed to diesel engine exhaust  
21 by riding and/or driving Defendants' diesel school buses, which creates a substantial risk of  
22 irreparable physical injury.

23           WHEREFORE, Plaintiffs pray for judgment against Defendants as set forth below.

24 ///

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs pray for the following relief:

A. A temporary restraining order, preliminary and permanent injunction enjoining Defendants, their agents, employees, assigns, and all persons acting in concert or participating with them from:

(1) operating their diesel school buses that expose employees and passengers to diesel engine exhaust in California, without first providing a clear and reasonable warning that the operation of these buses results in exposure to diesel engine exhaust, a chemical known to the State of California to be a carcinogen;

B. An award of statutory penalties of \$2,500 for each violation of Proposition 65 throughout the State of California;

C. Reasonable attorneys' fees and costs;

D. Such other and further relief as this court may deem necessary and proper.

Respectfully submitted,

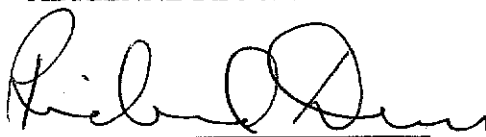
ADAMS BROADWELL JOSEPH & CARDOZO  
MARC D. JOSEPH  
RICHARD T. DRURY

ENVIRONMENTAL LAW FOUNDATION  
JAMES R. WHEATON  
LYNNE R. SAXTON

OUR CHILDREN'S EARTH FOUNDATION  
MICHAEL COSTA

COMMUNITIES FOR A BETTER ENVIRONMENT  
SHANA LAZEROW  
ADRIENNE BLOCH

DATED: July 11, 2007

  
**RICHARD TOSHIYUKI DRURY**  
Attorneys for Plaintiffs  
Environmental Law Foundation,  
Our Children's Earth Foundation and  
Communities for a Better Environment