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OUR CHILDREN'S EARTH FOUNDATION, and
COMMUNITIES FOR A BETTER ENVIRONMENT

10 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **IN AND FOR THE COUNTY OF LOS ANGELES**

BC 401484

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

v.

18 ATLANTIC EXPRESS OF L.A., INC.;
19 ATLANTIC EXPRESS OF CALIFORNIA,
20 INC.; EMBREE BUSES, INC.; STUDENT
21 TRANSPORTATION OF AMERICA, INC.;
22 SANTA BARBARA TRANSPORTATION
23 CORPORATION; STORER
24 TRANSPORTATION SCHOOL AND
25 CONTRACT SERVICE; STORER
26 TRANSPORTATION SERVICE; MERCED
27 TRANSPORTATION COMPANY;
28 MICHAEL'S TRANSPORTATION SERVICE,
INC.; and DOES 1 through 100, inclusive
Defendants,

CASE NO.:

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

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

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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 the public 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 Atlantic Express of California, Inc. (“Atlantic Express of California”) is a
6 California corporation and a “person in the course of doing business” within the meaning of
7 Health and Safety Code § 25249.11 with its principal place of business located at 7 North Street,
8 Staten Island, New York 10302. Atlantic Express of California operates diesel school buses for
9 schools throughout the State of California that expose riders and drivers to diesel engine exhaust.

10 10. Defendant Atlantic Express of L.A., Inc (“Atlantic Express of L.A.”), is a California
11 corporation and a “person in the course of doing business” within the meaning of Health and
12 Safety Code § 25249.11 with its principal place of business located at 7 North Street, Staten
13 Island, New York 10302. Atlantic Express of L.A. operates diesel school buses for schools
14 throughout the State of California that expose riders and drivers to diesel engine exhaust.

15 11. Defendant Embree Buses, Inc. (“Embree Buses”) is a California corporation and a
16 “person in the course of doing business” within the meaning of Health and Safety Code §
17 25249.11 with its principal place of business located at 1600 Lincoln Ave., Pasadena, CA 91103.
18 Embree Buses operates diesel school buses for schools throughout the State of California that
19 expose riders and drivers to diesel engine exhaust.

20 12. Defendant Student Transportation of America, Inc. (“Student Transportation”) is a
21 Delaware corporation and a “person in the course of doing business” within the meaning of
22 Health and Safety Code § 25249.11 with its principal place of business located at 3349 Highway
23 138 Building B Suite D, Wall, New Jersey 07719. Student Transportation operates diesel school
24 buses for schools throughout the State of California that expose riders and drivers to diesel
25 engine exhaust.

26 13. Defendant Santa Barbara Transportation Corporation (“Santa Barbara
27 Transportation”) is a California corporation and a “person in the course of doing business”
28

1 within the meaning of Health and Safety Code § 25249.11 with its principal place of business
2 located at 3349 Highway 138 Building B Suite D, Wall, New Jersey 07719. Santa Barbara
3 Transportation operates diesel school buses for schools throughout the State of California that
4 expose riders and drivers to diesel engine exhaust.

5 14. Defendant Storer Transportation Service (“Storer Transportation”) is a California
6 corporation and a “person in the course of doing business” within the meaning of Health and
7 Safety Code § 25249.11 with its principal place of business located at 2519 MacDonald Ave.,
8 Modesto, CA 95358. Storer Transportation Service operates diesel school buses for schools
9 throughout the State of California that expose riders and drivers to diesel engine exhaust.

10 15. Defendant Storer Transportation School and Contract Service (“Storer School
11 Service”) is a California corporation and a “person in the course of doing business” within the
12 meaning of Health and Safety Code § 25249.11 with its principal place of business located at
13 2519 MacDonald Ave., Modesto, CA 95358. Storer Transportation operates diesel school buses
14 for schools throughout the State of California that expose riders and drivers to diesel engine
15 exhaust.

16 16. Defendant Merced Transportation Company (“Merced Transportation”) is a
17 California corporation and a “person in the course of doing business” within the meaning of
18 Health and Safety Code § 25249.11 with its principal place of business located at 300 Grogan
19 Avenue, Merced, CA 94350. Merced Transportation operates diesel school buses for schools
20 throughout the State of California that expose riders and drivers to diesel engine exhaust.

21 17. Michael’s Transportation Service, Inc., (“Michael’s Transportation”) is a California
22 corporation and a “person in the course of doing business” within the meaning of Health and
23 Safety Code § 25249.11 with its principal place of business located at 140 Yolano Drive,
24 Vallejo, CA 94589. Michael’s Transportation operates diesel school buses for schools
25 throughout the State of California that expose riders and drivers to diesel engine exhaust.

26 18. The true names and capacities of defendants sued herein under California Code of
27 Civil Procedure § 474 as DOE defendants 1 through 100, inclusive, are presently unknown to
28

1 Plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs will seek to
2 amend this Complaint and include these Doe defendants' true names and capacities when they
3 are ascertained. Each of the fictitiously named defendants is responsible in some manner for the
4 conduct alleged herein and for the injuries suffered by the general public.

5 19. Atlantic Express of California, Atlantic Express of L.A., Embree Buses, Student
6 Transportation, Santa Barbara Transportation, Storer Transportation, Storer School Service,
7 Merced Transportation, Michael's Transportation and defendants DOES 1 through 100
8 (collectively, "Defendants") each have employed ten (10) or more persons at all times relevant to
9 this action.

10 **JURISDICTION AND VENUE**

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

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

21 22. Venue is proper in this Court because exposure occurred in this County, a substantial
22 portion of the activities complained of herein occurred here, contracts relating to the operation of
23 vehicles causing the exposure were entered into, made and were to be performed in this County,
24 and at least one or more Defendant(s) has/have received substantial compensation from the
25 operation of the vehicles causing the exposure at issue in this County by doing business here and
26 exposing Los Angeles school children and bus drivers in Los Angeles to a known carcinogen
27 which had an effect in this County.

1 23. On August 13, 2008, pursuant to Health and Safety Code § 25249.7, Plaintiffs ELF,
2 CBE and OCE mailed notices of Defendants’ violations of section 25249.6 of Proposition 65, as
3 alleged herein. Plaintiffs’ August 13, 2008 notices also notified Defendants of their violations of
4 section 25249.6 of Proposition 65 specifically with respect to bus drivers, as alleged herein.
5 Because the notices of violation concerned occupational exposure, the notices also complied
6 with the regulations that harmonize state and federal occupational health requirements. *See* 8
7 Cal. Code Regulations 338.

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

19 25. None of these public prosecutors has commenced and is diligently prosecuting an
20 action against the violations at issue herein, although the notice period provided in § 25249.7 has
21 elapsed since such notice was provided.

22 **STATUTORY AND REGULATORY BACKGROUND**

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

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

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

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

8 29. The warning requirements under Proposition 65 for a given chemical go into effect
9 one year after the Governor places that chemical on the list. Health and Safety Code
10 § 25249.10(b). Therefore, diesel engine exhaust became subject to a Proposition 65 warning on
11 October 1, 1991.

12 FACTS

13 **What is Diesel Engine Exhaust?**

14 30. Diesel engine exhaust is a complex mixture of gases and fine particles formed by the
15 combustion of diesel fuel. Many known and potential cancer-causing substances such as arsenic,
16 benzene, formaldehyde, nickel and polycyclic aromatic hydrocarbons are present in the exhaust
17 gases, some of which are bound to the surfaces of the diesel-exhaust particles. The exhaust
18 contains more than 40 substances that California Air Resources Board (“ARB”) has identified as
19 Toxic Air Contaminants.

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

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

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

1 **What are the Health Effects of Diesel Engine Exhaust?**

2 34. Numerous human epidemiological studies have demonstrated that diesel engine
3 exhaust increases cancer risk. In fact, long-term exposure to diesel exhaust particles poses the
4 highest cancer risk of any toxic air contaminant evaluated by OEHHA.

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

7 36. Diesel exhaust is associated with a wide range of health effects beyond cancer,
8 including neurological effects, a weakened immune system, respiratory disease and
9 cardiovascular disease.

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

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

19 39. Children, the elderly, individuals with asthma, cardiopulmonary disease and other
20 lung diseases, and individuals with chronic heart diseases are particularly susceptible to the
21 effects of diesel exhaust. Evidence continues to mount that children, especially those with
22 asthma, are exceptionally sensitive to the effects of fine particle pollution, such as diesel exhaust.

23 40. Diesel exhaust affects children more than adults because children inhale more
24 pollutants per pound of body weight than adults and children have faster rate of respiration,
25 narrower airways, and a less mature ability to metabolize, detoxify, and excrete toxins.
26 Exposures that occur in childhood are of special concern because children's developmental
27 processes can easily be disrupted and the resulting dysfunctions may be irreversible. In addition,
28

1 exposures that occur earlier in life appear more likely to lead to disease than do exposures later
2 in life.

3 41. There is no known safe level of exposure to diesel exhaust for children, especially
4 those with respiratory illness.

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

6 42. Out of the six million school children in California, approximately one million are
7 transported by school buses.

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

10 44. Studies by the ARB and others have established that much of a bus' own diesel
11 exhaust enters the cabin and exposes passengers and drivers through a phenomenon called "self-
12 pollution."

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

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

19 47. Children and drivers on school buses are exposed to levels of diesel exhaust that are
20 five to ten times higher than background levels.

21 48. Closing the bus' windows simply makes the situation worse. Concentrations of diesel
22 vehicle-related pollutants are significantly higher on board a conventional diesel bus when the
23 windows are closed due to the intrusion of the bus' own exhaust.

24 **Why Is This Case "Complex"?**

25 49. A "complex case" is an action that requires "exceptional judicial management to
26 avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep
27 costs reasonable, and promote effective decision making by the court, the parties, and counsel."
28

1 Rule of Court 3.400(a). As explained below, given the number of parties, likely amount of
2 evidence, and the complexity of the issues involved in this environmental case, this case warrants
3 “complex” designation.

4 50. Rule of Court 3.400 provides that certain categories of cases are “provisionally
5 complex.” The Rule establishes that “[e]nvironmental or toxic tort claims involving many
6 parties” are provisionally complex. Rule 3.400(c)(4). This action involves complex
7 environmental claims under Proposition 65. Such actions are customarily referred to the
8 Complex Litigation Department of this Court, which has developed significant expertise in this
9 area.

10 51. The action involves numerous parties and is brought on behalf of the general public.
11 Moreover, there are thousands of individuals who may be affected by this environmental action
12 throughout the State of California. Defendants operate school buses for numerous California
13 school districts and transport thousands of California students to school each day. Due to the
14 complex environmental issues in this action and the vast number of individuals affected by the
15 litigation, this case should be designated provisionally complex.

16 52. Also, consistent with Rule of Court 3.400(b), this case is “complex” because there are
17 likely to be “numerous pretrial motions raising difficult or novel legal issues that will be time-
18 consuming to resolve” (Rule 3.400(b)(1)); because there is likely to be “a substantial amount of
19 documentary evidence” in the form of scientific studies and technical evidence (Rule
20 3.400(b)(2)); because the case has 3 separate Plaintiffs and 9 named Defendants, thus requiring
21 the management “of a large number of separately represented parties” (Rule 3.400(b)(3)); and
22 because Plaintiffs ultimately seek both pollution control retrofits and warnings to be posted on
23 Defendants’ buses, which may require “substantial post-judgment judicial supervision.” (Rule
24 3.400(b)(5)).

25 **Additional Facts**

26 53. Defendants operate their diesel buses across the State of California and promote, sell
27 and market their diesel bus services for the transportation in California of school-age children.
28

1 54. The diesel buses at issue in this Complaint release diesel engine exhaust into the
2 interior passenger area of the buses, which results in human exposure to the diesel engine
3 exhaust without prior warning.

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

16 56. Defendants purchase their buses from many of the same limited number of
17 manufacturers. Defendants' buses, for purposes of determining levels of self-pollution, may be
18 categorized by make, model, and year.

19 57. The diesel engine exhaust from Defendants' buses is not confined to any one location
20 in California, but is widespread.

21 58. In light of the above, the Defendants in this litigation, who are all part of the school
22 bus industry, have a community of interest with respect to Plaintiffs' claims.

23 **FIRST CAUSE OF ACTION**

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

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

26 **By All Plaintiffs Against All Defendants)**

27 59. Plaintiffs incorporate by reference all of the above paragraphs as if fully set forth
28

1 herein.

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

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

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

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

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

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

4 **SECOND CAUSE OF ACTION**

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

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

7 **By All Plaintiffs Against All Defendants)**

8 66. Plaintiffs incorporate by reference all of the above paragraphs as if fully set forth
9 herein.

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

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

17 69. Proposition 65's requirements for warnings in the occupational setting have been
18 incorporated into California's occupational safety and health plan established pursuant to the
19 Occupational Safety and Health Act. 8 Cal.Code Regs. §5194.

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

23 71. When such an exposure is likely to occur, the employer must provide a clear and
24 adequate warning to the employees. *Id.*

25 72. On October 1, 1990, diesel engine exhaust was listed as a chemical known to the
26 State of California to cause cancer. No warning needs to be given concerning a chemical so
27 listed until one year after the chemical first appears on the list. Cal. Health & Saf. Code
28

1 § 25249.10(b). Therefore, on October 1, 1991, diesel engine exhaust became subject to the
2 warning requirements of Proposition 65.

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

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

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

18 **THE NEED FOR INJUNCTIVE RELIEF**

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

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

25 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs pray for the following relief:

3 A. A temporary restraining order, preliminary and permanent injunction
4 enjoining Defendants, their agents, employees, assigns, and all persons acting in concert
5 or participating with them from operating their diesel school buses that expose employees
6 and passengers to diesel engine exhaust in California, without first providing a clear and
7 reasonable warning that the operation of these buses results in exposure to diesel engine
8 exhaust, a chemical known to the State of California to be a carcinogen;

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


11 C. Reasonable attorneys' fees and costs;

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

13 Respectfully submitted,

14 LOZEAU | DRURY LLP

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