

1
2
3
4
5
6
7
8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF LOS ANGELES—CENTRAL CIVIL WEST**

10 ENVIRONMENTAL LAW FOUNDATION,)
11 OUR CHILDREN’S EARTH FOUNDATION,) CASE NO. BC 401484
12 COMMUNITIES FOR A BETTER)
13 ENVIRONMENT,) [PROPOSED]
14 On Behalf of the General Public,) **STIPULATED JUDGMENT**
15)
16 Plaintiffs,)
17) Case Filed: Nov. 7, 2008
18 v.) Trial Date: Not set
19) Hon. Carl J. West
20)
21 STUDENT TRANSPORTATION OF)
22 AMERICA, INC. & SANTA BARBARA)
23 TRANSPORTATION CORP., and DOES 1)
24 through 100, inclusive,) CCW Dept. 311
25)
26 Defendants.)

19
20 RECITALS

21 WHEREAS,

22 a. Student Transportation of America, Inc., and Santa Barbara Transportation Corporation
23 (collectively, “Operator”) own and operate vehicles used for the purpose of transporting students to and
24 from school and school-related activities in the State of California;

25 b. Plaintiffs Environmental Law Foundation (“ELF”), Our Children’s Earth (“OCE”), and
26 Communities for a Better Environment (“CBE”) brought this action against Operator seeking
preliminary and permanent injunctive relief and penalties under California’s Proposition 65, The Safe

1 Drinking Water and Toxic Enforcement Act, California Health and Safety Code § 25249.6, et seq.
2 (“Proposition 65” or “Act”), alleging that operator had exposed passengers and drivers to diesel engine
3 exhaust without providing a warning pursuant to the Act;

4 c. Operator denies that it has violated Proposition 65 or any other provision of law;

5 d. Plaintiffs and Operator (collectively “the Parties”) wish to resolve all claims in this
6 action;

7 e. Without any admission of liability, the Parties consent to the entry of this Stipulated
8 Judgment to resolve all of the claims in this action;

9 THEREFORE, THE PARTIES HEREBY AGREE AND IT IS ADJUDGED AND ORDERED
10 AS FOLLOWS:

11 TERMS AND CONDITIONS

12 **1. Definitions**

13 The following terms are defined as follows:

- 14 (a) “Approved Diesel Emission Control Strategy” shall mean a CARB-verified Level III active
15 or passive pollution control device that has been or is in the future verified for use only
16 with tested engines that meet minimum exhaust temperature requirements for a specified
17 portion of each bus’s duty cycle.
- 18 (b) “CARB” shall mean the California Air Resources Board.
- 19 (c) “Effective date” shall mean the date the Judge signs this Stipulated Judgment.
- 20 (d) “Existing Fleet” shall mean a School Bus Fleet that was in operation on November 7, 2008.
- 21 (e) “Existing School Bus” shall mean a bus operating as part of an Existing Fleet.
- 22 (f) “Gross Vehicle Weight Rating (“GVWR”) shall mean the weight rating of a vehicle.
- 23 (g) “Level III” or “Tier III” shall mean those technologies achieving at least an 85 percent or
24 greater reduction in particulate matter or less than 0.01 g/bhp-hr emission level.
- 25 (h) “Operator” shall mean defendants Student Transportation of America, Inc. and Santa
26 Barbara Transportation Corporation.

- 1 (i) "Plaintiffs" shall mean the Environmental Law Foundation, Our Children's Earth, and
2 Communities for a Better Environment.
- 3 (j) "Retrofit" shall mean to modify with a CARB-Approved Tier III Diesel Emission Control
4 Strategy.
- 5 (k) "Replace" shall mean to replace an existing diesel-engine School Bus listed on Exhibit A
6 with a non-diesel School Bus, or a model 2007 or newer diesel-engine School Bus, or a
7 model 2003 or newer diesel-engine School Bus that is equipped with a CARB-Approved
8 Tier III Diesel Emission Control Strategy.
- 9 (l) "School" shall mean any public or private school used for the purpose of education and
10 instruction of school pupils but does not include any private school in which education and
11 instruction is primarily conducted in private homes.
- 12 (m) "School Bus" shall mean any bus used for the express purpose of transporting students
13 from home to School and to any School-related activities. It does not include vans, which
14 are vehicles with conventional van engines and drive trains as opposed to bus engines and
15 drive trains.
- 16 (n) "School Bus Fleet" shall mean any group of one or more School Buses.
- 17 (o) "Year of Delivery" shall mean no more than 12 months from the date the School Bus is
18 delivered to the School Bus Fleet operator.

19 **2. List of Buses:** Operator shall provide Plaintiffs with a complete list of all diesel School
20 Buses owned by Student Transportation of America, Inc. and Santa Barbara
21 Transportation Corporation that are used to transport students to and from school and
22 school-related activities in the State of California (referred to as "Exhibit A") and a
23 complete list of all diesel vans owned by Student Transportation of America, Inc. and
24 Santa Barbara Transportation Corporation that are used to transport students to and from
25 school and school-related activities in the State of California (referred to as "Exhibit B").
26 Exhibits A and B shall be kept confidential by Plaintiffs, including after the termination

1 of this Consent Judgment. If necessary for an enforcement action, Plaintiff may submit
2 Exhibits A and/or B to the Court under seal.

3 **3. Fleet Modernization:**

4 By September 30, 2010, Student Transportation of America, Inc. and Santa Barbara
5 Transportation Corporation agree to Retrofit or Replace 100% of their pre-2003 model year diesel-
6 fueled School Buses over 14,000 lbs GVWR that do not currently have particulate traps according to the
7 following schedule:

8 (a) By March 31, 2009 Operator agrees to retrofit three 2001 buses with a CARB-Approved
9 Tier III Diesel Emission Control Strategy (e.g., a Level III particulate trap).

10 (b) By September 30, 2009 Operator agrees to either replace with buses that meet the CARB
11 and EPA emission standards applicable to post-January 1, 2007 engines, or to cease operating as a
12 School Bus, a combined total of 15 pre-2000 diesel buses.

13 (c) By September 30, 2010, Operator agrees to either replace with buses that meet the CARB
14 and EPA emission standards applicable to post-January 1, 2007 engines, or to cease operating as a
15 School Bus, the remaining eighteen (18) pre-2000 diesel buses.

16 **4. Retrofit subsidies:** Operator can use public or private Retrofit subsidies towards meeting its
17 Fleet Modernization obligations in Section 3. Plaintiffs will not oppose Operator's applications for
18 public or private grant monies for retrofits and replacements and will take no actions to encourage or
19 assist non-signatories to this Stipulated Judgment to oppose such applications.

20 **5. Attorney Fees:**

21 (a) Operator shall pay the following amount to plaintiffs: eighty-seven thousand five-
22 hundred dollars (\$87,500), subject to review and approval pursuant to Cal. Health and Safety
23 Code §25249.7(f). Payment shall be due in full 30 days after the Effective date.

24 (b) All payments set forth in this section shall be made by certified check, bank check or
25 cashier's check to "Baron & Budd, P.C. Attorney Trust Fund Account," and shall be delivered
26 by overnight mail or hand delivery to Baron & Budd, P.C., attn: Laura Baughman, 3102 Oak
Lawn Avenue, Suite 1100, Dallas, TX 75219.

1 **6. Reporting**

2 (a) On or before November 1, 2010, Operator will represent in writing under penalty of
3 perjury, with copies of such writing to be provided to a designated representative for Plaintiffs:

4 (i) which buses (including the VIN) received retrofits and the make and model of the
5 retrofit technology installed on each;

6 (ii) which buses (including the VIN) were replaced, including VIN of the bus that was
7 replaced and the year, make and model of each new (replacing) bus; and

8 (iii) that 100% of Operator's pre-2003 model year diesel-fueled School Buses over
9 14,000 lbs GVWR identified in section 3 were retrofitted or replaced by September 30,
10 2010.

11 (b) Within thirty days of the Effective Date, Operator will request from the California
12 Department of Motor Vehicles ("DMV") a list of all School Buses in its California fleet. Within
13 ten days after receiving a list from DMV, Operator will provide Plaintiffs' designated
14 representative with a copy of the DMV list. The DMV list will be kept confidential by Plaintiffs,
15 including after termination of this Stipulated Judgment.

16 **7. Liquidated Damages**

17 (a) On or before December 1, 2010, Operator shall pay liquidated damages equal to \$15,000
18 for each bus that had not been retrofitted or replaced pursuant to the terms of paragraph 3 of this
19 Stipulated Judgment by September 30, 2010.

20 (b) Payment of a penalty pursuant to this section does not excuse Operator from compliance
21 with the terms of this Stipulated Judgment. Even if Operator pays a penalty for failing to timely
22 meet its fleet modernization obligations, Operator commits pursuant to this Stipulated Judgment
23 to retrofit or replace 100% of its pre-2003 model year diesel-fueled school buses over 14,000 lbs
24 GVWR by September 30, 2010, unless:

25 (i) it no longer owns any such diesel school buses,

26 (ii) it ceases using such buses because its contracts are not renewed or because such
buses are otherwise not needed; however, if Operator later needs to operate any of its pre-

1 2003 model year diesel-fueled school buses over 14,000 lbs GVWR that had been taken
2 out of operation, Operator will either retrofit such buses before they are placed back into
3 operation, or will replace such buses with buses that meet the CARB and EPA emission
4 standards applicable to post-January 1, 2007 engines; or

5 (ii) a *force majeure* event occurs (as more fully described in Section 12, below).

6 (c) Any liquidated damages will be treated as penalties under Proposition 65, and shall be
7 paid seventy five percent (75%) to the State of California to the funds identified in Proposition
8 65 (Health and Safety Code section 25249.12) and twenty five percent (25%) to Plaintiffs, in the
9 manner described in section 5(b), above.

10 **8. Warning**

11 (a) Within sixty (60) days after the Effective date, Operator shall post the following warning
12 on all pre-2007 model year diesel School Buses and vans that it owns that have not been
13 Retrofitted and that do not already contain a Proposition 65 warning:

14 **WARNING: This Vehicle Contains Chemicals Known To The State Of California**
15 **To Cause Cancer And Birth Defects Or Other Reproductive Harm.**

16 (b) Warnings shall be in the form of a placard on each vehicle in a reasonable location where
17 students and driver are likely to see it.

18 (c) The warning must remain on each of the vehicles described in paragraph 8(a) as long as
19 the vehicle is owned by Operator and being used for the purpose of transporting students to and
20 from school and school-related activities in the State of California; however, Operator may
21 remove the warning from any bus that is retrofitted in the future.

22 **9. Plaintiffs' Application for Attorney Fees.** Operator will not oppose Plaintiff's application for
23 approval of the payment of the attorney fees set forth in section 5, above.

24 **10. Releases.**

25 (a) General Release. Except for the obligations under this Judgment and any other documents to
26 be executed, and conditioned upon transfer of the consideration and receipt of all signed documents set
forth herein, ELF, OCE and CBE, on behalf of themselves and in the public interest, hereby release and

1 discharge Student Transportation of America, Inc. and Santa Barbara Transportation Corporation from
2 any and all claims asserted, or that could have been asserted, in this litigation arising from defendants'
3 alleged failure to provide Proposition 65 warnings regarding the exposure of individuals to diesel engine
4 exhaust. ELF, OCE and CBE, on behalf of themselves only, hereby release and discharge Student
5 Transportation of America, Inc. and Santa Barbara Transportation Corporation from any and all claims
6 asserted, or that could have been asserted, under state or federal law in this litigation arising from or
7 related to diesel engine exhaust, the facts alleged in Plaintiffs' Proposition 65 Notices, the Complaint,
8 and all amendments to the Complaint through the date of Dismissal, including without limitation any
9 and all claims concerning exposure of any person to diesel engine exhaust from vehicles owned or
10 operated by Operator.

11 (b) Unknown Claims. It is possible that other injuries or damages not now known to the Parties
12 arising out of the facts alleged in the Complaint will develop or be discovered, and this Judgment is
13 expressly intended to cover and include all such injuries or damages, including all rights of action
14 therefor. ELF, OCE and CBE, on behalf of themselves only, hereby expressly, knowingly, and
15 voluntarily waive the provisions of Section 1542 of the California Civil Code, which provides as
16 follows:

17 **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE**
18 **CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**
19 **FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN**
20 **BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER**
21 **SETTLEMENT WITH THE DEBTOR.”**

22 **11. No Admission of Liability.** This Judgment is entered into in compromise of disputed claims,
23 the existence of any liability for which is expressly denied. The Parties agree that this Judgment shall
24 not be deemed or construed for any purpose as an admission of liability or responsibility for or
25 participation in any unlawful or wrongful act at any time by any Party hereto or any other person or
26 entity.

1 **12. Force Majeure:**

2 (a) If performance of any covenant or obligation by a party is prevented or delayed by one or
3 more events of *Force Majeure*, the time for the performance of such covenant or obligation will
4 be extended for the period that such performance is delayed or prevented by such event(s) of
5 *Force Majeure*.

6 (b) A Party seeking an extension of time pursuant to the provisions of this Section shall give
7 written notice to the other Party describing with reasonable particularity (to the extent known)
8 the facts and circumstances constituting a *Force Majeure* event within 14 days after determining
9 that such *Force Majeure* cause shall affect or hinder the Party's performance under this
10 Stipulated Judgment. The written notification shall describe the factual basis for the *Force*
11 *Majeure*, and the measures the Party is taking to mitigate the delay, and the expected length of
12 the delay, to the extent reasonably possible. The Party seeking an extension of time for
13 performance pursuant to this Section shall have an affirmative duty to diligently pursue
14 resolution of the Force Majeure event(s) to the extent such resolution is possible, but in no event
15 beyond the term of this Stipulated Judgment.

16 (c) As used herein, "*Force Majeure*" shall mean:

17 (i) act of God, fire, earthquake, flood, act of war or terrorism, riot or civil
18 commotion, strike or a labor dispute that has the same effect as a strike, or other cause
19 (whether similar or dissimilar) beyond the reasonable control of such Party (but in all
20 cases excluding inability to perform for financial reasons);

21 (ii) Notice from:

22 (A) an original equipment manufacturer,

23 (B) a governmental agency with jurisdiction over transportation, education,
24 health or safety issues; or

25 (C) a recognized third party vendor who installs CARB verified pollution
26 control devices; that:

1 a particular retrofit device or technology should not be used on a particular bus
2 type, engine family group, or exhaust system due to technical limitations, safety
3 or health issues. An example of this includes but is not limited to notice from a
4 third party vendor that a particular bus does not meet minimum exhaust
5 temperature requirements for a pollution control device to be used effectively.
6 The inability to use one device does not relieve Operator of the obligation to try
7 another CARB-verified device; or

8 (iii) lack of availability of parts or vehicles due to failure of a manufacturer to meet
9 orders placed, where orders are placed in a timely manner and in accord with standard
10 industry practice.

11 (d) This section does not apply to Defendants' obligation to post any warnings required
12 pursuant to this Stipulated Judgment.

13 **13. Notices.** Whenever notice or a document is required to be sent to Plaintiffs, it shall be
14 sent to:

15 Laura Baughman
16 Baron & Budd, P.C.
3102 Oak Lawn Avenue, Suite 1100
Dallas, TX 75219

17 Whenever notice or a document is required to be sent to Operator, it shall be sent to:

18 Student Transportation of America, Inc.
19 Attn. CFO
3349 Highway 138
20 Building B, Suite D
21 Wall, NJ 07719

22 with a copy to:

23 Jeffrey J. Parker
Sheppard Mullin Richter & Hampton LLP
24 333 South Hope Street, 48th Floor
25 Los Angeles, CA 90071-1448
26

1
2 **14. Severability.** In the event that any portion of this Judgment is found to be illegal, invalid,
3 unenforceable or otherwise without legal force or effect, the remainder of the Judgment will remain in
4 force and be fully binding.

5 **15. Entire Agreement.** This Judgment constitutes the entire agreement and understanding between
6 the Parties. All agreements or representations, expressed or implied, of the parties with regard to this
7 subject matter are contained in this Judgment. The Parties acknowledge that there are no other
8 warranties, promises, assurances or representations of any kind, express or implied, upon which the
9 Parties have relied in entering into this Judgment, unless expressly set forth herein. All prior
10 representations, understandings and agreements between the Parties concerning settlement are
11 superseded by this Judgment. The terms of this Judgment shall not be changed, revised or modified
12 except by written agreement signed by the Parties to this Judgment and shall not take effect until
13 approved by the Court.

14 **16. Acknowledgment of Terms.** The Parties have read and understood the terms of this Judgment,
15 have had the opportunity to consult with counsel regarding those terms, and understand and
16 acknowledge the significance and consequence of each such term.

17 **17. Parties Affected.** This Judgment shall be binding upon and inure to the benefit of the Parties
18 hereto, and their respective heirs, predecessors, successors, affiliated companies, subsidiaries, officers,
19 directors, shareholders, partners, trustees, employees, assigns, executors, administrators, agents and
20 attorneys, and all persons and/or entities connected with each of them, and the general public.

21 **18. Warranty.** Each Party warrants that (a) the person executing this Stipulated Judgment is fully
22 authorized to do so and to enter into the terms and conditions hereof; and (b) the claims being released
23 pursuant to this Stipulated Judgment have not been assigned or otherwise transferred to any other person
24 or entity.

25 **19. Construction.** This Stipulated Judgment is the product of negotiation and preparation by and
26 among each Party hereto and their respective attorneys. Accordingly, the Stipulated Judgment shall not
be construed against the Party preparing it. The section headings are included for convenience only and
are not intended to be operative as part of this Stipulated Judgment.

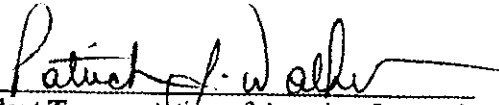
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

20. Execution of Documents. The Parties agree to execute this Stipulated Judgment and all such other documents as are reasonably necessary to effect the terms and conditions of this Stipulated Judgment. The Stipulated Judgment may be executed in counterparts, each of which shall be considered an original.

21. Retention of Jurisdiction. This Court shall retain jurisdiction to enforce the terms of this Stipulated Judgment.

APPROVED AS TO SUBSTANCE:

Dated: 12/30/08



Student Transportation of America, Inc. and
Santa Barbara Transportation Corporation.

Dated: _____

Environmental Law Foundation

Dated: _____

Our Children's Earth Foundation

Dated: _____

Communities for a Better Environment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

20. **Execution of Documents.** The Parties agree to execute this Stipulated Judgment and all such other documents as are reasonably necessary to effect the terms and conditions of this Stipulated Judgment. The Stipulated Judgment may be executed in counterparts, each of which shall be considered an original.

21. **Retention of Jurisdiction.** This Court shall retain jurisdiction to enforce the terms of this Stipulated Judgment.

APPROVED AS TO SUBSTANCE:

Dated: _____

Student Transportation of America, Inc. and
Santa Barbara Transportation Corporation.

Dated: 12/30/08

Lynne R. Saxton

Environmental Law Foundation

Dated: _____

Our Children's Earth Foundation

Dated: _____

Communities for a Better Environment

1 20. **Execution of Documents.** The Parties agree to execute this Stipulated Judgment and all such
2 other documents as are reasonably necessary to effect the terms and conditions of this Stipulated
3 Judgment. The Stipulated Judgment may be executed in counterparts, each of which shall be considered
4 an original.

5 21. **Retention of Jurisdiction.** This Court shall retain jurisdiction to enforce the terms of this
6 Stipulated Judgment.

7
8 APPROVED AS TO SUBSTANCE:

9 Dated: _____

Student Transportation of America, Inc. and
Santa Barbara Transportation Corporation.

10
11
12 Dated: _____

Environmental Law Foundation

13
14 Dated: 12/30/08



Our Children's Earth Foundation

15
16 Dated: _____

Communities for a Better Environment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

20. **Execution of Documents.** The Parties agree to execute this Stipulated Judgment and all such other documents as are reasonably necessary to effect the terms and conditions of this Stipulated Judgment. The Stipulated Judgment may be executed in counterparts, each of which shall be considered an original.

21. **Retention of Jurisdiction.** This Court shall retain jurisdiction to enforce the terms of this Stipulated Judgment.

APPROVED AS TO SUBSTANCE:

Dated: _____

Student Transportation of America, Inc. and
Santa Barbara Transportation Corporation.

Dated: _____

Environmental Law Foundation

Dated: _____

Our Children's Earth Foundation

Dated: 12/30/08

Bill Gallegos

Communities for a Better Environment

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

APPROVED AS TO FORM:

Dated: 12/29/08

LAW OFFICE OF APRIL STRAUSS
LOZEAU | DRURY LLP
BARON & BUDD, P.C.

By: *Laura Baughman*
Laura Baughman
Attorneys for Plaintiffs

Dated: _____

Sheppard, Mullin, Richter & Hampton LLP

By: _____
Jeffrey J. Parker
Attorneys for Defendants
Student Transportation of America, Inc. and
Santa Barbara Transportation Corporation.

APPROVED AND ORDERED:

Dated: _____

Hon. Carl J. West
Judge of the Superior Court

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

APPROVED AS TO FORM:

Dated: _____

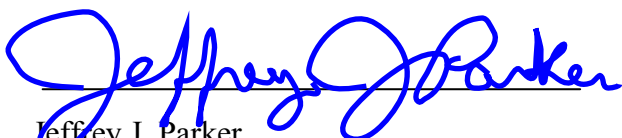
LAW OFFICE OF APRIL STRAUSS
LOZEAU | DRURY LLP
BARON & BUDD, P.C.

By: _____

Laura Baughman
Attorneys for Plaintiffs

Dated: 12/30/08

Sheppard, Mullin, Richter & Hampton LLP

By: 

Jeffrey J. Parker
Attorneys for Defendants
Student Transportation of America, Inc. and
Santa Barbara Transportation Corporation.

APPROVED AND ORDERED:

Dated: _____

Hon. Carl J. West
Judge of the Superior Court