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

ENVIRONMENTAL LAW FOUNDATION,
OUR CHILDREN'S EARTH FOUNDATION,
COMMUNITIES FOR A BETTER
ENVIRONMENT,
On Behalf of the General Public,

Plaintiffs,

v.

ATLANTIC EXPRESS OF L.A., INC,
ATLANTIC EXPRESS OF CALIFORNIA,
INC., and DOES 1 through 100, inclusive,

Defendants.

CASE NO. BC 401484

[PROPOSED]
STIPULATED JUDGMENT

Case Filed: Nov. 7, 2008
Trial Date: Not set
Hon. Carl J. West

CCW Dept. 311

RECITALS

WHEREAS,

a. Atlantic Express of L.A., Inc. and Atlantic Express of California, Inc.
(collectively, "Atlantic" or "Operator") own and operate School Buses in the Los Angeles and
Long Beach vicinity in the State of California;

b. Plaintiffs Environmental Law Foundation ("ELF"), Our Children's Earth
("OCE"), and 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 Drinking Water and Toxic Enforcement Act, California Health and

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

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

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

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

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

10 TERMS AND CONDITIONS

11 **1. Definitions**

12 The following terms are defined as follows:

13 (a) “Approved Diesel Emission Control Strategy” shall mean a CARB-verified Level
14 III active or passive pollution control device, verified for use only with tested engines
15 that meet minimum exhaust temperature requirements for a specified portion of each
16 bus’s duty cycle.

17 (b) “CARB” shall mean the California Air Resources Board.

18 (c) “Effective Date” shall mean the date the Judge signs this Stipulated Judgment.

19 (d) “Existing Fleet” shall mean a fleet of School Buses that was in operation on
20 November 7, 2008.

21 (e) “Existing School Bus” shall mean a School Bus operating as part of an Existing
22 Fleet.

23 (f) “Gross Vehicle Weight Rating” (“GVWR”) shall mean the weight rating of a
24 vehicle.

25 (g) “Level III” shall mean those technologies achieving at least an 85 percent or
26 greater reduction in particulate matter or less than 0.01 g/bhp-hr emission level.

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

20 **2. List of Buses:** Attached hereto as Exhibit A is a complete list of all diesel School Buses
21 owned and operated by Atlantic Express of L.A., Inc. and Atlantic Express of California, Inc. as
22 of November 7, 2008. Exhibit A shall be kept confidential by all Parties, including after
23 termination of this Stipulated Judgment.

24 **3. Fleet Modernization:**

25 (a) Atlantic Express of L.A., Inc. and Atlantic Express of California, Inc. agree to
26 Retrofit or Replace 100% of their Existing Fleet which are pre-2003 model year diesel-fueled
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28

1 School Buses over 14,000 lbs GVWR and are still owned and operated by an Operator as of
2 October 1, 2010.

3 (b) Atlantic will diligently pursue funds from the South Coast Air Quality
4 Management District, and/or other available sources, to Retrofit 100% of its Existing Fleet over
5 14,000 lbs GVWR (including 2003 model year and newer diesel school buses).

6 (c) Atlantic commits to diligently and in good faith apply for any public and private
7 funding to Retrofit or Replace diesel-fueled School Buses in its fleet that are at or under 14,000
8 lbs GVWR within a commercially reasonable time after becoming aware of such funding either
9 on its own or as a result of communications with Plaintiffs or their counsel, and if awarded any
10 such funding, will use said funds to Retrofit or Replace School Buses in its Existing Fleet at or
11 under 14,000 lbs GVWR.

12 **4. Retrofit subsidies:** Operator may use public or private Retrofit subsidies towards
13 meeting its Fleet Modernization obligations in Section 3.

14 **5. Attorney Fees:**

15 (a) Operator shall pay the following amount to plaintiffs: sixty-five thousand dollars
16 (\$65,000.00), subject to review and approval pursuant to Cal. Health and Safety Code
17 § 25249.7(f). Payment in the amount of \$50,000 shall be due thirty (30) days after the
18 Effective Date, with the balance of \$15,000 due no later than June 30, 2009.

19 (b) All payments set forth in this section shall be made by (i) certified check, bank
20 check or cashier's check to "Baron & Budd, P.C. Attorney Trust Fund Account," and
21 shall be delivered by overnight mail or hand delivery to Baron & Budd, P.C., attn: Laura
22 Baughman, 3102 Oak Lawn Avenue, Suite 1100, Dallas, TX 75219 or (ii) wire transfer
23 to an account designated by Baron & Budd, P.C.

24 **6. Reporting**

25 (a) On or before November 5, 2010, Operator will represent in writing under penalty
26 of perjury, with copies of such writing to be provided to a designated representative for
27 Plaintiffs:
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- (i) which School Buses (including the VIN) received Retrofits and the make and model of the retrofit technology installed on each;
- (ii) which School Buses (including the VIN) were Replaced, including VIN of the bus that was Replaced and the year, make and model of each new (replacing) bus; and
- (iii) that 100% of their pre-2003 model year diesel-fueled School Buses over 14,000 lbs GVWR were Retrofitted or Replaced by October 1, 2010 in accordance with Section 3(a).

(b) Within thirty (30) days of the Effective Date, Operator will request from the California Department of Motor Vehicles (“DMV”) a list of all School Buses in its California fleet. Within ten (10) days after receiving a list from DMV, Operator will provide Plaintiffs’ designated representative with a copy of the DMV list. The DMV list will be kept confidential by Plaintiffs, including after termination of this Stipulated Judgment.

7. Liquidated Damages

(a) On or before December 1, 2010, Operator shall pay liquidated damages equal to \$15,000 for each School Bus that had not been Retrofitted or Replaced pursuant to the terms of paragraph 3(a) of this Stipulated Judgment by October 1, 2010.

(b) Payment of a penalty pursuant to this section does not excuse Operator from compliance with the terms of this Stipulated Judgment. Even if Operator pays a penalty for failing to timely meet its Fleet Modernization obligations under Section 3(a), Operator commits pursuant to this Stipulated Judgment to Retrofit or Replace 100% of its pre-2003 model year diesel-fueled School Buses over 14,000 lbs GVWR by October 1, 2010 in accordance with Section 3(a), unless:

- (i) it no longer owns such diesel School Buses, or
- (ii) a *force majeure* event occurs (as more fully described in Section 14, below).

1 (c) Any liquidated damages will be treated as penalties under Proposition 65, and
2 shall be paid seventy five percent (75%) to the State of California to the funds identified
3 in Proposition 65 (Health and Safety Code section 25249.12) and twenty five percent
4 (25%) to Plaintiffs, in the manner described in Section 5(b), above.

5 **8. Warning**

6 (a) Within sixty (60) days after the Effective Date, Operator shall post the following
7 warning on all of its pre-2007 model year diesel School Buses that it owns or operates
8 that have not been Retrofitted:

9 **WARNING: This bus contains diesel engine exhaust, a chemical known to**
10 **the State of California to cause cancer.**

11 (b) Warnings shall be in the form of a placard on each such School Bus in a
12 reasonable location where students and driver are likely to see it.

13 (c) The warning must remain on each of the buses described in paragraph 8(a) as long
14 as the bus is owned or operated by Atlantic and continues to meet the definition of
15 "School Bus" hereunder; however, Atlantic may remove the warning from any bus that
16 is Retrofitted in the future.

17 **9. Plaintiffs' Application for Attorney Fees.** Operator will not oppose any application for
18 attorney fees and costs by Plaintiffs; provided, such application is not in an amount in excess of
19 the amount set forth in Section 5(a).

20 **10. Support for Retrofit applications.** Plaintiffs will not oppose Operator's applications for
21 public or private grant monies for Retrofits and Replacements and will take no actions to
22 encourage or assist non-signatories to this Stipulated Judgment to oppose any such applications.

23 **11. Obligations of Operators.** The obligations of each Operator set forth in this Stipulated
24 Judgment are individual, and not joint and several. Accordingly, each Operator is only required
25 to Retrofit or Replace School Buses, in accordance with Section 3, that are owned or operated by
26 that Operator. Each Operator is required to pay fifty percent (50%) of the amount of attorney
27 fees set forth in Section 5(a).

1 **12. Release.** Except for the obligations under this Stipulated Judgment and any other
2 documents to be executed, and conditioned upon transfer of the consideration and receipt of all
3 signed documents set forth herein, ELF, OCE and CBE, on behalf of themselves and in the
4 public interest, hereby release and discharge Atlantic Express of L.A., Inc. and Atlantic Express
5 of California, Inc. and their respective parents, subsidiaries, officers, employees, directors,
6 shareholders and affiliates from any and all claims asserted, or that could have been asserted, in
7 this litigation arising from defendants' alleged failure to provide Proposition 65 warnings
8 regarding the exposure of individuals to diesel engine exhaust and its constituents.

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

14 **14. Force Majeure:**

15 (a) If performance of any covenant or obligation by a Party is prevented or delayed
16 by one or more events of *Force Majeure*, the time for the performance of such covenant
17 or obligation will be extended for the period that such performance is delayed or
18 prevented by such event(s) of *Force Majeure*.

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

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

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

8 (ii) Notice from:

9 (A) an original equipment manufacturer,

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

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

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

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

24 (d) This section does not apply to Defendants' obligation to post any warnings
25 required pursuant to this Stipulated Judgment on buses owned and operated by
26 Defendants.

1 **15. Notices.** Whenever notice or a document is required to be sent to Plaintiffs, it shall be
2 sent to:

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

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

6 Patricia Guerrero
7 Latham & Watkins LLP
600 West Broadway, Suite 1800
8 San Diego, CA 92101

9 With a copy to:

10 John Shin
11 Silverman Sclar Shin & Byrne PLLC
381 Park Avenue South
New York, New York 10016

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

16 **17. Entire Agreement.** This Stipulated Judgment constitutes the entire agreement and
17 understanding between the Parties. All agreements or representations, expressed or implied, of
18 the Parties with regard to this subject matter are contained in this Stipulated Judgment. The
19 Parties acknowledge that there are no other warranties, promises, assurances or representations
20 of any kind, express or implied, upon which the Parties have relied in entering into this
21 Stipulated Judgment, unless expressly set forth herein. All prior representations, understandings
22 and agreements between the Parties concerning settlement are superseded by this Stipulated
23 Judgment. The terms of this Stipulated Judgment shall not be changed, revised or modified
24 except by written agreement signed by the Parties to this Stipulated Judgment and shall not take
25 effect until approved by the Court.

26 **18. Acknowledgment of Terms.** The Parties have read and understood the terms of this
27 Stipulated Judgment, have had the opportunity to consult with counsel regarding those terms,
28 and understand and acknowledge the significance and consequence of each such term.

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

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

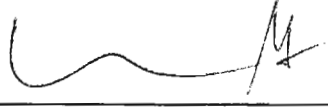
10 **21. Construction.** This Stipulated Judgment is the product of negotiation and preparation by
 11 and among each Party hereto and their respective attorneys. Accordingly, the Stipulated
 12 Judgment shall not be construed against the Party preparing it. The section headings are
 13 included for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

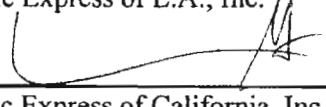
15 **22. Execution of Documents.** The Parties agree to execute this Stipulated Judgment and all
 16 such other documents as are reasonably necessary to effect the terms and conditions of this
 17 Stipulated Judgment. The Stipulated Judgment may be executed in counterparts, each of which
 18 shall be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

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

21
 22 APPROVED AS TO SUBSTANCE:

23 Dated: _____
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 25 Dated: _____
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 Atlantic Express of L.A., Inc.


 Atlantic Express of California, Inc.

 Environmental Law Foundation

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 2 benefit of the Parties hereto, and their respective heirs, predecessors, successors, affiliated
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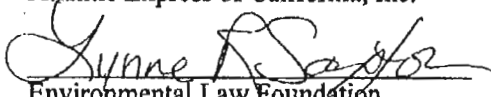
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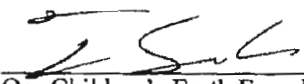
19 **23. Retention of Jurisdiction.** This Court shall retain jurisdiction to enforce the terms of
 20 this Stipulated Judgment.

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 22 APPROVED AS TO SUBSTANCE:

23 Dated: _____ Atlantic Express of L.A., Inc.
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 25 Dated: _____ Atlantic Express of California, Inc.
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 27 Dated: _____ 
 28 Environmental Law Foundation

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Dated: 1/8/09


Our Children's Earth Foundation

Dated: _____

Communities for a Better Environment

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Our Children's Earth Foundation

Dated: 1/9/09

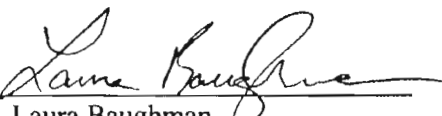
Bill Galley
Communities for a Better Environment

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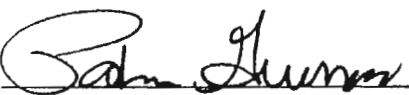
Dated: Jan 16, 2008

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

By: 
Laura Baughman
Attorneys for Plaintiffs

Dated: _____

LATHAM & WATKINS LLP

By: 
Patricia Guerrero
Attorneys for Defendants
Atlantic Express of L.A., Inc. and
Atlantic Express of California, Inc.

APPROVED AND ORDERED:

Dated: _____

Hon. Carl J. West
Judge of the Superior Court