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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,)	CASE NO. BC 401484
COMMUNITIES FOR A BETTER)	
ENVIRONMENT,)	[PROPOSED]
On Behalf of the General Public,)	STIPULATED JUDGMENT
)	
Plaintiffs,)	
)	Case Filed: Nov. 7, 2008
v.)	Trial Date: Not set
)	Hon. Carl. J. West
MERCED TRANSPORTATION COMPANY;)	
and DOES 1 through 100, inclusive,)	CCW Dept. 311
)	
Defendants.)	

RECITALS

WHEREAS,

a. Merced Transportation Company (“Operator”) owns and operates School Buses in the County of Merced, 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 Safety Code § 25249.6, et seq.

1 (“Proposition 65” or “Act”), alleging that operator had exposed passengers and drivers to diesel engine
2 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 this
5 action;

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

8 THEREFORE, THE PARTIES HEREBY AGREE AND IT IS ADJUDGED AND ORDERED
9 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 III
14 active or passive pollution control device, verified for use only with tested engines that meet
15 minimum exhaust temperature requirements for a specified portion of each bus’s duty cycle.

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

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

18 (d) “Existing Fleet” shall mean a school bus fleet that was in operation on November 7,
19 2008.

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

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

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

24 (h) “Operator” shall mean defendant Merced Transportation Company.

25 (i) “Plaintiffs” shall mean the Environmental Law Foundation, Our Children’s Earth, and
26 Communities for a Better Environment.

- 1 (j) "Retrofit" shall mean to modify with a CARB-Approved Tier III Diesel Emission Control
2 Strategy.
- 3 (k) "Replace" shall mean to replace an existing diesel-engine school bus listed on Exhibit A
4 with a non-diesel school bus, or a model 2008 or newer diesel-engine school bus, or a model
5 2003 or newer diesel-engine school bus that is equipped with a CARB-Approved Tier III
6 Diesel Emission Control Strategy.
- 7 (l) "School" shall mean any public or private school used for the purpose of education and
8 instruction of school pupils but does not include any private school in which education and
9 instruction is primarily conducted in private homes.
- 10 (m) "School Bus" shall mean any vehicle used for the express purpose of transporting
11 students from home to School and to any School-related activities.
- 12 (n) "School Bus Fleet" shall mean any group of one or more School Buses.
- 13 (o) "Year of Delivery" shall mean no more than 12 months from the date the School Bus is
14 delivered to the School Bus Fleet operator.

15 **2. List of Buses:** Attached hereto as Exhibit A is a complete list of all diesel school buses
16 owned and operated by Merced Transportation Company.

17 **3. Fleet Modernization:** Merced Transportation Company has a contract with Merced County to
18 provide school bus services. The contract ends in 2009. Merced Transportation Company will submit a
19 bid to Merced County Office of Education to continue to provide school bus services in 2009 and
20 beyond. If Merced Transportation Company is awarded a contract to provide school bus services to
21 Merced County or to any other entity beyond the terms of its existing contract with Merced County,
22 Merced Transportation Company agrees to retrofit or replace 100% of the School Buses on the Exhibit
23 A list by September 1, 2010.

24 **4. Retrofit subsidies:** Operator can use public or private Retrofit subsidies towards meeting its
25 Fleet Modernization obligations in Section 3.
26

1 **5. Attorney Fees:**

2 (a) Operator shall pay the following amount to plaintiffs: thirty thousand dollars (\$30,000),
3 subject to review and approval pursuant to Cal. Health and Safety Code §25249.7(f). Payment
4 shall be due in full 30 days after the Effective date.

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

9 **6. Reporting**

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

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

14 (ii) which buses (including the VIN) were replaced, including VIN of the bus that was
15 replaced and of the year, make and model of each new (replacing) bus.

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

21 **7. Liquidated Damages**

22 (a) On or before November 1, 2010, Operator shall pay liquidated damages equal to \$15,000
23 for each bus that had not been retrofitted or replaced pursuant to the terms of this Stipulated
24 Judgment by September 1, 2010.

25 (b) Payment of a penalty pursuant to this section does not excuse Operator from compliance
26 with the terms of this Stipulated Judgment. Even if Operator pays a penalty for failing to timely

1 meet its fleet modernization obligations, Operator commits pursuant to this Stipulated Judgment
2 to retrofit or replace 100% of its diesel school bus fleet, unless:

- 3 (i) it no longer owns any diesel school buses, or
4 (ii) a *force majeure* event occurs (as more fully described in Section 12, below).
5 (c) Any liquidated damages will be treated as penalties under Proposition 65, and shall be
6 paid seventy five percent (75%) to the State of California to the funds identified in Proposition
7 65 (Health and Safety Code section 25249.12) and twenty five percent (25%) to Plaintiffs, in the
8 manner described in section 5(b), above.

9 **8. Warning**

10 (a) Within sixty (60) days after the Effective date, Operator shall post the following warning
11 on all of the diesel school buses that it owns or operates:

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

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

16 (c) The warning must remain on each of the buses described in paragraph 8(a) as long as the
17 bus is owned or operated by Operator; however, Operator may remove the warning from any bus
18 that is retrofitted in the future.

19 **9. Plaintiffs' Application for Attorney Fees.** Operator will not oppose any application for
20 attorney fees and costs by Plaintiffs.

21 **10. Release.** Except for the obligations under this Judgment and any other documents to be
22 executed, and conditioned upon transfer of the consideration and receipt of all signed documents set
23 forth herein, ELF, OCE and CBE, on behalf of themselves and in the public interest, hereby release and
24 discharge Merced Transportation Company from any and all claims asserted, or that could have been
25 asserted, in this litigation arising from defendant's alleged failure to provide Proposition 65 warnings
26 regarding the exposure of individuals to diesel engine exhaust.

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

6 **12. Force Majeure:**

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

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

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

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

26 (ii) Notice from:

(A) an original equipment manufacturer,

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

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

5 a particular retrofit device or technology should not be used on a particular bus
6 type, engine family group, or exhaust system due to technical limitations, safety
7 or health issues. An example of this includes but is not limited to notice from a
8 third party vendor that a particular bus does not meet minimum exhaust
9 temperature requirements for a pollution control device to be used effectively.

10 The inability to use one device does not relieve Operator of the obligation to try
11 another CARB-verified device; or

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

15 (d) This section does not apply to Defendant's obligation to post any warnings required
16 pursuant to this Stipulated Judgment on buses owned by Defendant; however, if the owner of
17 buses operated (but not owned) by Defendant objects to the posting of warnings, Defendant is
18 excused from posting warnings on those buses only.

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

21 Laura Baughman
22 Baron & Budd, P.C.
23 3102 Oak Lawn Avenue, Suite 1100
24 Dallas, TX 75219
25
26

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

2 Arthur F. Godwin
3 Mason, Robbins, Browning & Godwin
4 700 Loughborough Drive, Suite D
5 P.O. Box 2067
6 Merced, CA 95344

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

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

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

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

26 **18. Warranty.** Each Party warrants that (a) the person executing this Stipulated Judgment is fully
authorized to do so and to enter into the terms and conditions hereof; and (b) the claims being released

1 pursuant to this Stipulated Judgment have not been assigned or otherwise transferred to any other person
2 or entity.

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

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

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

13 APPROVED AS TO SUBSTANCE:

14 Dated: _____

Merced Transportation Company

15 Dated: 1/9/09


Environmental Law Foundation

16 Dated: _____

Our Children's Earth Foundation

17 Dated: _____

Communities for a Better Environment

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13 APPROVED AS TO SUBSTANCE:
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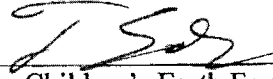
15 Dated: _____

Merced Transportation Company

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17 Dated: _____

Environmental Law Foundation

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19 Dated: 1/8/09


Our Children's Earth Foundation

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21 Dated: _____

Communities for a Better Environment

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15 Dated: _____

Merced Transportation Company

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17 Dated: _____

Environmental Law Foundation

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19 Dated: _____

Our Children's Earth Foundation

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21 Dated: 1/9/09

Bill Kelley
Communities for a Better Environment

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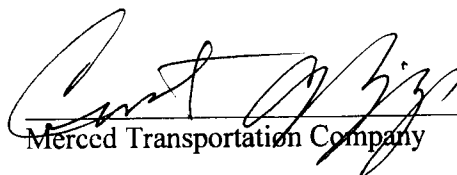
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10 an original.

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

13 APPROVED AS TO SUBSTANCE:

14 Dated: 1-28-09


Merced Transportation Company

15 Dated: _____

Environmental Law Foundation

16 Dated: _____

Our Children's Earth Foundation

17 Dated: _____

Communities for a Better Environment

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1 APPROVED AS TO FORM:

2 Dated: Jan 16, 2009

LAW OFFICE OF APRIL STRAUSS

LOZEAU | DRURY LLP

BARON & BUDD, P.C.

3
4
5
6 By: Laura Baughman
7 Laura Baughman
8 Attorneys for Plaintiffs

9 Dated: 1-28-09

MASON, ROBBINS, BROWNING & GODWIN

10
11 By: Arthur Godwin
12 Arthur Godwin
13 Attorneys for Defendant
14 Merced Transportation Company

15 APPROVED AND ORDERED:

16 Dated: _____

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Hon. Carl J. West
Judge of the Superior Court

Unit	Mfg. year	License Plate	Spec - Veh Make & Model	Spec - Gross Weight	Spec - Engine
0016 (MTC Bus) MTC	1997	5DYB205	INTERNATIONAL/CARPENT	25,500 LBS	T44E DIESEL
0017 (MTC Bus) MTC	1997	5DYA539	INTERNATIONAL/CARPENT	25,500 LBS	Int. T444E
0018 (MTC Bus) MTC	1997	5DYA503	INTERNATIONAL/CARPENT	25,500 LBS	Int. T444E
0021 (MTC Bus) MTC	1986	8G39958	Chevy G30/Collins	8,600 LBS	Chevy 6.2 Diesel
0023 (MTC Bus) MTC	1989	2TWX091	GMC/VANDURA 3500	10,000 LBS	Chevy 6.2 Diesel
0024 (MTC Bus) MTC	1989	6X02642	GMC/VANDURA 3500	10,000 LBS	Chevy 6.2 Diesel
0025 (MTC Bus) MTC	1989	2PXJ057	GMC/VANDURA 3500	10,000 LBS	Chevy 6.2 Diesel
0026 (MTC Bus) MTC	1992	3AJR821	GMC G3500/Collins	10,000 LBS	Chevy 6.2 Diesel
0033 (MTC Bus) MTC	1994	5BGB168	Thomas SAF-T-LINER	30,000 LBS	Cummins B 5.9
0034 (MTC Bus) MTC	1993	5BGB169	INT/BLUEBIRD	25,500 LBS	Int 7.3
0035 (MTC Bus) MTC	1988	2HIT201	INT/WARD	26,500 LBS	Int 7.3
0036 (MTC Bus) MTC	1990	4PTS291	INT/WARD	27,500 LBS	Int 7.3
0038 (MTC Bus) MTC	1987	4KUF753	INTS1700/WARD	23,500 LBS	Int 6.9/7.3
0040 (MTC Bus) MTC	1989	2PKD161	AMERICAN TRANS/WARD	26,500 LBS	Int 6.9/7.3
0042 (MTC Bus) MTC	1990	2ROT216	INT/WAYNE	23,500 LBS	Int 7.3
0043 (MTC Bus) MTC	1990	2RBE484	INT/WAYNE	23,500 LBS	Int 7.3L
0046 (MTC Bus) MTC	1988	4ERG374	INT/Thomas	28,000 LBS	Int 7.3
0047 (MTC Bus) MTC	1989	2MPL740	FORD E350	9,500 LBS	Ford 7.3 Diesel
0050 (MTC Bus) MTC	1995	3RCG274	INT/AMTRANS 3800 SERIES	25,500 LBS	Int T444E
0051 (MTC Bus) MTC	1996	3RFK688	FORD BLUEBIRD	24,800 LBS	Cummins B 5.9
0052 (MTC Bus) MTC	1997	4AMP791	INTERNATIONAL/CARPENT	25,500 LBS	Int T444E
0053 (MTC Bus) MTC	1993	3DCT667	FORD E350	9,600 LBS	Ford 7.3 Diesel
0054 (MTC Bus) MTC	1993	3FBZ576	INTERNATIONAL/CARPENT		Int 7.3
0055 (MTC Bus) MTC	1993	3FBZ575	INTERNATIONAL/CARPENT		Int 7.3
0057 (MTC Bus) MTC	1984	3KAT895	INTERNATIONAL/BLUEBIRD	21,000 LBS	Int 6.9/7.3
0058 (MTC Bus) MTC	1987	5TVE158	INTS1700/WARD	20,200 LBS	Int 6.9/7.3
0059 (MTC Bus) MTC	1987	3KWP622	INT/UNITED		Int 7.3
0081 (MTC Bus) MTC	2002	5JG791	/GMC	23,100 LBS	Cat 3126
0082 (MTC Bus) MTC	2002	5JG793	BLUEBIRD/GMC	23,100 LBS	Cat 3126
0083 (MTC Bus) MTC	2002	5JG792	BLUEBIRD/GMC	23,100 LBS	Cat 3126
0086 (MTC Bus) MTC	1993	5RLH624	Thomas SAF-T-LINER	23,100 LBS	Caterpillar 3116
0087 (MTC Bus) MTC	1993	5RLH630	Thomas SAF-T-LINER	23,100 LBS	Caterpillar 3116
0031 (SELPA) MTC	1999	4JAM031	BLUE BIRD TC/2000	30,000 LBS	Cummins B 5.9 ISB
0032 (SELPA) MTC	1999	4JAM032	BLUE BIRD TC/2000	30,000 LBS	Cummins B 5.9 ISB