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

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.;; EMBREE BUSES, INC.;; STUDENT
TRANSPORTATION OF AMERICA, INC.;;
SANTA BARBARA TRANSPORTATION
CORPORATION; STORER
TRANSPORTATION SCHOOL AND
CONTRACT SERVICE; STORER
TRANSPORTATION SERVICE; MERCED
TRANSPORTATION COMPANY;
MICHAEL’S TRANSPORTATION
SERVICE, INC.;; and DOES 1 through 100,
inclusive

Defendants,

CASE NO. BC 401484

**[PROPOSED]
STIPULATED JUDGMENT BETWEEN
ALL PLAINTIFFS AND STORER
TRANSPORTATION SCHOOL AND
CONTRACT SERVICE, AND STORER
TRANSPORTATION SERVICE**

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

Dept. 311

- 1 (d) "Existing Fleet" shall mean a fleet of School Buses that was in operation on
2 November 7, 2008.
- 3 (e) "Existing School Bus" shall mean a School Bus operating as part of an Existing
4 Fleet.
- 5 (f) "Gross Vehicle Weight Rating" ("GVWR") shall mean the weight rating of a
6 vehicle.
- 7 (g) "Level III" shall mean those technologies achieving at least an 85 percent or
8 greater reduction in particulate matter or less than 0.01 g/bhp-hr emission level.
- 9 (h) "Low-Use Vehicle" shall mean any School Bus for which usage is less than 1000
10 miles per year.
- 11 (i) "Operator" shall mean defendants Storer Transportation School and Contract
12 Service, and Storer Transportation Service.
- 13 (j) "Plaintiffs" shall mean the Environmental Law Foundation, Our Children's Earth,
14 and Communities for a Better Environment.
- 15 (k) "Retrofit" shall mean to modify with an Approved Diesel Emission Control
16 Strategy.
- 17 (l) "Replace" shall mean to replace an existing diesel-engine School Bus listed on
18 Exhibit A with a non-diesel school bus, or a model 2007 or newer diesel-engine
19 school bus, or a model 2003 or newer diesel-engine school bus that is equipped with
20 an Approved Diesel Emission Control Strategy.
- 21 (m) "School" shall mean any public or private school within the State of California
22 used for the purpose of education and instruction of school pupils but does not include
23 any private school in which education and instruction is primarily conducted in
24 private homes.
- 25 (n) "School Bus" shall mean any vehicle used primarily for the express purpose of
26 transporting students from home to School and to any School-related activities.
- 27 (o) "School Bus Fleet" shall mean any group of one or more School Buses.
- 28

1 (p) "Year of Delivery" shall mean no more than 12 months from the date the School
2 Bus is delivered to the School Bus Fleet Operator.

3 **2. List of Buses:** Attached hereto as Exhibit A is a complete list of all diesel School Buses
4 owned and operated by Operator as of November 7, 2008.

5 **3. Fleet Modernization:**

6 (a) Operator agrees to Retrofit or Replace 100% of their Existing Fleet which are pre-
7 2003 model year diesel-fueled School Buses over 14,000 lbs GVWR and are still owned
8 and operated by an Operator as of October 1, 2010.

9 (b) Low-Use Vehicles shall be exempt from the requirement set forth in the preceding
10 subparagraph. However, if a School Bus designated as a Low-Use Vehicle is driven
11 more than 1000 miles in any twelve month period, then Operator shall Retrofit or
12 Replace that School Bus within one-hundred and twenty (120) days of exceeding the
13 1000 miles per year threshold.

14 (c) Operator agrees to pursue funds from the California Air Resources Board, local
15 Air Quality Management District(s) and/or Air Pollution Control District(s), and/or other
16 available sources, to Retrofit 100% of its Existing Fleet over 14,000 lbs GVWR
17 (including 2003 model year and newer diesel school buses), if such funds become
18 available.

19 (d) Operator agrees to apply for any public and private funding to Retrofit or Replace
20 diesel-fueled School Buses in its fleet that are at or under 14,000 lbs GVWR within a
21 commercially reasonable time after becoming aware of such funding either on its own or
22 as a result of communications with Plaintiffs or their counsel, and if awarded any such
23 funding, will use said funds to Retrofit or Replace School Buses in its Existing Fleet at or
24 under 14,000 lbs GVWR.

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

27 **5. Attorney Fees:**

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

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

9 **6. Reporting**

10 (a) On or before November 5, 2010, Operator will represent in writing under penalty
11 of perjury, with copies of such writing to be provided to a designated representative for
12 Plaintiffs:

13 (i) which School Buses (including the VIN) received Retrofits and the make
14 and model of the retrofit technology installed on each;

15 (ii) which School Buses (including the VIN) were Replaced, including VIN of
16 the bus that was Replaced and the year, make and model of each new (replacing)
17 bus;

18 (iii) that 100% of their pre-2003 model year diesel-fueled School Buses over
19 14,000 lbs GVWR were Retrofitted or Replaced by October 1, 2010 in
20 accordance with Section 3(a), except for Low-Use Vehicles; and,

21 (iv) which School Buses (including VIN) are claimed as Low-Use Vehicles
22 and the number of miles driven per year for that vehicle in the preceding three
23 years.

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

3 **7. Liquidated Damages**

4 (a) On or before December 1, 2010, Operator shall pay liquidated damages equal to
5 \$15,000 for each School Bus that had not been Retrofitted or Replaced pursuant to the
6 terms of paragraph 3(a) of this Stipulated Judgment by October 1, 2010.

7 (b) Payment of a penalty pursuant to this section does not excuse Operator from
8 compliance with the terms of this Stipulated Judgment. Even if Operator pays a penalty
9 for failing to timely meet its Fleet Modernization obligations under Section 3(a),
10 Operator commits pursuant to this Stipulated Judgment to Retrofit or Replace 100% of
11 its pre-2003 model year diesel-fueled School Buses over 14,000 lbs GVWR by October
12 1, 2010 in accordance with Section 3(a), unless:

13 (i) it no longer owns such diesel School Buses, or

14 (ii) a *force majeure* event occurs (as more fully described in Section 14,
15 below).

16 (c) Any liquidated damages will be treated as penalties under Proposition 65, and
17 shall be paid seventy five percent (75%) to the State of California to the funds identified
18 in Proposition 65 (Health and Safety Code section 25249.12) and twenty five percent
19 (25%) to Plaintiffs, in the manner described in Section 5(b), above.

20 **8. Warning**

21 (a) Within sixty (60) days after the Effective Date, Operator shall post the following
22 warning on all of its pre-2007 model year diesel School Buses that it owns or operates
23 that have not been Retrofitted (including Low-Use Vehicles):

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

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

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1 (c) The warning must remain on each of the buses described in paragraph 8(a) as long
2 as the bus is owned or operated by Operator and continues to meet the definition of
3 “School Bus” hereunder; however, Operator may remove the warning from any bus that
4 is Retrofitted in the future.

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

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

11 **11. Obligations of Operators.** With the exception of Section 5, the obligations of each
12 Operator set forth in this Stipulated Judgment are individual, and not joint and several.
13 Accordingly, each Operator is only required to Retrofit or Replace School Buses, in accordance
14 with Section 3, that are owned or operated by that Operator. Section 5 imposes joint and several
15 obligations upon both Operators.

16 **12. Release.** Except for the obligations under this Stipulated Judgment and any other
17 documents to be executed, and conditioned upon transfer of the consideration and receipt of all
18 signed documents set forth herein, ELF, OCE and CBE, on behalf of themselves and in the
19 public interest, hereby release and discharge Storer Transportation School and Contract Service,
20 and Storer Transportation Service and their respective parents, subsidiaries, officers, employees,
21 directors, shareholders and affiliates from any and all claims asserted, or that could have been
22 asserted, in this litigation arising from Operators’ alleged failure to provide Proposition 65
23 warnings regarding the exposure of individuals to diesel engine exhaust and its constituents.

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

3 **14. Force Majeure:**

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

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

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

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

24 (ii) Notice from:

25 (A) an original equipment manufacturer,

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

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

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

(d) This section does not apply to Operator’s obligation to post any warnings required pursuant to this Stipulated Judgment on buses owned and operated by Operator.

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

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

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

Arthur Godwin
Mason Robbins Gnass & Browning
700 Loughborough Dr #D
P O Box 2067
Merced, CA 95344-0067

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

17. Entire Agreement. This Stipulated Judgment constitutes the entire agreement and understanding between the Parties. All agreements or representations, expressed or implied, of

1 the Parties with regard to this subject matter are contained in this Stipulated Judgment. The
2 Parties acknowledge that there are no other warranties, promises, assurances or representations
3 of any kind, express or implied, upon which the Parties have relied in entering into this
4 Stipulated Judgment, unless expressly set forth herein. All prior representations, understandings
5 and agreements between the Parties concerning settlement are superseded by this Stipulated
6 Judgment. The terms of this Stipulated Judgment shall not be changed, revised or modified
7 except by written agreement signed by the Parties to this Stipulated Judgment and shall not take
8 effect until approved by the Court.

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

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

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

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

26 **22. Execution of Documents.** The Parties agree to execute this Stipulated Judgment and all
27 such other documents as are reasonably necessary to effect the terms and conditions of this
28

1 Stipulated Judgment. The Stipulated Judgment may be executed in counterparts, each of which
2 shall be considered an original.

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


5 APPROVED AS TO SUBSTANCE:

6
7 Dated: 2-17-09



Storer Transportation School and Contract
Service

8
9 Dated: 2-17-09



Storer Transportation Service

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11 Dated: 2/5/09



Environmental Law Foundation

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13 Dated: _____

Our Children's Earth Foundation

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15 Dated: _____

Communities for a Better Environment

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5 APPROVED AS TO SUBSTANCE:
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7 Dated: _____
8 Storer Transportation School and Contract
Service

9 Dated: _____
10 Storer Transportation Service

11 Dated: 2/5/09 _____
12 *Lynne R. Coxson*
Environmental Law Foundation

13 Dated: _____
14 Our Children's Earth Foundation

15 Dated: _____
16 Communities for a Better Environment

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5 APPROVED AS TO SUBSTANCE:
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7 Dated: _____
8 Storer Transportation School and Contract
Service

9 Dated: _____
10 ~~Storer Transportation Service~~

11 Dated: _____
12 Environmental Law Foundation

13 Dated: 2/6/09 _____
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Our Children's Earth Foundation

15 Dated: _____
16 Communities for a Better Environment

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5 APPROVED AS TO SUBSTANCE:
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7 Dated: _____
8 Storer Transportation School and Contract
Service

9 Dated: _____
10 Storer Transportation Service

11 Dated: _____
12 Environmental Law Foundation

13 Dated: _____
14 Our Children's Earth Foundation

15 Dated: 2/6/09
16 *Bill Gally*
17 Communities for a Better Environment


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APPROVED AS TO FORM:

Dated: 2/9/09

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

By: 
Richard Drury
Attorneys for Plaintiffs

MASON ROBBINS GNASS & BROWNING

Dated: _____

By: _____
Arthur Godwin
Attorneys for Defendants
Storer Transportation School and
Contract Service, and Storer
Transportation Service

APPROVED AND ORDERED:

Dated: _____

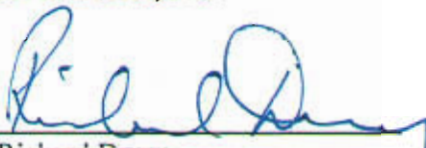
Hon. Carl J. West
Judge of the Superior Court

1 APPROVED AS TO FORM:

2 Dated: 2/9/09

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

By: 
Richard Drury
Attorneys for Plaintiffs

7
8 Dated: 2/18/09

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MASON ROBBINS GNASS & BROWNING

By: 
Arthur Godwin
Attorneys for Defendants
Storer Transportation School and
Contract Service, and Storer
Transportation Service

14 APPROVED AND ORDERED:

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Dated: _____

Hon. Carl J. West
Judge of the Superior Court

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