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11 COMMUNITIES FOR A BETTER ENVIRONMENT

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

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

18 Plaintiffs,

19 v.

20 LAIDLAW TRANSIT INC. dba LAIDLAW  
21 EDUCATION SERVICES; LAIDLAW TRANSIT  
22 SERVICES, INC.; DURHAM SCHOOL  
23 SERVICES; DURHAM SCHOOL SERVICES,  
24 L.P.; NATIONAL EXPRESS CORPORATION; and  
25 DOES 1 through 100, inclusive,

26 Respondents.

CASE NO.: CGC-06-451832

**DECLARATION OF WILLIAM  
PADILLA IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
PRELIMINARY INJUNCTION**

[CCP §§526, 527]

Date: June 8, 2007

Time: 1:30 p.m.

Court: Dept. 613

Judge: Hon. Ernest H. Goldsmith

Complaint filed: May 2, 2006

Trial Date: Nov. 26, 2007

1. My name is William Padilla. I know the following of my own knowledge and could testify thereto if called as a witness.

### **Background**

2. I am a mechanic. I worked at the Laidlaw bus yard on Jerrold Avenue from March 28, 1987 until September 27, 2006. I am currently employed by United Parcel Service as a mechanic. Prior to working for Laidlaw I was a maintenance mechanic in shops, including an injection mold shop, but the bulk of my experience as a mechanic was with Laidlaw. While at Laidlaw, my duties as a mechanic included performing inspections, conducting opacity tests and doing all major or minor repairs that a bus would need. We did everything at that shop. We even built transmissions. Relatively recently, the shop started sending transmissions out for service but prior to that we built them ourselves and did every kind of maintenance that was needed on any bus in the Laidlaw fleet. I estimate that we did 99% of the work that was needed at the Jerrold Avenue shop.

### **Prop 65 Warning Sign**

3. When Dean Langerman was my supervisor, sometime around 1998, he instructed me to attach two signs to the wall by the doors on the outside of the shop on Jerrold Avenue that read something like, "WARNING: you are being exposed to chemicals that cause cancer and birth defects." These signs were generic. Neither of these signs specified anything about diesel exhaust. I did not know that diesel exhaust caused cancer until I learned about this lawsuit. There were no memos ever given nor did anyone in management ever tell us in the shop that diesel exhaust causes cancer.

### **The Smell of Diesel Exhaust in the Laidlaw Yard and in the Shop**

4. Everywhere at the bus yard you can smell diesel exhaust. A person can be outside, inside, wherever you are you can smell diesel exhaust, especially in the morning. In the morning the

drivers would start their buses in the yard and go have coffee in the drivers' room while their buses idled in the yard. Even though they were not supposed to let their buses idle in the morning, because of the new law, the drivers were still doing it when I left Laidlaw in the fall of last year. The diesel exhaust was terrible. You could smell it everywhere.

5. To make matters worse, the shop doors at the Jerrold Avenue shop open toward the Bay. The wind blows from the bay. Therefore, any diesel exhaust that is formed outside of the shop, or inside the shop but drifts outside, gets blown back into the shop.

6. In 1997, I personally signed a complaint letter along with all of the mechanics asking that an exhaust and cleaning system be installed in the shop to protect us from the diesel exhaust we were breathing. Laidlaw disregarded that letter.

7. For years, the mechanics complained bitterly about the amount of diesel exhaust in the shop. Laidlaw management finally attempted to do something about it. A few years ago they purchased rubber hoses to redirect the exhaust from the buses inside the shop to the outside. This system failed to work, however, because whatever exhaust was blown outside would be blown by the wind from the Bay, back into the shop.

#### **Diesel Exhaust Inside the Buses**

8. I remember one driver in particular, Michael Henderson, who would complain about exhaust inside the bus cabin and other things that were wrong with the buses. He drove a Genesis. I remember that Mr. Henderson was written up because he complained too much about the smoking conditions in his bus. He is still employed by Laidlaw. I remember several other drivers complained about smoking buses and about the smell of diesel exhaust in their buses but I don't remember their names at this time. Many of these complaints would be found in the DVIR reports, the Driver

## Vehicle Inspection Reports.

### **Laidlaw Buses In Need of Repair**

9 During my entire time at Laidlaw, I was frustrated that buses in need of repair were routinely put into service, that is, put back on the road, without or before needed repairs could be made. All the other mechanics I worked with expressed their frustration with the same issue.

10. During my time at Laidlaw, the Jerrold Avenue shop employed approximately 10 mechanics to work on the 250 buses stored there. It is my opinion, based on my experience there, that Laidlaw does not employ enough mechanics to keep up with the proper maintenance of the buses.

### **A Inspections**

11. A Inspections, also referred to as "A Sheets," are mandatory safety and mechanical inspections performed on every school bus by Laidlaw mechanics and signed by the shop manager every 45 days.

12. The California Highway Patrol conducts annual inspections of each motor carrier, such as Laidlaw, to insure that they are in compliance with the law and performing the required 45-day inspections.

13. It is my understanding that, as long as any "safety item" found during the inspection is repaired, the bus is supposed to be "grounded," that is, taken out of service. Some examples of safety items are: bad brakes, fuel leaks, exhaust leaks, broken windshields, broken windows, bald tires, front end work, belts, major leaks. Any fuel leak would ground a bus, even a minor one. If one drop of fuel leaked, we were required to ground the bus, but this policy was not enforced. For example, Bob Gonzales allowed all of the defective 2000 Thomas buses to leak fuel in the bus yard

and onto the streets of San Francisco and never attempted to fix this problem. All of the mechanics knew about this defect and expressed concern about it.

14. During my time at Laidlaw, Laidlaw managers routinely ordered mechanics to sign A Sheets before the repairs were made to the buses.

15. After an A Inspection is done, but often before any or all of the needed repairs are made, the mechanic is told to sign the A Sheet. The paperwork then goes upstairs to the office, where it is supposed to be signed by the shop manager and filed. The problem is that once an A Sheet goes upstairs to the office, the paperwork never comes back downstairs to the shop. Therefore, all the repairs not made before an A Sheet is signed are not made. Once an A Sheet goes upstairs the mechanics never get a copy coming back downstairs so they can do the repairs. The only time an A Sheet would come back down to the shop would be if a mechanic makes a big hassle about it. Then, and only then, would Laidlaw management give a copy of the Inspection to a mechanic so the repairs could be made.

16. It is my belief that Laidlaw's chief concern was completing the A Inspection paperwork in time – but not the repairs – to avoid problems with the California Highway Patrol.

17. A few years ago, in 2002, the mechanics confronted management about having to sign A Sheets when repairs were not getting done. I and all the other mechanics expressed concern about being held personally responsible if something went wrong with the buses when repairs found during the A Inspections were not made. I and all the other mechanics expressed the belief that by signing an A Sheet, we were saying that the bus we inspected was legal to be put on the road.

18. A meeting was held in 2002 to discuss this unwritten policy and issue. Laidlaw's division

manager (Bob Gonzales), Laidlaw's attorney (Ron English), the mechanics, the mechanics union representative (John Moran) and the California Highway Patrol representative (Chris, last name unknown) were present. At this meeting Bob Gonzales explicitly told the mechanics to sign the A Sheets when we were told to, whether or not the work was completed or he would write us up for refusing to sign it. It had gotten to the point where we were refusing to sign the A Sheets. Chris said that as long as the manager signs the A Sheet, the mechanics were released from responsibility.

19. After the meeting on the subject all of the mechanics expressed concern that they might be personally responsible for anything that may go wrong with the bus from the time they signed the A Sheet until the time that the shop manager would sign them.

20. It was often the case that the night shift mechanics were instructed to sign A Sheets before they left the shop. They often returned to work to find that before the shop manager would have had a chance to sign the inspections at 10:00 a.m. the next morning, the buses would have been put back into service. The shop manager would often delay signing the A Sheets for a day or two because he was doing something else. For example, if he was out sick or on vacation the A Sheets wouldn't be signed. For that period of time, until the A Sheets were signed by the shop manager, the mechanics were concerned that we were responsible for buses that were on the road but that should have been out of service. Mechanics were upset that we might be on the line and the company was not.

21. One of the mechanics working for Laidlaw in Santa Rosa was arrested when something went wrong with a bus he had inspected. The bus driver got into an accident and blamed the problem on the brakes. The cops came to the shop, arrested the mechanic and put him in jail before they could prove whose fault it was. We were afraid this would happen to us at the San Francisco yard. We did not want to be penalized for being made to falsify A Sheets. We did not want our signatures on

the A Sheets because our signatures meant that these buses were legal to be put on the road when they were not.

22. At least one time after the A Inspection meeting referred to above, Bob Gonzales tried to write me up for insubordination because I refused to sign an A Sheet. I explained to Mr. Gonzales that after the sheets were signed, they were sent upstairs and there was no guarantee that the necessary work on the buses would ever get done. I explained that after they were sent upstairs to the office, no copies would return to the shop.

23. Bob tried to persuade me that as long as the items he personally considered to be "safety items" were repaired on the bus I could sign the A Sheets and turn them in. I argued with him and took the position that if I could not "down" a bus, that particular bus was permitted to be on the road. If I downed it, it was unsafe until the safety items I found were repaired. If I found items I knew were considered safety items by the CHP, it was my responsibility to down that bus until those items were repaired. Mr. Gonzales took the position that as long as a manager would let the bus go, it was OK.

24. Mr. Gonzales refused to change this policy and his position on this issue. He told me that either I signed the A Sheets or I was canned -- that by not signing, I was refusing to do my job.

#### **Opacity Testing Was Routinely Falsified**

25. Since 1998 the California Air Resources Board has required heavy-duty trucks and buses to be inspected for excessive smoke. The "Periodic Smoke Inspection Program" requires that diesel bus fleet owners conduct annual inspections of their vehicles and repair those with excessive smoke emissions. I was told about this annual inspection requirement by Dean Langerman, my manager.

26. I was the only employee at Laidlaw San Francisco shown how to use the opacity testing instrument. I had my own basic job to do but when I was ordered by my managers to get the opacity tests done, I did them. I was usually told to do the opacity tests during the summer but I recall that some buses were not tested for three years in a row.

27. Dean Langerman was the shop manager when the opacity testing instrument was first purchased. Langerman showed me how to use the unit, how to set it up and was the first person to set it up. I believe we started doing opacity measurements in the late 1990's.

28. The opacity unit has been sent into the manufacturer for recalibration only twice since it was purchased. In the manual for the opacity unit, it specifies that we are supposed to use special filters to test the calibration of the unit. Each time I would do the tests I would ask my managers for these filters. I specifically remember asking Dean Langerman and Joe Saba for them. Each time I was told by Laidlaw managers that we couldn't buy these filters that we'd have to send the unit to the manufacturer to get recalibrated. I think that Laidlaw just didn't want to spend the money for the filters so the unit was only recalibrated twice in the last eight years.

29. I was ordered by every one of my managers on many occasions to make buses that were excessively smoking pass the opacity test by falsifying the test as described below. In other words, I was ordered several times to make buses that were not passing, pass the test anyway.

30. It is very easy make any bus pass with the opacity testing unit. A person could make any smoking vehicle pass. The unit is held manually next to the exhaust pipe. It is shaped like a tuning fork. The sensor is a beam that shoots from one prong to the other and it measures the opacity of the diesel exhaust being emitted from the tailpipe.

31. For each reading I take, the unit prints out a report saying whether the bus passes or fails. When I had buses that were smoking excessively, putting out a lot of diesel exhaust, all I had to do was pull the unit away from the tailpipe and/or tell the person in the driver's seat to step lightly on the gas peddle and although the opacity tests would be false, the unit would print out a "pass." I could make the unit pass any bus by merely moving the sensor back, up or down, depending on which way the wind was blowing. It was just that simple.

32. I always knew there was diesel exhaust coming out, even when I got a clean reading from a bus, because at the end of the day after I had finished the opacity tests, I would feel so nasty. My whole body, my clothes, my socks, underneath my pants, would be black with soot.

#### **Falsification of Opacity Testing Data For This Lawsuit**

33. I ran opacity tests on all the vans and smaller buses during the summer, in mid-July of 2006. I didn't do the big buses because we just got them and were getting them through the school year. Then, in mid-August of 2006, I got a sudden order from my manager, Jack Duke, that he needed opacity tests done on all the vehicles before Friday. He told me it was for a lawsuit.

34. I started to do the tests and quickly realized that I was not getting any readings from the new buses. I need to get at least a reading of 0.1 on the meter in order to run a test, in order for the machine to print a report. If the sensor reports a zero the unit won't allow the test to be run. Since I could not get the sensor to detect anything on the new buses, I called the manufacturer of the unit and explained the problem I was having. I was told by the technical support person working for the manufacturer to get a piece of plastic and put it in between the prongs. Merely having a piece of plastic in between the prongs of the meter allowed me to get a reading that was not zero and I could get the unit to print a report.

35. Mr. Duke had gone home for the day so I was unable to tell him what the manufacturer told me to do until the next day at work. Knowing that I had to get these opacity tests done, I sat down on a bench, put the bus numbers into the computer and began running the opacity test for each new bus using a piece of plastic. In order to get readings that were not identical for every bus, I would barely break the beam with the plastic to get a very low reading, or I would use fingerprints on the plastic for a slightly higher reading.

36. The next day at work I explained to Mr. Duke what the manufacturer told me to do, what I did and exactly how I did it. I told him that I sat on a bench, typed in each bus number and ran an opacity tests for each bus using a piece of plastic. After I told him I finished running the opacity tests using a piece of plastic. He signed the opacity tests after I turned them in, after I told him how I ran the tests. He signed off on the tests knowing exactly what I did.

37. Before I started using the piece of plastic to run the tests, I got actual readings on about four of the buses in the fleet. For all of the other buses, I performed the opacity tests using a piece of plastic.

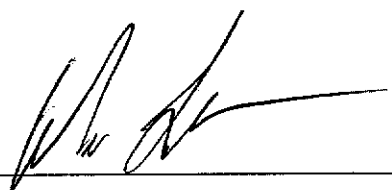
38. When I left, the only vehicle in the yard that had a failing test was the shop van. The shop van needs injection pumps and injectors. I ran the test on the shop van and it failed. I turned the paperwork in but Mr. Duke told me "make it pass and we'll get to it later." So I also falsified the results of the opacity test for the shop van. Since the day I left, the shop van still has not been repaired.

#### **Complaints from Citizens about Smoking Buses**

39. During the year people who were not employees would complain about buses smoking. They'd call the 1-800-EXHAUST number and we'd get a complaint letter. When this would

happen, my managers would tell me to make the smoking buses pass the opacity test so we could answer the letters. In other words, I was told several different times to falsify opacity tests on smoking buses so that we could answer complaints from drivers about our smoking buses. When Dean Langerman was the manager we never answered the letters at all, but the other managers ordered me to make the smoking buses pass, so I did.

40. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this was signed on April 27, 2007 at CONCORD, California.



A handwritten signature in black ink, appearing to be 'D. Langerman', is written over a horizontal line.

Declarant