

ENDORSED
FILED
San Francisco County Superior Court

FEB 06 2008

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8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN FRANCISCO

10 SAN FRANCISCO UNIFIED SCHOOL)
11 DISTRICT, *ex rel.*, MANUEL CONTRERAS,)
12 WILLIAM PADILLA, and ENVIRONMENTAL)
13 LAW FOUNDATION,)

14 Plaintiffs,

15 vs.

16 LAIDLAW TRANSIT, INC., LAIDLAW)
17 TRANSIT SERVICES, INC., and DOES 1-100,)
18 inclusive,)

19 Defendants.

No. CGC-07-0463308

FIRST AMENDED COMPLAINT FOR
VIOLATIONS OF THE CALIFORNIA FALSE
CLAIMS ACT

Violations of California Gov't Code §§12650 *et*
seq. (False Claims Act)

JURY TRIAL DEMANDED

Original Compliant filed in camera under seal on
May 11, 2007.

Seal on Complaint Lifted on January 28, 2008.

1 Plaintiffs Manuel Contreras, William Padilla and the Environmental Law Foundation (“ELF”)
2 (collectively, “Qui Tam Plaintiffs” or “Plaintiffs”), bring this action on behalf of the San Francisco
3 Unified School District (“SFUSD”) and allege:

4 INTRODUCTION

5 1. This is an action to recover damages and civil penalties on behalf of SFUSD arising from false
6 records, statements and claims made by defendants Laidlaw Transit, Inc. and Laidlaw Transit Services,
7 Inc. against the State of California and its political subdivisions (referred to collectively as “the State”)
8 in violation of the California False Claims Act, Government Code §§ 12650 *et seq.* (“FCA”).

9 2. At all times relevant to this Complaint, Laidlaw Transit, Inc. and/or Laidlaw Transit Services,
10 Inc. (individually and collectively, “Laidlaw”) was in the business of providing transportation services
11 for school children enrolled in SFUSD under contracts with SFUSD.

12 3. Since at least May 11, 1997, Laidlaw has provided shoddy and unsafe buses to transport SFUSD
13 school children. Laidlaw has consistently failed to maintain the buses used for transporting those
14 children in “excellent mechanical condition”, and has maintained its records regarding the repair and
15 maintenance of the buses used for transporting those children in such a way that the records are
16 incomplete, inaccurate and contain falsified records for repairs or maintenance that was not actually
17 performed as indicated. These and other business practices of Laidlaw violate specific, material terms of
18 the contracts under which Laidlaw provides and has provided transportation services for SFUSD.
19 Despite these and other defalcations of material terms of the contracts, Laidlaw has consistently
20 presented monthly invoices demanding full payment for all services under the contract with knowledge
21 of, or reckless disregard for the lack of knowledge, that Laidlaw was not providing the services for
22 which they were under contract. As a result, schoolchildren within SFUSD have been transported on
23 buses that were unsafe, unhealthy, did not meet all federal, state and local safety standards, and were not
24 properly maintained and repaired as needed. In addition, Laidlaw deliberately destroyed, lost or
25 fabricated records regarding the maintenance and condition of those buses. SFUSD has suffered
26 substantial damages from this substandard service, which is well below the quality of service bargained
27 and paid for by SFUSD. To ELF’s knowledge, no child has been injured or killed due to Laidlaw’s
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1 failure to properly maintain its buses. Although, this is a matter of pure luck on Laidlaw's part.

2 4. The FCA provides that any person who knowingly submits a false or fraudulent claim to the
3 State for payment or approval is liable for a civil penalty of up to \$10,000 for each such claim, plus three
4 times the amount of the damages sustained by the State. Gov't Code § 12651(a)(1).

5 5. The FCA further provides that any person who knowingly submits a false record or statement to
6 get a false claim paid or approved is liable for a civil penalty of up to \$10,000 for each such claim, plus
7 three times the amount of the damages sustained by the State. Gov't Code § 12651(a)(2).

8 6. Under the FCA, submitting a periodic claim, invoice or demand for payment under a contract
9 with a public agency is a false or fraudulent claim within the meaning of the law if the services or goods
10 provided do not meet a material term of the contract with the public agency.

11 7. The FCA allows any person¹ having information regarding a false or fraudulent claim against the
12 State to bring an action on behalf of itself, himself or herself (the "qui tam plaintiff") and the State and
13 to share in any recovery. Gov't Code § 12652(c)(1). The Complaint must be filed under seal for at least
14 60 days (without service on the defendant during the period in which the complaint is under seal) to
15 enable the State to conduct its own investigation, without the defendant's knowledge, and to determine
16 whether to join the action. Gov't Code § 12652(c)(6).

17 8. Based on these provisions, the Qui Tam Plaintiffs seek to recover damages and civil penalties
18 arising from Laidlaw's presentation of false statements and claims to the State.

19 PARTIES

20 9. Qui tam plaintiff William Padilla is an individual. He worked for 19 years as a mechanic for
21 Laidlaw in its San Francisco bus yard, repairing and maintaining the buses used by Laidlaw to transport
22 schoolchildren under the contract with SFUSD. His job responsibilities included, *inter alia*, performing
23 inspections, conducting opacity tests and doing all major or minor repairs that a bus would need.

24 10. Qui tam plaintiff Manuel Contreras is an individual. He worked for 19 years as a mechanic for
25 Laidlaw in its San Francisco bus yard, repairing and maintaining the buses used by Laidlaw to transport
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28 1. A "person" is defined by the statute to include "any natural person, corporation, firm, association, organization, partnership, business or trust." Gov't Code § 12650(e).

1 schoolchildren under the contract with SFUSD. His job responsibilities included, *inter alia*, acting as
2 the Lead Man in the shop, a position analogous to foreman, periodically for approximately five or more
3 years; and he was also the union shop steward for roughly the last ten to twelve years of his employment
4 at Laidlaw.

5 11. Qui tam plaintiff ELF is a California nonprofit organization founded on Earth Day in 1991.
6 Among ELF's chief concerns is an enforcement program to protect the environment and public health,
7 and particularly to protect those with the least choice and greatest vulnerability to toxics and other risks:
8 children, inner city dwellers, and workers. ELF is dedicated to the preservation and enhancement of
9 human health and the environment.

10 12. On numerous occasions both individual qui tam plaintiffs, acting together and individually,
11 objected to, protested, and sought to amend Laidlaw's actions and business practices referenced herein,
12 all without success. Both individual qui tam plaintiffs were threatened with sanctions and termination if
13 they did not comply with orders and demands to engage in the actions and business practices objected to
14 and referenced herein. To the extent that either of these qui tam plaintiffs were involved, directly or
15 indirectly, by action or inaction, with the actions and business practices of Laidlaw referenced herein,
16 they did so over protest and objection, and against their will and under threat, real or implied of
17 sanctions – including termination – if they did not so act or refrain from acting.

18 13. Defendant Laidlaw Transit, Inc., doing business as Laidlaw Education Services, is or was, and at
19 all times pertinent hereto has been, a business entity involved in providing transit services for
20 schoolchildren for SFUSD. On information and belief, Qui Tam Plaintiffs allege that Laidlaw Transit,
21 Inc. is a Delaware corporation with its principal place of business located at 55 Shuman Boulevard,
22 #400, Naperville, Illinois 60563. Defendant Laidlaw Transit, Inc. maintains a corporation yard for some
23 or all of the buses used under the contract with SFUSD at 2270 Jerrold Avenue in the City and County
24 of San Francisco.

25 14. Defendant Laidlaw Transit Services, Inc. is or was, and at all times pertinent hereto has been, a
26 business entity involved in providing transit services for schoolchildren for the SFUSD. On information
27 and belief, ELF alleges that Laidlaw Transit Services, Inc. is a Delaware corporation with its principal
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1 place of business located at 5360 College Blvd., Suite 200, Overland Park, KS 66211. Defendant
2 Laidlaw Transit Services, Inc. does or has maintained a corporation yard for some or all of the buses
3 used under the contract with SFUSD at 2270 Jerrold Avenue in the City and County of San Francisco.
4 On information and belief, all of the school bus contracts, operations and equipment of Laidlaw Transit
5 Services, Inc. was acquired by Defendant Laidlaw Transit, Inc. during the operative period in this
6 complaint.

7 15. The true names and capacities of defendants sued herein under California Code of Civil
8 Procedure § 474 as DOE defendants 1 through 100, inclusive, are presently unknown to Plaintiffs, who
9 therefore sue these defendants by such fictitious names. Each of the fictitiously named Defendants is
10 responsible in some manner for the conduct alleged herein and for the injuries suffered by SFUSD.
11 Plaintiffs will seek to amend this Complaint and include these Doe defendants' true names and capacities
12 when they are ascertained.

13 16. Defendant Laidlaw Transit, Inc., Defendant Laidlaw Transit Services, Inc., Defendants DOES 1-
14 100 will collectively be referred to as "Laidlaw" or "Defendants", herein.

15 17. At all times relevant to this action, each Defendant was an agent or employee of each other
16 Defendant. In conducting the activities alleged in this Complaint, each Defendant was acting within the
17 course and scope of this agency or employment, and was acting with the consent, permission, and
18 authorization of each of the remaining Defendants. All actions of each Defendant alleged in this
19 Complaint were ratified and approved by every other Defendant or their officers or managing agents, and
20 by agreeing to actively conceal the true facts as alleged herein. Alternatively, Defendants aided,
21 conspired with and/or facilitated wrongful conduct of other Defendants.

22 JURISDICTION AND VENUE

23 18. This court has jurisdiction over all causes of action asserted herein pursuant to the California
24 Constitution, Article VI, Section 10, because this case is a cause not given by statute to other trial courts.

25 19. This court has jurisdiction over the Defendants named herein because each Defendant is a
26 corporation authorized to do business in California and does sufficient business, has sufficient minimum
27 contacts with California, or otherwise intentionally avails itself of the California markets through the
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1 operation of its school buses under contract with SFUSD, to render the exercise of jurisdiction by the
2 California courts permissible under traditional notions of fair play and substantial justice.

3 20. Venue is proper in this court because the Defendants have provided the transportation for the
4 school children, engaged in all the acts of commission and omission alleged herein in the City and
5 County of San Francisco, and have received substantial compensation for those services from SFUSD.

6 FACTUAL ALLEGATIONS

7 THE CONTRACT

8 21. At all material times herein Laidlaw provided transportation for school children under a series of
9 contracts with SFUSD. The current contract is a five year contract executed June 30, 2005 and effective
10 August 16, 2005 through August 15, 2010. Material terms of the current contract are reproduced below.
11 On information and belief, each predecessor contract had substantially similar if not identical material
12 terms. The contracts, including the current contract and its predecessors, will be referred to herein as
13 "The Contract," with citations to the current contract.

14 22. The material terms of The Contract include (all emphases are added):

15 a. Payment is made by SFUSD monthly "for services *satisfactorily performed* by the
16 Contractor after receipt of properly documented invoices." Art. 6.

17 b. "The contractor shall provide certified *school buses which meet all applicable regulations*
18 *and laws relating to pupil transportation in California*" as well as federal standards. "Minimum
19 standards for school buses as provided by the California Vehicle Code, California Administrative Code
20 and California Education Code. . .and any other applicable code or regulations." Art. 8(a).

21 c. "[A]ll buses shall be in excellent mechanical condition and appearance. . .and shall be
22 maintained in that condition at all times during the term of the contract. . .Vehicles which are deemed to
23 be unfit for providing the required service. . .shall be replaced by the Contractor with another vehicle. . ."
24 Art. 8(d).

25 d. The contractor is required to *maintain an extra ten percent of each type of bus as a spare*
26 *fleet* to ensure service in case any bus is unavailable or breaks down. Art. 8(e).

27 e. "Buses proposed for operation on this Contract *must meet or exceed the safety standards*
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1 *for school buses* as established in the Federal standards of 1977, as amended, and must meet the
2 standards set forth in the California Education Code and Title 5 of the California Code of Regulations.
3 ” Art. 8(f).

4 f. “All vehicles to be supplied for use under this contract must meet a 0.01 g/bhp-h (grams
5 per brake horsepower-hour) particulate matter emissions standard or be equipped with a California Air
6 Resources Board verified level-3 diesel emission control device. *Buses fueled by diesel must be supplied*
7 *with a closed crankcase emission control system.*” Art. 8(g). On information and belief, this term
8 appears only in the current contract and did not appear in predecessor contracts.

9 g. “The Contractor *shall not authorize overnight park-out of any vehicles utilized for the*
10 *transportation of pupils under this Contract* without the prior written permission of the School
11 Transportation Director.” Art. 10.

12 h. “The Contractor shall provide a complete and effective management and supervisory
13 complement necessary to perform the contract[. T]he complement will include but not [be] limited to the
14 following: Fleet Maintenance Supervisor. . . The supervisor shall establish and maintain a complete and
15 effective preventative maintenance program *with complete and accurate records on each vehicle.*” Art.
16 11(A)..

17 23. The contract also contains a clause for liquidated damages. “In addition, failure of the Contractor
18 to . . . properly equip buses as required by Item 5 of the bid sheet (B4 of 6) or as required by law will
19 result in an assessment of *liquidated damages of \$100.00 per day. . . per bus*, and continuing at said rate
20 for so long as Contractor fails to meet the requirements of the paragraph.” Art. 25(B)(4).

21 24. Each of the sections of The Contract quoted in paragraphs 22 and 23 are material terms of The
22 Contract with SFUSD.

23 25. As described below, Laidlaw has been in breach of one or more of these material terms
24 throughout the term of The Contract and at the time Laidlaw has presented invoices, claims or demands
25 for payment to SFUSD.

26 26. Laidlaw has known it has been in breach of one or more of these material terms or has acted in
27 reckless disregard as to whether it was in breach, each time that Laidlaw presented an invoice, claim or
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1 demand for payment to SFUSD.

2 27. Laidlaw has never disclosed to SFUSD that it has been in breach of any of these material terms
3 of The Contract.

4 BREACHES OF THE MATERIAL TERMS OF THE CONTRACT

5 28. Laidlaw maintained improper and incomplete record keeping on vehicles, so that important
6 maintenance records were often incapable of being located. In addition, as alleged below, Laidlaw
7 fabricated records regarding maintenance and repairs that did not reflect actual repairs, maintenance and
8 the condition of the buses. In addition, as alleged below, Laidlaw deliberately discarded records
9 received from others regarding the conditions of its buses and did not keep records of same in their files
10 with each bus, as required under contract.

11 29. To rectify loss of some parking space, Laidlaw engaged in "park outs" in which drivers would
12 take buses home for the evening. This violated The Contract and as a result both routine and needed
13 inspections and maintenance were delayed or rendered impossible.

14 30. A large number of buses from 2000 to 2005 had defective fuel vents that were never repaired,
15 resulting in leakages of fuel whenever the buses were filled, leaking fuel in the yard and throughout the
16 streets of San Francisco when driven. A fuel leak of any kind should have been grounds for immediate
17 removal of a bus from service.

18 31. Cracked exhaust pipes which allowed diesel exhaust into the passenger compartment were not
19 repaired, because Laidlaw refused to keep replacement parts in stock. These buses were improperly left
20 in service when they should have been removed from service.

21 32. At the specific demand of management, "opacity tests," which are required annually to measure
22 the level of diesel exhaust coming from the buses, were not performed properly, were routinely
23 manipulated or falsified, were performed so that buses which could not pass inspection were nonetheless
24 allowed to pass, and the machine used to perform the tests was not maintained or operated properly. In
25 addition, records of such tests must be kept, by law, for two years. Laidlaw either did not conduct the
26 opacity tests or it discarded the records of same during the two year period for many of its buses.

27 33. Opacity tests performed on all the buses in San Francisco in 2006 were all falsified. Based on a
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1 pattern and practice of being ordered repeatedly by management to falsify opacity results and make
2 excessively smoking buses, that would fail the test, pass anyway, qui tam plaintiff William Padilla
3 performed the 2006 opacity tests at a work bench, rather than placing the measuring device next to the
4 tailpipe of the buses to be tested. For each bus, Mr. Padilla used a piece of plastic to proxy for the
5 tailpipe exhaust and input those results as the opacity data. On some of these tests, he would smudge the
6 piece of plastic with a thumb print in order to produce varying results.

7 34. Letters received from the Bay Area Air Quality Management District under the "1-800-
8 EXHAUST" program that reported excessive diesel exhaust from specific buses are and were uniformly
9 discarded without any corrective action being taken or record of the report being maintained in the file
10 for the referenced bus. To the extent any action was taken, Laidlaw management ordered mechanics to
11 produce falsified opacity tests.

12 35. In the fall of 2003, qui tam plaintiff Contreras informed California Highway Patrol ("CHP") that
13 scores of vehicles were in service that should not have been. On information and belief, CHP
14 investigated and eventually pulled several of those buses out of service because they were in need of
15 immediate safety repairs.

16 36. Laidlaw falsified inspection and repair reports that were required for CHP. Laidlaw management
17 required mechanics to sign off on mandatory inspection reports that showed needed repairs, so that the
18 reports would show repairs had been made when they were not, and such buses would therefore remain
19 in service.

20 37. Required inspections were performed inadequately and by incompetent personnel, so that buses
21 with safety problems would remain in service. In at least one case a bus was allowed to remain in
22 service that had no brakes and a driver was injured.

23 38. Buses with problems and in need of significant repair, such as leaking fuel pumps, cracked
24 exhaust pipes or faulty brakes, were commonly left in service to transport school children until the
25 maintenance could be performed.

26 39. Laidlaw did not maintain a sufficient fleet or replacement buses to allow buses that needed
27 mandatory safety repairs to be pulled from service.

1 40. Mechanics were the only personnel at Laidlaw with the authority to take a bus out of service and
2 then, after repair or maintenance, certify it as for to return to service. However, Laidlaw management
3 would routinely override the mechanics' directives in order to keep buses in service, despite those buses
4 having serious health and safety issues, such as those needing brake work.

5 41. Laidlaw has and continues to supply buses which do not meet the requirements of paragraph 8g of
6 The Contract.

7 FIRST CAUSE OF ACTION

8 (California False Claims Act, Cal. Gov't Code §12651(a)(1))

9 42. Plaintiffs reallege and incorporate paragraphs 1 through 41 above as though fully set forth herein.

10 43. This is a claim for treble damages and penalties under the California False Claims Act.

11 44. By virtue of the acts described above, Laidlaw knowingly presented or caused to be presented to
12 an officer or employee of SFUSD false claims for payment or approval.

13 45. SFUSD was unaware of the falsity of the false claims presented for payment or approval.

14 46. As a result, SFUSD has been damaged in a substantial amount and Laidlaw is subject to
15 substantial penalties.

16 SECOND CAUSE OF ACTION

17 (California False Claims Act, Cal. Gov't Code §12651(a)(2))

18 47. Plaintiffs reallege and incorporate paragraphs 1 through 46 above as though fully set forth herein.

19 48. This is a claim for treble damages and penalties under the California False Claims Act.

20 49. By virtue of the acts described above, Laidlaw knowingly made, used, or caused to be made and
21 used, false records and statements to get false claims paid or approved by SFUSD.

22 50. SFUSD was unaware of the falsity of the records and statements made to get these false claims
23 paid or approved.

24 51. As a result, SFUSD has been damaged in a substantial amount and Laidlaw is subject to
25 substantial penalties.

26 DEMAND FOR JURY TRIAL

27 52. Plaintiffs demand a jury trial.

1 PRAYER FOR RELIEF

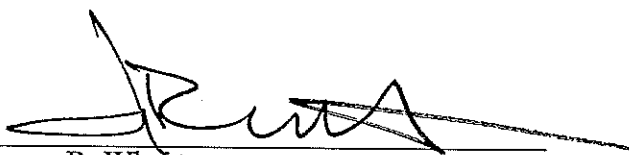
2 WHEREFORE,

3 Plaintiffs accordingly pray for the following relief:

- 4 1. An order directing Defendants to cease and desist from violating Cal. Gov't Code §12651;
- 5 2. Judgment against Defendants in an amount equal to three times the amount of damages
- 6 that SFUSD has sustained because of the conduct of Defendants;
- 7 3. Judgment against the Defendants for a civil penalty of \$10,000 for each violation of Cal.
- 8 Gov't Code §12651(a) by Defendants, consisting of each invoice, claim or demand for payment made
- 9 each month and at any other time under The Contract;
- 10 4. An award to Qui Tam Plaintiffs of the maximum amount allowed pursuant to Cal. Gov't
- 11 Code §12651(g);
- 12 5. Attorneys' fees, expenses, and costs of suit herein incurred; and
- 13 6. Such other and further relief as this Court deems just and proper.
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15 Dated: February 5, 2008

Respectfully submitted,

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19 James R. Wheaton
20 Attorneys for Qui Tam Plaintiffs William Padilla, Manuel
21 Contreras and Environmental Law Foundation
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