

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

_____	)	
Conservation Law Foundation, Inc.,	)	
	)	Case No. _____
Plaintiff,	)	
	)	<b>COMPLAINT FOR</b>
v.	)	<b>DECLARATORY AND INJUNCTIVE</b>
	)	<b>RELIEF AND CIVIL PENALTIES</b>
Wynn Resorts, Ltd., Wynn MA, LLC,	)	
Wynn Resorts Holdings, LLC, Wynn	)	
America Group, LLC, Wynn Resorts	)	
Finance, LLC, Academy Bus, LLC,	)	
Academy Express, LLC, DPV	)	
Transportation, Inc., Boston Charter	)	
Bus, LLC,	)	
	)	
Defendants.	)	(Clean Air Act, 42 U.S.C. §§ 7401, <i>et seq.</i> )
_____	)	

**INTRODUCTION**

1. This is a citizen enforcement suit brought by Plaintiff, Conservation Law Foundation, Inc. (“Plaintiff” or “CLF”), on behalf of its individual members, to redress and prevent Clean Air Act violations that negatively affect the health and lives of Massachusetts residents by repeatedly exposing them to harmful air pollutants.

2. Defendants Wynn Resorts, Ltd., Wynn MA, LLC, Wynn Resorts Holdings, LLC, Wynn America Group, LLC, and Wynn Resorts Finance, LLC (collectively, “Wynn Resorts”); Academy Bus, LLC and Academy Express, LLC (collectively “Academy” or “the Academy companies”); DPV Transportation, Inc. (“DPV”); and Boston Charter Bus, LLC (“BCB”) own, operate, manage, and/or oversee a fleet of vehicles that travel and are housed in and around the Commonwealth of Massachusetts.

3. Defendants have repeatedly violated, are violating, and continue to violate the Clean Air Act (“CAA” or “Act”) and the Massachusetts State Implementation Plan (“SIP”), specifically, the Massachusetts motor vehicle idling limits contained within the federally enforceable Massachusetts SIP.

4. Upon information and belief, Defendants have, on numerous occasions, caused, suffered, allowed, and/or permitted the idling of motor vehicles in excess of the five-minute time period allowed by 310 C.M.R. § 7.11(1)(b), and not in accordance with any exceptions listed in 310 C.M.R. § 7.11(1)(b)(1), (2), or (3).

5. Neither Wynn Resorts, Academy, DPV, nor BCB have taken actions sufficient to prevent future violations of the type alleged in this Complaint.

6. Absent an appropriate order from this Court, Defendants are likely to repeat their violations of the Act as described below. Plaintiff intends this action to encompass post-Complaint violations of the types alleged in the Complaint.

**THE CITIZEN SUIT PROVISION OF THE CLEAN AIR ACT**

7. Congress has declared that the purpose of the Clean Air Act is “to protect and enhance the quality of the Nation’s air resources so as to promote the public health and welfare and the productive capacity of its population.” 42 U.S.C. § 7401(b)(1).

8. In the “citizen suit” provision of the Act, Congress authorized any person to commence a civil action against any person who is alleged to have violated (if there is evidence that the alleged violation has been repeated) or to be in violation of an emission standard or limitation under the Act. 42 U.S.C. § 7604(a)(1).

9. The Act’s definition of an “emission standard or limitation” includes any standard or limitation established “under any applicable State implementation plan approved by the Administrator” (42 U.S.C. § 7604(f)(4)).

10. The Act directs each state or local air pollution control agency to develop a State Implementation Plan that describes how it will achieve and maintain compliance with National Ambient Air Quality Standards (“NAAQS”) set by the United States Environmental Protection Agency (“EPA”) to protect human health and the environment. 42 U.S.C. § 7407(a).

11. Standards or limitations established under any EPA-approved SIP are enforceable by citizens under the Act. 42 U.S.C. § 7604(f)(4).

12. The Commonwealth of Massachusetts has an EPA-approved SIP that includes regulation 310 C.M.R. § 7.11(1)(b) (the “Massachusetts idling regulation”), which prohibits the unnecessary operation of the engine of a motor vehicle while the vehicle is stopped for a period of time in excess of five minutes. 40 C.F.R. § 52; 37 Fed. Reg. 23,085.

13. In this action, Plaintiff alleges Wynn Resorts, Academy, DPV, and BCB have violated the Massachusetts idling regulation.

14. The Clean Air Act’s citizen suit provision provides the district courts of the United States with jurisdiction to “enforce” emission standards and limitations under the Act, and to impose an appropriate civil penalty on the violator of those emissions standards and limitations. 42 U.S.C. § 7604(a).

### **PARTIES**

#### **Conservation Law Foundation**

15. Plaintiff, Conservation Law Foundation (“CLF”), is a nonprofit, member-supported, regional organization dedicated to protecting New England’s environment.

16. CLF is incorporated under the laws of Massachusetts with a principal place of business at 62 Summer Street, Boston, MA 02110.
17. CLF has over 5,000 members, including 2,787 members in Massachusetts.
18. CLF's mission includes safeguarding the health and quality of life of New England communities facing the adverse effects of air pollution.
19. CLF's members include individuals who live and recreate near the locations where vehicles owned, operated, managed, and/or overseen by Wynn Resorts, Academy, DPV, and BCB idle in excess of five minutes.
20. The health, well-being, quality of life, and enjoyment of CLF members are harmed by Defendants' violations of the CAA.
21. "Person" in the CAA is defined to include "corporations." 42 U.S.C. § 7602(e). CLF is a corporation and thus a "person" under the CAA.

Wynn Resorts

22. Wynn Resorts, Ltd. is a corporation organized under the laws of the state of Nevada.
23. Wynn Resorts, Ltd. is headquartered at 3131 Las Vegas Boulevard South, Las Vegas, NV 89109.
24. Wynn Resorts, Ltd. does business within the Commonwealth of Massachusetts.
25. Wynn MA, LLC is a corporation organized under the laws of the state of Nevada.
26. Wynn MA, LLC is headquartered at 3131 Las Vegas Boulevard South, Las Vegas, NV 89109.
27. Wynn MA, LLC does business within the Commonwealth of Massachusetts.
28. Wynn Resorts Holdings, LLC is a corporation organized under the laws of the state of Nevada.

29. Wynn Resorts Holdings, LLC is headquartered at 3131 Las Vegas Boulevard South, Las Vegas, NV 89109.
30. Wynn Resorts Holdings or its subsidiaries do business within the Commonwealth of Massachusetts.
31. Wynn America Group, LLC is a corporation organized under the laws of the state of Nevada.
32. Wynn America Group, LLC is headquartered at 3131 Las Vegas Boulevard South, Las Vegas, NV 89109.
33. Wynn America Group, LLC or its subsidiaries do business within the Commonwealth of Massachusetts.
34. Wynn Resorts Finance, LLC is a corporation organized under the laws of the state of Nevada.
35. Wynn Resorts Finance, LLC is headquartered at 3131 Las Vegas Boulevard South, Las Vegas, NV 89109.
36. Wynn Resorts Finance or its subsidiaries do business within the Commonwealth of Massachusetts.
37. Encore Boston Harbor is a luxury resort and casino located at 1 Broadway, Everett, MA 02149.
38. Wynn Resorts, Ltd. is a publicly traded corporation that is a developer and operator of resort and casino properties, including Encore Boston Harbor.
39. Wynn MA, LLC, Wynn Resorts Holdings, LLC, Wynn America Group, LLC, and Wynn Resorts Finance, LLC are subsidiaries of Wynn Resorts, Ltd.

40. Some or all of Wynn Resorts, Ltd., Wynn MA, LLC, Wynn Resorts Holdings, LLC, Wynn America Group, LLC, and Wynn Resorts Finance, LLC own, operate, finance, contract on behalf of, and/or control operations at Encore Boston Harbor.

Academy

41. Academy Bus, LLC is a corporation organized under the laws of the state of New Jersey.

42. Academy Bus, LLC is headquartered at 111 Paterson Avenue, Hoboken, NJ 07030.

43. Academy Bus, LLC does business within the Commonwealth of Massachusetts.

44. Academy Bus, LLC is a bus company that provides local bus services, line-run services, and contract and charter service from Massachusetts to Florida, including between Boston, New York City, New Jersey, and Miami.

45. Academy Bus, LLC has three subsidiaries, one of which is Academy Express, LLC.

46. Academy Bus, LLC provides transportation services through its own buses, as well as through buses owned and/or operated by Academy Express, LLC.

47. Academy Express, LLC is a corporation organized under the laws of the state of New Jersey and is a subsidiary of Academy Bus, LLC.

48. Academy Express, LLC is headquartered at 111 Paterson Avenue, Hoboken, NJ 07030.

49. Academy Express, LLC does business within the Commonwealth of Massachusetts.

50. Academy Express, LLC operated a shuttle bus service which transported employees of Wynn Resorts to and from Encore Boston Harbor.

DPV

51. DPV Transportation, Inc. is a corporation organized under the laws of Massachusetts.

52. DPV is headquartered at 383 Second Street, Everett, MA 02149.

53. DPV does business within the Commonwealth of Massachusetts.

54. DPV Transportation, Inc. is a corporation that provides charter bus services and luxury ground transportation.

55. DPV provides shuttle service to and from Encore Boston Harbor for employees and customers of Wynn Resorts.

BCB

56. Boston Charter Bus, LLC is a corporation organized under the laws of Massachusetts.

57. BCB is headquartered at 383 Second Street, Everett, MA 02149.

58. BCB does business within the Commonwealth of Massachusetts.

59. Boston Charter Bus, LLC is a corporation that provides charter bus rentals and motor coach bus services across New England.

60. It provides bus service to and from Encore Boston Harbor for customers of Wynn Resorts.

Defendants Academy, DPV, and BCB

61. Upon information and belief, Wynn Resorts has contracts with Academy, DPV, and BCB.

62. Upon information and belief, Wynn Resorts contracts or has contracted with Academy, DPV, and BCB regarding how Academy, DPV, and BCB operate shuttles on behalf of Wynn Resorts.

63. Encore Boston Harbor's website advertises details of the shuttle operation by DPV and BCB, including the schedule and routes traveled by the shuttle buses and the Encore Boston Harbor logos printed on the buses.

64. Upon information and belief, Academy, DPV, and BCB are agents of Wynn Resorts.

65. Upon information and belief, Wynn Resorts knew or had reason to know that Academy, DPV, and BCB may idle their vehicles in the ordinary course of operating the Encore Boston Harbor shuttle bus services.

66. DPV and BCB provide a shuttle bus service to Wynn Resorts customers which is heavily advertised by Wynn Resorts under the Encore Boston Harbor name.

67. DPV and BCB use Encore Boston Harbor-branded buses to provide the shuttle bus service for Wynn Resorts customers.

68. Additional information from other sources not yet publicly available may reveal additional information regarding the business relationships between Wynn Resorts and Academy, DPV, BCB.

69. Defendants are all persons within the meaning of Section 302(e) of the CAA, 42 U.S.C. § 7602(e).

### **JURISDICTION, VENUE, AND NOTICE**

70. Subject matter jurisdiction is conferred upon this Court by 42 U.S.C. § 7604(a) (CAA citizen suit jurisdictional provision) and 28 U.S.C. § 1331 (federal question jurisdiction).

71. Venue lies in this District pursuant to 28 U.S.C. § 1391(e) (federal venue provision), because the vehicles owned, operated, managed, and/or overseen by Defendants were documented idling within this District.

72. Plaintiff gave Defendants notice of the violations alleged in this Complaint more than 60 days prior to commencement of this lawsuit by a letter (the "Notice Letter") mailed to: Matt Maddox, CEO of Wynn Resorts, Ltd., Wynn MA, LLC, Wynn Resorts Holdings, LLC, Wynn America Group, LLC and Wynn Resorts Finance, LLC; Roxane Peper, Registered Agent for



Wynn Resorts, Ltd., Wynn MA, LLC, Wynn Resorts Holdings, LLC, Wynn America Group, LLC, and Wynn Resorts Finance, LLC; C T Corporation System, Registered Agent for Wynn Resorts, Ltd., Wynn MA, LLC, and Everett Property, LLC; Francis Tedesco, President and Manager of Academy Bus, LLC and Academy Express, LLC; Michael J. Mazurczak, Registered Agent for Academy Express, LLC, and Daniel E. Perez, Present and Manager of DPV Transportation, Inc. and Boston Charter Bus, LLC. A copy of the Notice Letter is attached as Exhibit 1. The Notice Letter is incorporated by reference herein.

73. Defendants Wynn Resorts, DPV, and BCB received the Notice Letter. A copy of each return receipt is attached as Exhibit 2.

74. Copies of the Notice Letter were also mailed to the Administrator of EPA, the Regional Administrator of EPA for Region 1, the Massachusetts Department of Environmental Protection (MassDEP) Commissioner, and the EPA Citizen Suit Coordinator.

75. Each of the addressees identified in the preceding paragraph received the Notice Letter. A copy of each return receipt is attached as Exhibit 3.

76. The Notice Letter satisfies the pre-suit notice requirements of the CAA, pursuant to 42 U.S.C. § 7604(b).

77. Neither MassDEP nor EPA has commenced a civil action against Defendants in court to enforce vehicle anti-idling laws.

#### **STATUTORY AND REGULATORY BACKGROUND**

78. The provisions of the Commonwealth of Massachusetts idling regulation at 310 C.M.R. § 7.11(1)(b) are part of a federally enforceable SIP approved by EPA under section 110 of the CAA, 42 U.S.C. § 7410. 40 C.F.R. § 52; 37 Fed. Reg. 23,085.

79. The Massachusetts idling regulation at 310 C.M.R. § 7.11(1)(b) provides:

No person shall cause, suffer, allow, or permit the unnecessary operation of the engine of a motor vehicle while said vehicle is stopped for a foreseeable period of time in excess of five minutes. 310 CMR 17.11 shall not apply to:

1. vehicles being serviced, provided that operation of the engine is essential to the proper repair thereof, or
2. vehicles engaged in the delivery or acceptance of goods, wares, or merchandise for which engine assisted power is necessary and substitute alternate means cannot be made available, or
3. vehicles engaged in an operation for which the engine power is necessary for an associated power need other than movement and substitute alternate power means cannot be made available provided that such operation does not cause or contribute to a condition of air pollution.

80. As a federally enforceable SIP under section 113(b) of the Act, 42 U.S.C. § 7413(b), each separate violation of the Massachusetts idling regulation subjects the violator to a penalty of up to \$99,681 per day per violation for all CAA violations occurring after November 2, 2015, where penalties are assessed on or after February 6, 2019. 40 C.F.R. §§ 19.2, 19.4.

### **FACTUAL BACKGROUND**

81. Defendants own, operate, manage, and/or oversee shuttle buses that transport customers and employees to and from Encore Boston Harbor.

82. The vehicles owned, operated, managed, and/or overseen by Defendants make regular stops at multiple locations throughout the Commonwealth of Massachusetts.

83. Defendants employ diesel-fueled vehicles to transport individuals around the Commonwealth of Massachusetts.

84. Diesel-fueled vehicles emit diesel fuel exhaust including fine particulates, nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), benzene, formaldehyde, and forty other kinds of toxic air contaminants.

85. Fine particulates have been found to impair lung function, aggravate respiratory illnesses such as asthma, bronchitis, and emphysema, and are associated with premature deaths.
86. Exposure to  $\text{NO}_x$  can aggravate respiratory diseases, particularly asthma, leading to respiratory symptoms (such as coughing, wheezing or difficulty breathing).
87. Longer exposures to elevated concentrations of  $\text{NO}_x$  may contribute to the development of asthma and potentially increase susceptibility to respiratory infections.
88. People with asthma, as well as children and the elderly, are generally at greater risk for the health effects of  $\text{NO}_x$ .
89. Exposure to  $\text{SO}_2$  can cause respiratory illness, including aggravation of asthma, other adverse effects on breathing, and alterations in pulmonary defenses, as well as aggravation of existing cardiovascular disease.
90. Exposure to high levels of  $\text{SO}_2$  can cause chronic hypersensitivity to a wide range of respiratory irritant pollutants.
91. Children, the elderly, and people with asthma, cardiovascular disease, or chronic lung disease (such as bronchitis or emphysema) are particularly susceptible to the adverse effects of  $\text{SO}_2$ .
92. Benzene is a volatile organic compound (“VOC”) and is designated as a Hazardous Air Pollutant under the Act.
93. Benzene is a known human carcinogen. Benzene exposure can also cause neurological harm in humans and animals.
94. Exposure to formaldehyde can cause eye, nose, and throat irritation and can harm the nasal cavity.

95. Other effects seen from exposure to high levels of formaldehyde in humans are coughing, wheezing, chest pains, and bronchitis.

96. Longer exposures to elevated concentrations of formaldehyde have been associated with respiratory symptoms and eye, nose, and throat irritation.

97. EPA considers formaldehyde to be a probable human carcinogen (cancer-causing agent).

98. Defendants cause, suffer, allow, and/or permit the emission of fine particulates, nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), benzene, formaldehyde, and forty other kinds of toxic air contaminants into the atmosphere from the vehicles that they own, operate, manage, and/or oversee.

99. Non-diesel, non-electric buses, including ethanol, propane, and compressed natural gas buses, emit harmful air pollutants.

100. Defendants Wynn Resorts and DPV cause, suffer, allow, and/or permit the emission of fine particulates, nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), benzene, formaldehyde, and forty other kinds of toxic air contaminants into the atmosphere at the Encore Neighborhood Runner stop located adjacent to the Santander Bank at 148 Everett Ave, Chelsea, MA 02150 (“Neighborhood Runner stop”).

101. Chelsea High School, Joseph A. Browne School, Excel Academy Chelsea, Phoenix Charter Academy, St. Rose School, Clark Avenue School, and Eugene Wright School are within a half mile of the Neighborhood Runner stop.

102. Winnisimmet Park, Jacob Scharf Playground, Quigley Park, Bosson Playground, Malone Park, and Bellingham Hill Park are within approximately a half mile of the Neighborhood Runner stop.

103. According to the 2013-2017 American Community Survey (ACS) data, approximately 10,555 people live within two miles of the Neighborhood Runner stop.

104. The Neighborhood Runner stop is located within an Environmental Justice area where the annual median household income is equal to or less than 65 percent of the statewide median, at least 25 percent of residents identify as a race other than white, and more than 25 percent of households have no one over the age of 14 who speaks English only or very well, according to the Environmental Justice layer of the Massachusetts OnLine Viewer (OLIVER) created in part by the Massachusetts Bureau of Geographic Information (MassGIS) and available at [maps.massgis.state.ma.us/map\\_ol/ej.php](https://maps.massgis.state.ma.us/map_ol/ej.php).

105. Defendants Wynn Resorts, Academy, and DPV cause, suffer, allow, and/or permit the emission of fine particulates, nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), benzene, formaldehyde, and forty other kinds of toxic air contaminants into the atmosphere at the Wellington Orange Line Station located at Revere Beach Parkway, Medford, MA 02155 (“Wellington Orange Line Station” or “Wellington Station”).

106. According to the 2013-2017 American Community Survey (ACS) data, approximately 9,443 people live within two miles of the Wellington Orange Line Station.

107. The Wellington Orange Line Station is located within an Environmental Justice area where at least 25 percent of residents identify as a race other than white, according to the Environmental Justice layer of the Massachusetts OnLine Viewer (OLIVER) created in part by the Massachusetts Bureau of Geographic Information (MassGIS) and available at [maps.massgis.state.ma.us/map\\_ol/ej.php](https://maps.massgis.state.ma.us/map_ol/ej.php).

108. Defendants Wynn Resorts and BCB cause, suffer, allow, and/or permit the emission of fine particulates, nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), benzene, formaldehyde, and forty

other kinds of toxic air contaminants into the atmosphere on Mystic Street near the Encore Boston Harbor Resort located at One Broadway, Everett, MA 02149.

109. Pioneer Charter School of Science I Elementary, Sumner G. Whittier School, Adams School and Saint Anthony School are within a mile of Mystic Street in Everett, MA.

110. Sacramone Playground, Kearins Playground and Island End Park are within a mile of Mystic Street in Everett, MA.

111. Emmanuel Evangelical Church is within a mile of Mystic Street in Everett, MA.

112. According to the 2013-2017 American Community Survey (ACS) data, approximately 10,706 people live within two miles of Mystic Street in Everett, MA.

113. Mystic Street in Everett, MA is located within an Environmental Justice area where at least 25 percent of residents identify as a race other than white, according to the Environmental Justice layer of the Massachusetts OnLine ViewER (OLIVER) created in part by the Massachusetts Bureau of Geographic Information (MassGIS) and available at [maps.massgis.state.ma.us/map\\_ol/ej.php](http://maps.massgis.state.ma.us/map_ol/ej.php).

#### **DEFENDANTS' VIOLATIONS OF THE CLEAN AIR ACT**

114. On the dates listed below in separate paragraphs, an investigator observed vehicles owned, operated, managed, and/or overseen by Wynn Resorts and/or Academy idling in excess of five minutes for the following amounts of time:

<b>Paragraph Number</b>	<b>Date</b>	<b>Location of Vehicle</b>	<b>Idling Start Time</b>	<b>Idling End Time</b>	<b>Duration of Idling</b>	<b>Excess Idling</b>
115	9/27/2019	Wellington Station	10:22 AM	10:29 AM	7 min	2 min
116	9/27/2019	Wellington Station	11:03 AM	11:10 AM	7 min	2 min
117	9/27/2019	Wellington Station	11:14 AM	11:45 AM	31 min	26 min
118	9/27/2019	Wellington Station	11:47 AM	12:01 PM	14 min	9 min

119	9/27/2019	Wellington Station	12:02 PM	12:16 PM	14 min	9 min
120	9/27/2019	Wellington Station	12:22 PM	12:31 PM	9 min	4 min
121	10/2/2019	Wellington Station	8:46 AM	8:56 AM	10 min	5 min
122	10/2/2019	Wellington Station	10:22 AM	10:28 AM	6 min	1 min
123	10/2/2019	Wellington Station	11:03 AM	11:10 AM	7 min	2 min
124	10/2/2019	Wellington Station	11:32 AM	11:41 AM	9 min	4 min
125	10/2/2019	Wellington Station	12:36 PM	12:42 AM	6 min	1 min
126	10/3/2019	Wellington Station	8:24 AM	8:31 AM	7 min	2 min
127	10/3/2019	Wellington Station	9:01 AM	9:11 AM	10 min	5 min
128	10/3/2019	Wellington Station	9:14 AM	9:21 AM	7 min	2 min
129	10/3/2019	Wellington Station	10:31 AM	10:45 AM	14 min	9 min
130	10/3/2019	Wellington Station	10:46 AM	10:52 AM	6 min	1 min
131	10/3/2019	Wellington Station	11:05 AM	11:16 AM	11 min	6 min
132	10/3/2019	Wellington Station	11:16 AM	11:32 AM	16 min	11 min
133	10/3/2019	Wellington Station	11:32 AM	11:46 AM	14 min	9 min
134	10/3/2019	Wellington Station	11:46 AM	12:01 PM	15 min	10 min
135	10/3/2019	Wellington Station	12:14 PM	12:30 PM	16 min	11 min

136. On the dates listed below in separate paragraphs, an investigator observed vehicles owned, operated, managed, and/or overseen by Wynn Resorts and/or DPV idling in excess of five minutes for the following amounts of time:

Paragraph Number	Date	Location of Vehicle	Idling Start Time	Idling End Time	Duration of Idling	Excess Idling
137	9/5/19	Everett Neighborhood Runner Bus Stop	9:25 AM	9:32 AM	7 min	2 min

138	9/5/19	Everett Neighborhood Runner Bus Stop	10:39 AM	10:50 AM	11 min	6 min
139	9/5/19	Everett Neighborhood Runner Bus Stop	11:01 AM	11:10 AM	9 min	4 min
140	9/5/19	Everett Neighborhood Runner Bus Stop	11:41 AM	11:49 AM	8 min	3 min
141	9/5/19	Everett Neighborhood Runner Bus Stop	12:02 PM	12:12 PM	10 min	5 min
142	9/5/19	Everett Neighborhood Runner Bus Stop	12:44 PM	12:52 PM	8 min	3 min
143	9/25/19	Everett Neighborhood Runner Bus Stop	12:20 PM	12:30 PM	10 min	5 min
144	9/25/19	Everett Neighborhood Runner Bus Stop	1:03 PM	1:11 PM	8 min	3 min
145	9/25/19	Everett Neighborhood Runner Bus Stop	1:21 PM	1:31 PM	10 min	5 min
146	9/27/19	Wellington Station	10:22 AM	10:29 AM	7 min	2 min
147	9/27/19	Wellington Station	10:43 AM	10:51 AM	8 min	3 min
148	9/27/19	Wellington Station	10:53 AM	11:01 AM	8 min	3 min
149	9/27/19	Wellington Station	11:03 AM	11:10 AM	7 min	2 min
150	9/27/19	Wellington Station	11:14 AM	11:22 AM	8 min	3 min
151	9/27/19	Wellington Station	11:22 AM	11:30 AM	8 min	3 min
152	9/27/19	Wellington Station	11:31 AM	11:41 AM	10 min	5 min
153	9/27/19	Wellington Station	11:41 AM	11:51 AM	10 min	5 min
154	9/27/19	Wellington Station	11:51 AM	12:00 PM	9 min	4 min
155	9/27/19	Wellington Station	12:01 PM	12:07 PM	6 min	1 min
156	9/27/19	Wellington Station	12:13 PM	12:20 PM	7 min	2 min
157	9/27/19	Wellington Station	12:20 PM	12:32 PM	12 min	7 min



158	9/28/19	Everett Neighborhood Runner Bus Stop	4:44 PM	4:51 PM	7 min	2 min
159	9/28/19	Everett Neighborhood Runner Bus Stop	5:20 PM	5:29 PM	9 min	4 min
160	9/28/19	Everett Neighborhood Runner Bus Stop	5:42 PM	5:53 PM	11 min	6 min
161	10/1/19	Everett Neighborhood Runner Bus Stop	10:34 AM	10:45 AM	11 min	6 min
162	10/1/19	Everett Neighborhood Runner Bus Stop	11:34 AM	11:47 AM	13 min	8 min
163	10/1/19	Everett Neighborhood Runner Bus Stop	11:53 AM	12:05 PM	12 min	7 min
164	10/1/19	Everett Neighborhood Runner Bus Stop	12:40 AM	12:49 AM	9 min	4 min
165	10/2/19	Wellington Station	8:41 AM	8:50 AM	9 min	4 min
166	10/2/19	Wellington Station	8:50 AM	8:56 AM	6 min	1 min
167	10/2/19	Wellington Station	9:12 AM	9:23 AM	11 min	6 min
168	10/2/19	Wellington Station	9:33 AM	9:41 AM	8 min	3 min
169	10/2/19	Everett Neighborhood Runner Bus Stop	10:17 AM	10:30 AM	13 min	8 min
170	10/2/19	Wellington Station	10:22 AM	10:28 AM	6 min	1 min
171	10/2/19	Wellington Station	10:57 AM	11:10 AM	13 min	8 min
172	10/2/19	Everett Neighborhood Runner Bus Stop	11:01 AM	11:08 AM	7 min	2 min
173	10/2/19	Everett Neighborhood Runner Bus Stop	11:14 AM	11:29 AM	15 min	10 min
174	10/2/19	Wellington Station	11:32 AM	11:40 AM	8 min	3 min
175	10/2/19	Wellington Station	12:36 PM	12:42 PM	6 min	1 min
176	10/3/19	Wellington Station	8:24 AM	8:32 AM	8 min	3 min
177	10/3/19	Wellington Station	8:42 AM	8:57 AM	15 min	10 min

178	10/3/19	Wellington Station	9:01 AM	9:12 AM	11 min	6 min
179	10/3/19	Wellington Station	9:12 AM	9:21 AM	9 min	4 min
180	10/3/19	Wellington Station	9:41 AM	9:51 AM	10 min	5 min
181	10/3/19	Wellington Station	9:52 AM	10:02 AM	10 min	5 min
182	10/3/19	Wellington Station	10:02 AM	10:11 AM	9 min	4 min
183	10/3/19	Wellington Station	10:22 AM	10:31 AM	9 min	4 min
184	10/3/19	Wellington Station	10:31 AM	10:44 AM	13 min	8 min
185	10/3/19	Wellington Station	10:45 AM	10:51 AM	6 min	1 min
186	10/3/19	Wellington Station	11:05 AM	11:13 AM	8 min	3 min
187	10/3/19	Wellington Station	11:14 AM	11:21 AM	7 min	2 min
188	10/3/19	Wellington Station	11:22 AM	11:30 AM	8 min	3 min
189	10/3/19	Wellington Station	11:31 AM	11:40 AM	9 min	4 min
190	10/3/19	Wellington Station	11:41 AM	11:52 AM	11 min	6 min
191	10/3/19	Wellington Station	11:55 AM	12:01 PM	6 min	1 min
192	10/3/19	Wellington Station	12:03 PM	12:12 PM	9 min	4 min
193	10/3/19	Wellington Station	12:13 PM	12:20 PM	7 min	2 min
194	10/3/19	Wellington Station	12:21 PM	12:29 PM	8 min	3 min
195	10/4/19	Wellington Station	1:29 PM	3:05 PM	2 hr 36 min	151 min
196	10/5/19	Everett Neighborhood Runner Bus Stop	9:23 AM	9:29 AM	6 min	1 min
197	10/5/19	Everett Neighborhood Runner Bus Stop	9:33 AM	9:52 AM	19 min	14 min
198	10/5/19	Everett Neighborhood Runner Bus Stop	10:20 AM	10:29 AM	9 min	4 min
199	10/5/19	Everett Neighborhood Runner Bus Stop	10:43 AM	10:51 PM	8 min	3 min

200	10/5/19	Everett Neighborhood Runner Bus Stop	10:51 AM	11:09 AM	18 min	13 min
201	10/31/19	Wellington Station	8:36 AM	8:46 AM	10 min	5 min
202	10/31/19	Wellington Station	8:45 AM	8:53 AM	8 min	3 min
203	10/31/19	Wellington Station	8:47 AM	8:54 AM	7 min	2 min
204	10/31/19	Wellington Station	9:17 AM	9:31 AM	14 min	9 min
205	10/31/19	Wellington Station	9:17 AM	9:31 AM	14 min	9 min
206	10/31/19	Wellington Station	9:32 AM	9:46 AM	14 min	9 min
207	10/31/19	Wellington Station	9:32 AM	9:41 AM	9 min	4 min
208	10/31/19	Wellington Station	9:41 AM	10:01 AM	20 min	15 min
209	10/31/19	Wellington Station	9:47 AM	10:01 AM	14 min	9 min
210	10/31/19	Wellington Station	10:01 AM	10:16 AM	15 min	10 min
211	10/31/19	Wellington Station	10:01 AM	10:15 AM	14 min	9 min
212	10/31/19	Wellington Station	10:16 AM	10:31 AM	15 min	10 min
213	10/31/19	Wellington Station	10:24 AM	10:31 AM	7 min	2 min
214	10/31/19	Wellington Station	10:35 AM	10:42 AM	7 min	2 min
215	10/31/19	Wellington Station	10:38 AM	10:46 AM	8 min	3 min
216	10/31/19	Wellington Station	10:42 AM	10:52 AM	10 min	5 min
217	10/31/19	Wellington Station	10:56 AM	11:02 AM	6 min	1 min
218	10/31/19	Wellington Station	11:01 AM	11:11 AM	10 min	5 min
219	10/31/19	Wellington Station	11:13 AM	11:22 AM	9 min	4 min
220	10/31/19	Wellington Station	11:22 AM	11:31 AM	9 min	4 min
221	10/31/19	Wellington Station	11:45 AM	11:52 AM	7 min	2 min
222	10/31/19	Wellington Station	11:52 AM	12:01 PM	9 min	4 min
223	10/31/19	Wellington Station	11:54 AM	12:01 PM	7 min	2 min

224	10/31/19	Wellington Station	12:03 PM	12:12 PM	9 min	4 min
225	10/31/19	Wellington Station	12:09 PM	12:16 PM	7 min	2 min
226	10/31/19	Wellington Station	12:14 PM	12:33 PM	19 min	14 min
227	10/31/19	Wellington Station	12:25 PM	12:31 PM	6 min	1 min
228	10/31/19	Wellington Station	12:35 PM	12:42 PM	7 min	2 min
229	10/31/19	Wellington Station	12:42 PM	12:49 PM	7 min	2 min
230	10/31/19	Wellington Station	12:52 PM	1:00 PM	8 min	3 min
231	10/31/19	Wellington Station	12:55 PM	1:02 PM	7 min	2 min
232	10/31/19	Wellington Station	1:03 PM	1:12 PM	9 min	4 min
233	10/31/19	Wellington Station	1:13 PM	1:22 PM	9 min	4 min
234	10/31/19	Wellington Station	1:23 PM	1:30 PM	7 min	2 min
235	10/31/19	Wellington Station	1:25 PM	1:31 PM	6 min	1 min
236	10/31/19	Wellington Station	1:35 PM	1:41 PM	6 min	1 min
237	10/31/19	Wellington Station	1:39 PM	1:46 PM	7 min	2 min
238	10/31/19	Wellington Station	1:47 PM	1:53 PM	6 min	1 min
239	10/31/19	Wellington Station	1:47 PM	1:54 PM	7 min	2 min
240	10/31/19	Wellington Station	2:02 PM	2:13 PM	11 min	6 min
241	10/31/19	Wellington Station	2:10 PM	2:16 PM	6 min	1 min
242	10/31/19	Wellington Station	2:15 PM	2:22 PM	7 min	2 min
243	10/31/19	Wellington Station	2:22 PM	2:30 PM	8 min	3 min
244	10/31/19	Wellington Station	2:26 PM	2:32 PM	6 min	1 min
245	10/31/19	Wellington Station	2:31 PM	2:42 PM	11 min	6 min
246	10/31/19	Wellington Station	2:40 PM	2:46 PM	6 min	1 min
247	10/31/19	Wellington Station	2:42 PM	2:51 PM	9 min	4 min
248	10/31/19	Wellington Station	2:54 PM	3:01 PM	7 min	2 min

249	10/31/19	Wellington Station	3:10 PM	3:16 PM	6 min	1 min
250	10/31/19	Wellington Station	3:11 PM	3:22 PM	11 min	6 min
251	10/31/19	Wellington Station	3:23 PM	3:32 PM	9 min	4 min
252	10/31/19	Wellington Station	3:23 PM	3:32 PM	9 min	4 min
253	10/31/19	Wellington Station	3:33 PM	3:42 PM	9 min	4 min
254	10/31/19	Wellington Station	3:40 PM	3:46 PM	6 min	1 min
255	10/31/19	Wellington Station	3:42 PM	3:52 PM	10 min	5 min
256	10/31/19	Wellington Station	3:51 PM	4:01 PM	10 min	5 min
257	10/31/19	Wellington Station	4:02 PM	4:11 PM	9 min	4 min
258	10/31/19	Wellington Station	4:02 PM	4:16 PM	14 min	9 min
259	10/31/19	Wellington Station	4:14 PM	4:23 PM	9 min	4 min
260	10/31/19	Wellington Station	4:17 PM	4:31 PM	14 min	9 min
261	10/31/19	Wellington Station	4:24 PM	4:31 PM	7 min	2 min
262	11/11/19	Wellington Station	8:16 AM	8:30 AM	14 min	9 min
263	11/11/19	Wellington Station	8:30 AM	8:45 AM	15 min	10 min
264	11/11/19	Wellington Station	8:53 AM	9:00 AM	7 min	2 min
265	11/11/19	Wellington Station	9:16 AM	9:30 AM	14 min	9 min
266	11/11/19	Wellington Station	9:31 AM	9:45 AM	14 min	9 min
267	11/11/19	Wellington Station	10:08 AM	10:16 AM	8 min	3 min
268	11/11/19	Wellington Station	10:26 AM	10:33 AM	7 min	2 min
269	11/11/19	Wellington Station	10:53 AM	11:02 AM	9 min	4 min
270	11/11/19	Wellington Station	12:39 PM	12:46 PM	7 min	2 min
271	11/11/19	Wellington Station	12:50 PM	12:59 PM	9 min	4 min
272	11/11/19	Wellington Station	1:21 PM	1:30 PM	9 min	4 min
273	11/11/19	Wellington Station	1:35 PM	1:45 PM	10 min	5 min

274	11/11/19	Wellington Station	2:39 PM	2:45 PM	6 min	1 min
275	11/11/19	Wellington Station	2:52 PM	3:00 PM	8 min	3 min
276	11/11/19	Wellington Station	3:09 PM	3:15 PM	6 min	1 min
277	11/11/19	Wellington Station	3:25 PM	3:31 PM	6 min	1 min
278	11/11/19	Wellington Station	4:01 PM	4:15 PM	14 min	9 min
279	11/11/19	Wellington Station	2:41 PM	2:47 PM	6 min	1 min
280	11/16/19	Wellington Station	10:39 AM	10:46 AM	7 min	2 min
281	11/16/19	Wellington Station	1:40 PM	1:46 PM	6 min	1 min

282. On the dates listed below in separate paragraphs, a CLF investigator observed vehicles owned, operated, managed, and/or overseen by Wynn Resorts and/or BCB idling in excess of five minutes for the following amounts of time:

<b>Paragraph Number</b>	<b>Date</b>	<b>Location of Vehicle</b>	<b>Idling Start Time</b>	<b>Idling End Time</b>	<b>Duration of Idling</b>	<b>Excess Idling</b>
283	9/28/2019	Mystic Street	10:41 AM	10:58 AM	17 min	12 min
284	9/28/2019	Mystic Street	11:02 AM	11:28 AM	26 min	21 min
285	9/28/2019	Mystic Street	12:17 PM	12:27 PM	10 min	5 min
286	9/28/2019	Mystic Street	12:43 PM	12:52 PM	9 min	4 min
287	9/28/2019	Mystic Street	12:53 PM	1:23 PM	30 min	25 min
288	9/28/2019	Mystic Street	1:39 PM	1:57 PM	18 min	13 min
289	9/28/2019	Mystic Street	2:00 PM	2:23 PM	23 min	18 min
290	10/17/2019	Mystic Street	10:41 AM	11:03 AM	22 min	17 min
291	10/17/2019	Mystic Street	11:07 AM	11:17 min	10 min	5 min
292	10/17/2019	Mystic Street	11:17 AM	11:54 AM	37 min	32 min
293	10/18/2019	Mystic Street	10:47 AM	10:57 AM	10 min	5 min
294	10/18/2019	Mystic Street	11:16 AM	11:55 AM	39 min	34 min
295	10/18/2019	Mystic Street	12:07 PM	12:15 PM	8 min	3 min
296	10/18/2019	Mystic Street	12:20 PM	12:30 PM	10 min	5 min
297	10/19/2019	Mystic Street	11:03 AM	11:18 AM	15 min	10 min
298	10/19/2019	Mystic Street	12:09 PM	12:27 PM	18 min	13 min
299	10/19/2019	Mystic Street	12:55 PM	1:25 PM	30 min	25 min
300	10/19/2019	Mystic Street	3:07 PM	3:25 PM	18 min	13 min
301	10/19/2019	Mystic Street	3:59 PM	4:23 PM	24 min	19 min

302. Additional information from other sources not yet publicly may reveal additional violations.

**PLAINTIFF AND ITS MEMBERS ARE HARMED BY DEFENDANTS' CLEAN AIR ACT VIOLATIONS**

303. Plaintiff's members live near, rent or own property near, study and attend school, use transit, and/or spend time shopping, recreating, and conducting activities near the locations where vehicles owned, operated, managed, and/or overseen by Wynn Resorts, Academy Express, DPV, and BCB were observed idling.

304. Plaintiff's members reside in and around Boston, Massachusetts.

305. Plaintiff's members breathe the emissions and air pollutants which Defendants cause, suffer, allow, or permit to be emitted from vehicles they own, operate, manage and/or oversee.

306. Plaintiff's members can see air pollution coming from vehicles owned, operated, managed, and/or overseen by Defendants.

307. Plaintiff's members who live near and spend time at the parks, playgrounds, places of worship, cultural centers, transit stations, medical providers, and/or educational institutions near the locations where vehicles owned, operated, managed, and/or overseen by Defendants were observed idling have asthma, experience trouble breathing and suffer from other respiratory symptoms.

308. Plaintiff's members are reasonably concerned about inhaling carcinogens and other pollutants emitted by vehicles owned, operated, managed, and/or overseen by Defendants.

309. Plaintiff's members want to breathe as little air pollution from vehicles owned, operated, managed, and/or overseen by Defendants as possible.

310. Plaintiff's members are reasonably concerned that the emissions released from vehicles owned operated, managed, and/or overseen by Defendants have harmed, continue to

harm and threaten, and will harm and threaten their health, well-being, quality of life, and enjoyment, as well as that of their families.

311. The greater the exposure to particulate matter, nitrogen oxides, sulfur dioxide, benzene, and formaldehyde, and the higher the levels of exposure, the more health and well-being is compromised.

312. The actual and threatened harm to Plaintiff's members would be redressed by an injunction, civil penalty, and other relief that prevents or deters future violations of the Act by the Defendants, and that requires the Defendants to offset their pollution from these violations by reducing their pollution, or otherwise remediating harm that has already been caused to Plaintiff's members and their local communities.

### **CLAIM FOR RELIEF**

#### **Cause of Action: Violation of Massachusetts Idling Regulation**

313. Plaintiff incorporates the allegations contained in the above paragraphs as though fully set forth herein.

314. The Massachusetts idling regulation at 310 C.M.R. § 7.11(1)(b) prohibits “the unnecessary operation of the engine of a motor vehicle while said vehicle is stopped for a foreseeable period of time in excess of five minutes.”

315. A bus, including the shuttle buses at issue here, is defined as a “motor vehicle” under 310 C.M.R. § 7.00.

316. The Defendants caused, suffered, allowed, and/or permitted motor vehicles to operate unnecessarily while those vehicles were stopped for a foreseeable period of time in excess of five minutes. The operation of the engines of vehicles owned, operated, managed, and/or overseen by Defendants did not occur within any exceptions listed in 310 C.M.R. § 7.11(1)(b)(1), (2) or (3).



317. Therefore, the Defendants violated 310 C.M.R. § 7.11(1)(b), an applicable SIP provision, numerous times during September, October, and November of 2019.

318. Pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b), and 40 C.F.R. §§ 19.2, 19.4, Defendants are liable for a civil penalty of up to \$99,681 per day for each violation that occurred after November 2, 2015, where penalties are assessed on or after February 6, 2019.

**RELIEF REQUESTED**

319. Wherefore, Plaintiff respectfully requests that this Court grant the following relief:

(a) Declare Defendants to have violated and to be in violation of 310 C.M.R. § 7.11(1)(b) for causing, suffering, allowing and/or permitting motor vehicles to operate unnecessarily while those vehicles were stopped for a foreseeable period of time in excess of five minutes;

(b) Permanently enjoin the Defendants from causing, suffering, allowing, or permitting the idling of any motor vehicles in violation of 310 C.M.R. § 7.11(1)(b);

(c) Order Defendants to comply fully and immediately with 310 C.M.R. § 7.11(1)(b);

(d) Order Defendants to pay civil penalties of \$99,681 per day for each violation for all CAA violations that occurred after November 2, 2015 and that are assessed on or after February 6, 2019;

(e) Order Defendants to take appropriate actions to remedy harm caused by Defendants' noncompliance with the Clean Air Act;

(f) Award Plaintiff's costs (including reasonable investigative, attorney, witness, and consultant fees) as permitted by Section 304 (d) of the Clean Air Act, 42 U.S.C. § 7406(d); and

(g) Award any such other and further relief as the Court may deem appropriate.

Dated: January 8, 2020

CONSERVATION LAW FOUNDATION, INC.,

By its attorney,

/s/ Heather A. Govern

Heather A. Govern, Esq.

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