

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PENNSYLVANIA COACH LINES, INC.,

Civil Action No.:

Plaintiff,

JURY TRIAL DEMANDED

v.

STUDENT TRANSPORTATION OF
AMERICA, LLC,

Defendant.

BRIEF IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

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Pursuant to Federal Rule of Civil Procedure 65, Plaintiff Pennsylvania Coach Lines, Inc. (“PA Coach”), by and through its attorneys, Eckert Seamans Cherin & Mellott, LLC, files the within Brief in Support of Motion for Preliminary Injunction.

I. INTRODUCTION

PA Coach brings this action to prevent Defendant, Student Transportation of America, LLC (“STA”), from wrongfully interfering with PA Coach’s contractual relationships with its current and former employees and from gaining an unfair competitive advantage from that interference.

PA Coach, a school bus transportation provider, operates in a highly competitive industry in which transportation companies vie for a limited pool of qualified drivers to fulfill the companies’ contracts with school districts. Because of the investments PA Coach makes in recruiting and retaining its drivers (the “Drivers”), and the irreparable harm that would befall PA Coach’s relationships with its school district clients if the Drivers absconded to a competitor, the Drivers signed a Retention Bonus and Non-Compete Agreement (the “Agreement”) containing certain reasonable post-employment restrictions.

PA Coach recently has come to learn that STA, a direct competitor of PA Coach, knowingly and intentionally induced several of PA Coach’s Drivers to leave their employment with PA Coach to provide school transportation for STA in direct violation of their Agreements (the “Solicited Drivers”). STA was fully aware of the Agreements before it solicited the Drivers. PA Coach also reminded STA of the Agreements after the solicitation and warned STA that it would pursue legal action if STA continued meddling with PA Coach’s relationships with its Drivers. Despite these efforts, STA continues to poach Drivers in violation of their Agreements, creating grave harm to PA Coach’s business, reputation, and good will. The loss of in-demand

and difficult-to-replace employees and the investments PA Coach made to in them, along with the damage to its relationships with the school districts PA Coach serves, creates substantial risk of irreparable harm that PA Coach cannot ignore.

II. PROCEDURAL HISTORY

On July 30, 2020 PA Coach filed a Verified Complaint against STA, which is incorporated herein by reference herein. In this action, PA Coach requests equitable relief and damages as a result of (1) STA's intentional interference with PA Coach's contractual obligations with its school bus drivers; and (2) the unfair competition STA perpetrates through that intentional interference.

III. FACTUAL BACKGROUND

A. PA Coach's Role in the School Transportation Industry

PA Coach provides school bus transportation for Pennsylvania school districts and their students, presently serving over 22 school districts in the Western Pennsylvania region. The school bus transportation industry is highly competitive, with transportation companies like PA Coach and STA vying for qualified drivers and profitable transportation contracts with school districts.

PA Coach has struggled in recent years to find individuals with a Commercial Driver's License ("CDL") who are qualified, willing, and able to work as a school bus driver for PA Coach's school district clients. There is a nationwide shortage of CDL drivers which is particularly prevalent in Western Pennsylvania where CDL drivers can earn significantly more money driving for an oil and gas company rather than a school district.

To combat this shortage, PA Coach offers its own CDL classes to help identify and train new drivers, employing several individuals for the sole purpose of soliciting, training, and testing driver candidates. The classes cost PA Coach thousands of dollars and take on average six weeks to complete. PA Coach spends tens of thousands of dollars per year on advertising its classes and

soliciting drivers through various means, including billboards, flyers, advertisements, and direct mailings. In addition to the monetary investment in helping its prospective drivers obtain a CDL, PA Coach also invests a significant amount of time tutoring and preparing its prospective drivers in obtaining a CDL.

Further depleting the potential driver pool, COVID-19 has caused many drivers who are over the age of 60 or who have health related concerns, to retire or leave their bus driving job for fear of getting sick. This has made it even more difficult to recruit and keep drivers. Also, for the 2020/2021 school year, there are strong indications that most school districts will be required to reduce the number of students carried per bus. This will likely require more buses and more drivers to service the same districts.

PA Coach utilizes proprietary technology in creating its bus routes and plans so as to maximize the number of routes it can cover for school districts using a minimal number of drivers. PA Coach's bus drivers have knowledge of certain facets of the aforementioned proprietary technology, including, but not limited to the routes that result from such proprietary technology.

B. PA Coach's Agreements with its Drivers

Because of its investment in finding and training drivers in light of the nationwide shortage, in addition to the harm that befalls PA Coach (and the school districts with which it contracts) when drivers separate from employment, PA Coach takes steps to retain its drivers and protect its investments in them.

In June 2019, given the decreasing availability of qualified drivers and the routes PA Coach had to cover for its school district clients, PA Coach offered each of the drivers based out of its Elizabeth, PA terminal a Retention Bonus and Non-Compete Agreement. See **Exhibit 1** to the Verified Complaint.

In June and July 2019, approximately 27 drivers based out of the Elizabeth, PA terminal signed the Agreement. Six (6) of these drivers were assigned to cover PA Coach's school bus routes for the Elizabeth Forward School District ("EFSD") located at 401 Rock Run Road, Elizabeth, Pennsylvania 15037 (the "EFSD Drivers").

In exchange for signing the Agreement and continuing to remain employed, the drivers each received a cash bonus of \$1,500.00 upon signing and the opportunity to earn a separate \$1,000.00 bonus if the Driver remained in good standing six (6) months after signing the Agreement. See Exhibit 1. The EFSD Drivers continued to remain employed by PA Coach and received both installments of the retention bonus.

The Agreement contained the following non-competition provision:

Non-Compete. As an employee of the Company, you will have access to the Company's confidential information, including its client relationships, and you will receive specialized training for your job. The Company seeks to protect its investments and interests in this regard. In exchange for the Company offering you the retention bonus and other valuable consideration, you agree that during your employment by the Company and for one (1) year after your employment has ended, you will not work as a school bus driver or school van driver (either as an employee, contractor, or otherwise) for any person or entity (including, for example, charter bus service companies or school districts) within a twenty-five (25)-mile radius of the Company's headquarters at 700 McKeesport Road, Elizabeth, PA 15037.

See Exhibit 1.

The Agreement further provided that:

You agree that if you leave the employ of the Company, you will provide a copy of this Agreement to your new employer at the outset of your employment, and you agree that the Company shall have the right to notify your new employer of same. You further agree that your breach or threatened breach of this non-compete provision will cause the Company irreparable harm, and the Company will be entitled to seek equitable relief, among other relief, for any such breach. If any provision of this non-compete obligation is deemed

to be invalid or unenforceable, the parties agree that a court may amend the provision for the protection of the Company to the extent necessary to make this non-compete obligation enforceable. Also, if you violate the terms of this non-compete, the restriction will be automatically extended by the period in which you were in violation.

See Exhibit 1.

C. STA's Wrongful Interference with the Agreements

STA, a direct competitor of PA Coach, has replaced PA Coach as the student transportation provider for EFSD and will commence transporting EFSD students for the 2020-2021 school year, if not sooner. However, even if STA replaces PA Coach as the student transportation provider for EFSD, PA Coach has other contracts with school districts and other work for the EFSD Drivers to perform. For example, PA Coach would likely assign the EFSD Drivers to cover routes for Pittsburgh Public Schools, which is critically short on bus service.

STA has solicited, and continues to solicit, PA Coach's drivers, including the EFSD Drivers and other drivers who signed the Agreement (i.e., the Solicited Drivers), to leave their employment with PA Coach and drive buses for EFSD under STA's new agreement with EFSD. PA Coach understands that, on July 1, 2020, the Solicited Drivers commenced employment with STA as a driver driving a school bus and/or school van to provide transportation to EFSD students on or before the start of the 2020-2021 school year.

EFSD is located within a 25-mile radius of PA Coach's headquarters, and the Solicited Drivers' employment by STA has occurred and is occurring within one (1) year following the Solicited Drivers' separation of employment from PA Coach. Rather than invest the time and money in finding its own qualified drivers, STA has stolen PA Coach's drivers, knowing that to do so was wrongful and would interfere with PA Coach's rights under the Agreements.

On June 23, 2020, after learning of Solicited Drivers' breach or threatened breach of the Agreement, PA Coach, through counsel, sent letters to the Solicited Drivers reminding Solicited Drivers of their obligations in the Agreement. On June 23, 2020, PA Coach also sent a letter, through counsel, to STA, advising STA of the existence of the Solicited Drivers' respective Agreements, including the restrictive covenants contained therein, and warning STA that PA Coach would take action if STA solicited, hired, and/or retained drivers in violation of their Agreements. See **Exhibit 2** to the Verified Complaint. PA Coach, through counsel, re-sent a copy of this letter to STA on June 26, 2020 which included as an attachment a copy of the Agreement. See **Exhibit 3** to the Verified Complaint. The June correspondence was the second time PA Coach had occasion to warn STA of the Agreements, having done so previously on September 19, 2019 in connection with another attempt by STA to poach PA Coach's drivers. See **Exhibit 4** to the Verified Complaint.

Despite multiple warnings to STA, STA continues to solicit PA Coach drivers to breach their Agreements, and STA continues to employ the Solicited Drivers, in violation of the Agreement. As a result of these actions, PA Coach is at risk of losing the investments it made to find, train, and retain the Solicited Drivers and its other drivers. PA Coach is also at risk of harming its relationships — contractual and otherwise — with other school districts and entities for whom it provides transportation services if it cannot provide drivers to cover those routes. Unless STA's unlawful conduct is enjoined, PA Coach will suffer irreparable harm and injury that cannot be compensated by damages.

IV. LEGAL STANDARD

Federal Rule of Civil Procedure 65 provides the basis for the preliminary injunction requested herein. *Sys. Operations, Inc. v. Sci. Games Dev., Co.*, 555 F.2d 1131, 1141 (3d Cir.

1977) (“Although the right upon which this cause of action is based is state-created, Rule 65(a) of the Federal Rules of Civil Procedure contemplates a federal standard as governing requests addressed to federal courts for preliminary injunctions”); *Instant Air Freight Co. v. C.F. Air Freight, Inc.*, 882 F.2d 797, 799 (3d Cir. 1989) (same).

A preliminary injunction is available to remedy a wrong where the moving party shows the “*Continental* factors”: “1) irreparable injury, 2) a reasonable probability of success on the merits, 3) the harm to it outweighs the possible harm to the other interested parties, and 4) harm to the public.” *Frank Russell Co. v. Wellington Mgmt. Co.*, 154 F.3d 97, 101 (3d Cir. 1998) (citing *Continental Grp., Inc. v. Amoco Chem. Corp.*, 614 F.2d 351, 356–57 (3d Cir. 1980)). “A court then balances these four *Continental* factors to determine if an injunction should issue” *Id.* Where each of the factors tips in the movants’ favor, the injunction should be granted. *Ferring Pharm., Inc. v. Watson Pharm., Inc.*, 765 F.2d 205, 210 (3d Cir. 2014).

V. ARGUMENT

As described below, PA Coach meets each of the elements required for issuance of a preliminary injunction against STA. PA Coach will first address the second of the *Continental* factors—the reasonable probability of success on the merits—followed by a discussion of the other elements.

A. PA Coach will prevail on the merits of its tortious interference and unfair competition claims against STA.

To warrant a preliminary injunction, the movant needs to show only *prima facie* case; the law does not “require that the right to a final decision after trial be ‘wholly without doubt’; the movant need only show a ‘reasonably probability’ of success.” *Issa v. Sch. Dist. of Lancaster*, 847 F.3d 121, 131 (3d Cir. 2017) (quoting *Punnett v. Carter*, 621 F.2d 578, 583 (3d Cir. 1980)); *Highmark, Inc. v. UPMC Health Plan, Inc.*, 276 F.3d 160, 173 (3d Cir. 2001).

1. PA Coach will prevail on its intentional interference claim against STA.

As to tortious interference with a contractual relationship,¹ Pennsylvania has adopted the Second Restatement of Torts, which provides:

One who intentionally and improperly interferes with the performance of a contract (except a contract to marry) between another and a third person by inducing or otherwise causing a third party not to perform the contract, is subject to liability to the other for the pecuniary loss resulting to the other from the failure of the third person to perform the contract.

Restatement (Second) of Torts § 766 (adopted by *Adler, Barish, Daniels, Levin and Creskoff v. Epstein, et al.*, 393 A.2d 1175 (1978)); *Mason v. Range Resources-Appalachia, LLC*, 2012 WL 2116969, at *4 (W.D. Pa. May 9, 2012); *Keefer v. Durkos*, 371 F.Supp.2d 686 (W.D. Pa. 2005).

In accordance with Pennsylvania's adoption of Section 766, the Third Circuit has stated that:

Under Pennsylvania law, the elements of a cause of action for intentional interference with a contractual relation, whether existing or prospective are:

(1) the existence of a contractual, or prospective contractual relation between the complainant and a third party; (2) purposeful action on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of privilege or justification on the part of the defendant, specifically intended to harm the existing relation, or to prevent a prospective relation from occurring; (3) the absence of privilege or justification on the part of the defendant; and (4) the occasioning of actual legal damage as a result of defendant's conduct.

Crivelli v. Gen. Motors Corp., 215 F.3d 386, 394 (3d Cir. 2000) (citing *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. Ct. 1997)); *CGB Occupational Therapy, Inc. v. RHA Health Servs., Inc.*, 357 F.3d 375, 384 (3d Cir. 2004).

¹ PA Coach uses "tortious interference" and "intentional interference" interchangeably throughout this brief.

Pennsylvania courts look to Restatement Section 767 to decide whether interfering conduct is improper:

In determining whether an actor's conduct in intentionally interfering with a contract or a prospective contractual relation of another is improper or not, consideration is given to the following factors: (a) the nature of the actor's conduct, (b) the actor's motive, (c) the interests of the other with which the actor's conduct interferes, (d) the interests in protecting the freedom of contract of the actor and the contractual interests of the other, (e) the social interests in protecting the freedom of action of the actor and the contractual interests of the other, (f) the proximity or remoteness of the actor's conduct to the interference, and (g) the relations between the parties.

Restatement (Second) of Torts § 767; *Windsor Secs., Inc. v. Hartford Life Ins. Co.*, 986 F.2d 655, 662 (3d Cir. 1993). “The nature of the actor's conduct is a chief factor in determining whether the conduct is improper or not, despite its harm to the other person.” Restatement (Second) of Torts § 767, cmt. c; *Windsor Secs.*, 986 F.2d at 663. In assessing the impropriety of interference, “[r]ecognized standards of business ethics and business customs and practices are pertinent, and consideration is given to concepts of fairly play and whether the defendant's interference is not sanctioned by the rules of the game.” Restatement (Second) of Torts § 767, cmt. j.; *see also Franklin Music Co. v. Am. Broad. Cos., Inc.*, 616 F.2d 528, 542 (3d Cir. 1979); Restatement (Second) of Torts § 767 cmt. j; *Phillips v. Selig*, 959 A.2d 420, (Pa. Super. Ct. 2008) (“The systematic inducing of employees to leave their present employment to take work with another is unlawful when the purpose of such enticement is to cripple and destroy an integral part of a competitive business organization[.]” *Franklin Music Co.*, 616 F.2d. at 542.

Here, PA Coach's Verified Complaint sets forth a *prima facie* case of intentional interference, and PA Coach is likely to succeed on this claim. PA Coach had an Agreement, including a non-competition clause, with each of the Solicited Drivers. PA Coach entered into

these Agreements as an express manifestation of its intent to avoid the foreseeable harm to PA Coach that stems from its competitors poaching its Drivers—the exact harm at issue in this case. With actual knowledge of the existence and terms of the Solicited Drivers’ Agreements, STA violated the “rules of the game” when it poached the Solicited Drivers from PA Coach, with the intent to deprive PA Coach of the Solicited Drivers’ services to injure a competitor’s business. *See* Restatement (Second) of Torts § 767, cmt. j. As a competitor in the difficult school transportation industry, STA was well aware of the damage it would do to PA Coach by stealing a portion of its workforce and causing a breach of the Agreements. STA lacked a legally cognizable privilege or justification for interfering with PA Coach’s contractual relationships with the Solicited Drivers. In fact, PA Coach several times warned STA of its wrongful conduct and demanded it stop. *See* Exhibits 2-4 of the Verified Complaint.

Furthermore, and as described further in Section V.B., PA Coach has suffered, and continues to suffer, substantial damage as a result of STA’s interference. This includes but is not limited to disruption of its bussing services, loss of employees in whom PA Coach has invested significant resources, and diminished good will and reputational standing in the community. *See Reading Radio, Inc. v. Fink*, 833 A.2d 199, 211 (Pa. Super. Ct. 2003); *Strickland v. Univ. of Scranton*, 700 A.2d 979, 985 (Pa. Super. Ct. 1997). This harm is significant and cannot be remedied by monetary damages.

2. PA Coach will succeed on its unfair competition claim against STA.

Similarly, PA Coach has set forth a *prima facie* case against STA for common law unfair competition. Pennsylvania state and federal courts have recognized the civil cause of action for common law unfair competition as set forth by the Restatement (Third) of Unfair Competition as follows:

One who causes harm to the commercial relations of another by engaging in a business or trade is not subject to liability to the other for such harm unless: (a) the harm results from acts or practices of the actor actionable by the other under the rules of this Restatement relating to: (1) deceptive marketing, as specified in Chapter Two; (2) infringement of trademarks and other indicia of identification, as specified in Chapter Three; (3) **appropriation of intangible trade values** including trade secrets and the right of publicity, as specified in Chapter Four; **or from other acts or practice of the actor determined to be actionable as an unfair method of competition**, taking into account the nature of the conduct and its likely effect on both the person seeking relief and the public[.]

Restatement (Third) of Competition § 1(a) (emphasis added); *see, e.g., Pharmerica Corp. v. Sturgeon*, 2:16-cv-1481, 2018 U.S. Dist. LEXIS 43236, at *26 (W.D. Pa. Mar. 16, 2018) (“Although no Pennsylvania appellate court has formally recognized the common law tort of unfair competition, several lower state courts have, relying on the Restatement (Third) of Unfair Competition § 1 to define its elements [and] . . . [t]he Third Circuit has predicted that the Pennsylvania Supreme Court would adopt the Restatement.” (internal citations omitted)); *see also Ilapak, Inc. v. Young*, No. 5:20-cv-01877, 2020 U.S. Dist. LEXIS 94550, at *11 (E.D. Pa. May 29, 2020); *Med. Diagnostic Labs., LLC v. Indep. Blue Cross*, Civil Action No. 16-5855, 2018 U.S. Dist. LEXIS 173676, at *12–13 (E.D. Pa. Oct. 9, 2018); *NSI Nursing Sols., Inc. v. Volume Recruitment Servs., LLC*, Civil Action No. 17-1613, 2018 U.S. Dist. LEXIS 101274, at *10–11 (E.D. Pa. June 18, 2018); *Warfield Phila., L.P. v. Trs. of the Univ. of Pa.*, No. 00154 Commerce Program, 2012 Phila. Ct. Com. Pl. LEXIS 108, at *17–19 (Mar. 30, 2012).

In Pennsylvania, “the doctrine of unfair competition provides the legal basis for business competitors to insist on fair play in the market in which they are involved.” *Lakeview Ambulance and Med. Servs., Inc. v. Gold Cross Ambulance and Med. Servs. Inc.*, No. 1994-2166, 1995 WL 84200, at *1–2 (Pa. C.P. Mercer Oct. 18, 1995). Further, an “important function” of unfair competition laws is to curtail the circumstances under which an entity can appropriate another’s

“intangible business assets created through investment of time, money or effort.” Restatement (Third) of Unfair Competition § (1)(a) cmt. f. The law recognizes the need to protect intangible business assets from appropriation “in order to insure adequate incentive for investment of resources necessary to produce such assets” and to prevent “the perceived unjust enrichment resulting from an appropriation of the fruits of another’s investment.” *Id.* A claim of unfair competition is appropriate “where there is evidence of, among other things . . . tortious interference with contract [and] improper inducement of another’s employees[.]” *Ilapak*, 2020 U.S. Dist. LEXIS 94550, at *11. To be sure, luring former employees of a competitor can rise to the level of actionable unfair competition “when the purpose of such enticement is to cripple and destroy an integral part of a competitive business organization . . .” *See e.g., Albee Homes, Inc. v. Caddie Homes, Inc.*, 207 A.2d 768, 771 (Pa. 1965).

PA Coach has established a *prima facie* case for common law unfair competition. Here, STA intentionally poached its direct competitor’s Drivers knowing full well that those Solicited Drivers were still subject to their respective Agreements, including the non-competition provision, that would prevent them from providing bussing services for STA or anyone else within the restricted area, including EFSD. Rather than recruiting, training, and licensing its own drivers, STA sought to capitalize on PA Coach’s extensive investments in its Drivers, necessarily depriving PA Coach of its expected benefit of those investments—a sufficient workforce to provide bussing services to PA Coach’s clients. By subverting PA Coach’s trained Drivers, STA not only obtained a leg up by employing CDL drivers, of which there is a shortage, STA also deprived PA Coach of the specific Solicited Drivers in violation of the Agreements for its own competitive advantage.

B. A preliminary injunction is necessary to prevent immediate and irreparable harm to PA Coach that cannot be compensated adequately by money damages.

PA Coach will be irreparably harmed without the requested injunction and such harm is not compensable by monetary damages. “[G]rounds for irreparable injury include ‘loss of control of reputation, loss of trade, and loss of good will.’” *Grant Heilman Photography, Inc. v. John Wiley & Sons, Inc.*, 864 F.Supp.2d 316, 325 (Mar. 30, 2012) (quoting *Kos Pharms., Inc. v. Andrx Corp.*, 369 F.3d 700, 726 (3d Cir. 2011)). In addition, “[h]aving to compete against the significant investment that [an employer] made in [an employee] and that it contracted to protect in a restrictive covenant is irreparable harm.” *NextGen Healthcare Info. Sys., Inc. v. Messier*, 2005 WL 3021095, at *13 (E.D. Pa. 2005).

STA’s actions have undermined PA Coach’s ability to fulfill its contracts with school districts and created irreparable harm to PA Coach’s business relationships. Given the multi-year, multi-million dollar nature of the transportation contracts at issue, PA Coach’s inability to perform the work required by its agreements due to unavailability of drivers would and will wreak havoc on its business. This is especially poignant given the anticipated capacity limitations on buses caused by COVID-19. PA Coach is already navigating unfavorable market conditions and the effects of a pandemic. Unbridled, wrongful interference by a competitor would cripple its ability to serve its school district clients—the lifeblood of its business.

Apart from the irreparable harm to its school district client relationships, STA’s wrongful interference has caused PA Coach to lose the time and cost invested in training, recertifying, and testing drivers to ensure their CDL license is maintained and they are in good standing to drive a school bus. The nature of school bus drivers’ qualification requirements, and the time it takes to obtain those qualifications, makes such drivers difficult to replace. *See* PennDOT Driver & Vehicle Services webpage, <https://www.dmv.pa.gov/Driver-Services/School-Bus->

Drivers/Pages/How-to-become-a-school-bus-driver-in-pa.aspx (listing steps and requirements to become a school bus driver). PA Coach cannot merely recruit replacements from neighboring states because the licensure is state-specific. STA's actions have, in effect, forced PA Coach to compete against its former employees with whom it had, and still has, contractual relationships and in whom it made significant investments. *See NextGen*, 2005 WL 3021095, at *13 (E.D. Pa. 2005).

Finally, the irreparable harm caused by STA is not limited to PA Coach. The nature of the work performed by PA Coach and its drivers cannot be ignored. PA Coach has work available for its drivers, and needs the Solicited Drivers, to transport children during the 2020–2021 school year—which in some districts is just over one month away. Specifically, the EFSD Drivers would likely be assigned to transport Pittsburgh Public Schools' students, absent STA's unlawful actions. If PA Coach cannot find replacement drivers in this already difficult job market prior to the start of the school year, the ultimate result will be that children do not get to school. Given the cost, time, and other difficulty involved in finding replacement CDL drivers at this late stage—as evidenced by the investments PA Coach makes in recruiting and retaining its drivers—PA Coach will struggle to transport children to school if competitors like STA poach its drivers, robbing PA Coach of the investments it made in its workforce.

C. Greater injury would result from refusing the injunction than from granting it.

The balance of hardships analysis “assesses the relative effect of granting or denying an injunction on the parties.” *Carnegie Mellon Univ. v. Marvell Tech. Grp., Ltd.*, Civil Action No. 09-290, 2014 U.S. Dist. LEXIS 43042, at * (W.D. Pa. Mar. 31, 2014). “The balance of harms analysis examines the harm of granting or denying the injunction upon both of the parties to the dispute and upon other interested parties, including the public. When evaluating the balance of

hardships, the court weighs the irreparable harm plaintiff would suffer absent an injunction against the harm such an injunction would inflict on the defendant.” *Brandt v. Burwell*, 43 F.Supp.3d 462, 493 (W.D. Pa. 2014) (internal marks and citations omitted).

Here, as PA Coach stated in its June 23, 2020 letter, PA Coach has work available for its Drivers, including the Solicited Drivers to perform. This is not a typical non-compete case in which PA Coach is seeking to prevent a competitor from employing its former employees and put the employees out of work. Rather, PA Coach would prefer that its Drivers work for PA Coach and that STA be restricted to fair and lawful means of competing in the parties’ industry. Preventing STA from soliciting and hiring PA Coach’s Drivers in violation of a non-compete will not cause harm to STA or the Drivers. Rather, STA will be in no better and no worse position than it is absent its unlawful conduct.

The shortage of CDL drivers is an unfortunate circumstance facing all transportation companies. However, poor economic conditions provide no excuse for STA to find drivers by interfering with its competitors’ contracts. On the other hand, if the Court grants an injunction and prevents STA from soliciting and hiring PA Coach’s Drivers bound by non-competes, PA Coach will be spared irreparable harm to its business.

D. Public policy favors issuing the injunction.

Numerous courts within the Third Circuit have held that the public benefits from preliminary injunctions enforcing non-competition agreements because society benefits generally from enforcing contractual obligations, including non-competition agreements. *See, e.g., HR Staffing Consultants LLC v. Butts*, 627 Fed.Appx. 168, 175 (3d Cir. 2015); *Bimbo Bakeries USA, Inc. v. Botticella*, 612 F.3d 102 (3d Cir. 2010); *Synthes, Inc. v. Gregoris*, 228 F.Supp.3d 421, 446

(E.D. Pa. 2017). The corollary to enforcing non-competition agreements is preventing third parties from interfering in the proper performance of them.

Here, the public interest is served for two reasons. First, there is public utility in endorsing the contractual obligations between PA Coach and its Drivers and protecting PA Coach's contractual rights from intentional interference by STA. Second, the requested injunction would also permit PA Coach to continue to serve its school districts, a prospect that is at risk without the requested injunction and that directly benefits students and families in our region. *See HR Staffing Consultants LLC v. Butts*, 627 Fed.Appx. 168 (3d Cir. 2015) (“we. . . agree that ‘the public at large can be expected to gain form the enforcement’ of non-competes that make it possible for staffing agencies to continue performing their services for both employees and employers.”); *see also* Dana Mitra, *Pennsylvania's Best Investment: The Social and Economic Benefits of Public Education*, https://www.elc-pa.org/wp-content/uploads/2011/06/BestInvestment_Full_Report_6.27.11.pdf.

VI. CONCLUSION

PA Coach has satisfied all the prerequisites for granting preliminary injunctive relief. For the reasons set forth herein and in PA Coach's Verified Complaint, PA Coach respectfully requests that this Court enter a preliminary injunction against Defendant STA preventing it from interfering with PA Coach's contracts with its Drivers and engaging in all other forms of unfair competition.

Respectfully submitted,

ECKERT SEAMANS CHERIN & MELLOTT,
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Dated: July 30, 2020

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