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14 IN THE UNITED STATES DISTRICT COURT

15 FOR THE EASTERN DISTRICT OF CALIFORNIA — FRESNO DIVISION

16	CENTRAL VALLEY CHRYSLER-JEEP, INC.; et al.,	
17		Plaintiffs,
18	v.	
19	CATHERINE E. WITHERSPOON, in her official capacity as Executive Officer of the 20 California Air Resources Board,	
21		Defendant,
22	ASSOCIATION OF INTERNATIONAL AUTOMOBILE MANUFACTURERS,	
23		Plaintiff-Intervenor,
24	SIERRA CLUB, NATURAL RESOURCES 25 DEFENSE COUNCIL, ENVIRONMENTAL 26 DEFENSE, BLUEWATER NETWORK, GLOBAL EXCHANGE and RAINFOREST 27 ACTION NETWORK,	
28		Defendant-Intervenors.

NO. 1:04-CV-06663-AWI-LJO

**DEFENDANT AND DEFENDANT-  
INTERVENORS' RESPONSE TO  
PLAINTIFFS' AND PLAINTIFF-  
INTERVENOR'S ASSERTED  
ADDITIONAL MATERIAL FACTS  
ON DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT AND  
DISMISSAL**

[L.R. 56-260(a)]

Date: November 27, 2006  
 Time: 1:30 p.m.  
 Courtroom: Two  
 Judge: Honorable Anthony W. Ishii

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Defendants submit this response to Plaintiffs’ and Plaintiff-intervenor’s response to Defendant’s statement of undisputed material facts.

UNDISPUTED MATERIAL FACTS

RESPONSES

- 1. The California Air Resources Board (“CARB”) has applied to the United States Environmental Protection Agency (“U.S. EPA”) for a waiver of Clean Air Act preemption for California’s greenhouse gas emissions regulations that are the subject of this lawsuit (“greenhouse gas emissions regulations”). Undisputed.
- 2. U.S. EPA has not granted a waiver of preemption for the greenhouse case emissions regulations. Undisputed.
- 3. U.S. EPA has not issued a notice of the opportunity for a public hearing on CARB’s request for a waiver of Clean Air Act preemption for the greenhouse gas emissions regulations. Undisputed.
- 4. CARB is not currently enforcing the greenhouse gas emissions regulations. Disputed. However, that dispute is immaterial because the Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.
- 5. CARB will take no action to enforce the greenhouse gas emissions regulations unless and until U.S. EPA issues a Clean Air Act preemption waiver for the regulations. Disputed and objected to. However, that dispute is immaterial because the Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

PLAINTIFFS’ COUNTERSTATEMENTS

RESPONSE

- 1. As set forth in the California Code of Regulations, the motor vehicle CO2 regulations became effective on January 1, 2006. Undisputed. However, the Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

2. The motor vehicle CO2 regulations apply to model year 2009 and later vehicles.

Undisputed. However, the Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

3. CARB regulations provide that the 2009 model year can begin as early as January 2, 2008.

Undisputed. However, the Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

4. Vehicle manufacturers obtain approval from CARB to sell motor vehicles in California before the start of production for specific motor vehicle models.

Undisputed. However, the Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

5. Vehicle manufacturers sometimes commence testing of vehicle prototypes to determine compliance with CARB's emissions standards, in order to obtain approval for sale in California, as much as nine months before the start of the model year.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

6. Vehicle manufacturers will need to present plans for compliance with CARB's model year 2009 fleet-wide standards, including the CO2 standards, no later than the summer of 2007.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

7. CARB frequently puts new motor vehicle emissions standards into effect in California before U.S. EPA completes review of those standards under section 209 of the Clean Air Act.

Immaterial and irrelevant. The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

8. For purposes of processing at EPA, CARB classifies new standards into two categories: new standards that CARB believes to require a "new waiver," and new standards that CARB believes to fall "within the scope" of a prior regulation that has received review. CARB has stated that it believes it may implement new standards that it deems to fall "within the scope" of other regulations without awaiting any review of the new standards by EPA.

Immaterial and irrelevant. The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

9. In one recent matter (in 2006), EPA had not acted upon CARB's request for approval of standards that CARB had originally stated would require a "new waiver." In that case, CARB simply reclassified portions of the rule that it wanted to implement immediately as "within the scope" of a prior regulation.

Immaterial and irrelevant. The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

10. Board Resolution 04-28 stated that the CARB Executive Officer could apply for "within the scope" review of CARB's new CO2 standards.

Immaterial and irrelevant. The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

11. In March 2005, the CARB staff advised officials in Washington State that they would treat the CO2 standards as "within the scope" of the California low-emission vehicle ("LEV") program, which had already been reviewed and approved by U.S. EPA.

Immaterial and irrelevant. The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

12. The CARB Executive Officer's letter to EPA concerning the CO2 standards (Cackette Exh. B) states on its first page that CARB "reserves our right to assert (at a later time) that no new waiver is required for California to adopt or enforce the subject regulations."

Immaterial and irrelevant. The Court has ruled that these regulations cannot be enforced prior to US EPA granting a preemption waiver.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

13. Counsel for plaintiffs wrote to counsel for defendants on August 23, 2006, and proposed that CARB advise EPA that CARB did not expect manufacturers to commit unrecoverable sums on compliance with the CO2 regulations prior to EPA's determination whether to grant a waiver, and also that CARB make appropriate changes in the CO2 regulations to permit manufacturers to discontinue such expenditures pending EPA's action on the CO2 regulations.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

14. Counsel for defendants sent a letter in response to plaintiffs' counsel's letter of August 23, 2006, declining the proposals from plaintiffs, and stating that manufacturers' "lead time [for compliance with CARB regulations] is calculated from the date the Air Resources Board adopts the relevant regulatory provisions."

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

15. In September 2005 the CARB Executive Officer stated that she and her staff "expected that a manufacturer would plan for a rollout of new technologies" to comply with the CO2 standards "that would begin in 2009 and then build on the initial efforts with additional ... technologies ... commensurate with previous investments."

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

16. Estimated investment costs and other expenses for compliance with the CO2 regulations, if manufacturers try to comply using the technologies expected by CARB, would exceed \$2.5 billion by 2009.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

17. To use resources efficiently, the introduction of new technologies must be staggered across a vehicle manufacturer's product line. A manufacturer that deferred expenditures on new technologies needed to comply with the CO2 standards in model year 2011 would have to spend capital and other resources inefficiently by trying to meet the standards.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

18. Limits on capital resources, engineering personnel, and the capacity of the machine tool industry require a financially competitive manufacturer to start investments in any new products needed to comply with the CO2 regulations long before the first model year to which the rule applies.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

19. Disruption of normal product development cycles would have severe economic consequences. For that reason, capital-constrained manufacturers cannot delay implementation of product plans.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

20. Through its designated witness under Rule 30(b)(6) of the Federal Rules of Civil Procedure on the subject of lead time, defendant has stated that the amount of time needed for General Motors to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is "approximately seven years."

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

21. Defendant has stated that the amount of time needed for DaimlerChrysler to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is "probably about seven" years.'

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

22. Defendant has stated that the amount of time needed for Ford to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is "approximately seven" years.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

23. Defendant has stated that the amount of time needed for Toyota to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is "five to six" years.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

24. Defendant has stated that the amount of time needed for Honda to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is "about five years."

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

25. Defendant has stated that the amount of time needed for Nissan to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is at least six years.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

26. Defendant has stated that the amount of time needed for BMW to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is "approximately six years."

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

27. Defendant has stated that the amount of time needed for Volkswagen to make the changes in its vehicle fleet needed to comply with the model year 2012 CO2 standards using fuel consumption reduction technologies is "five to six" years.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

28. At the time when she developed the CO2 regulations, the CARB Executive Officer stated that she expected GM to equip 100 percent of its truck (LDT2+ MDPV) fleet with the technologies needed to comply with the CO2 regulations by model year 2012.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

29. At the time when she developed the CO2 regulations, the CARB Executive Officer stated that she expected Ford to equip 93 percent of its truck (LDT2+ MDPV) fleet with the technologies needed to comply with the CO2 regulations by model year 2012.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

30. At the time when she developed the CO2 regulations, the CARB Executive Officer stated that she expected DaimlerChrysler to equip 90 percent of its truck (LDT2+ MDPV) fleet with the technologies needed to comply with the CO2 regulations by model year 2012.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

31. At the time when she developed the CO2 regulations, the CARB Executive Officer stated that she expected Nissan to equip 64 percent of its truck (LDT2+ MDPV) fleet with the technologies needed to comply with the CO2 regulations by model year 2012.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

32. At the time when she developed the CO2 regulations, the CARB Executive Officer stated that she expected Toyota to equip 62 percent of its truck (LDT2+ MDPV) fleet with the technologies needed to comply with the CO2 regulations by model year 2012.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

33. At the time when she developed the CO2 regulations, the CARB Executive Officer stated that she expected Honda to equip 32 percent of its truck (LDT2+ MDPV) fleet with the technologies needed to comply with the CO2 regulations by model year 2012.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

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34. The development and deployment of new or significantly modified engines or technologies for a given vehicle often requires more than four years of lead-time.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

35. As of July 2006, model year 2011 was the earliest model year for which new engines or transmissions that could be used for compliance with the CO2 standards could enter mass production. The costs of the technologies needed to comply with the 2011 model year standards that must be incurred in calendar years 2006 and 2007 would be substantial.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

36. A final decision concerning CARB's waiver request at EPA is probably more than three years away.

Undisputed.

37. Vehicle manufacturers historically have not deferred expenditures to comply with new CARB standards pending EPA action on a waiver request, given the lead-time needed to comply with the standards.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

38. Vehicle manufacturers will not defer expenditures to comply with new CARB standards pending EPA action on a waiver request, given the lead-time needed to comply with the standards.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

39. Vehicle manufacturers with the most significant technological challenges for compliance with the CARB standards and who require the longest lead-time for compliance would be at a competitive disadvantage, and would incur significant competitive risk now, if they deferred compliance investments for the CO2 regulations while awaiting the outcome of CARB's waiver request at EPA for the CO2 regulations.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

40. In the initial years of the CO2 standards' applicability, some vehicles will have to be eliminated from the California product line because there is insufficient time to design, develop and produce new technologies needed to keep some vehicles in the California market.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations. Lastly, Defendants object to the cited declaration, as the declarant does not have expertise to express these economic or marketing opinions.

PLAINTIFFS' COUNTERSTATEMENTS

RESPONSE

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41. In later years of the CARB program, even with a huge investment of resources, some manufacturers will be required significantly to curtail their California product lines, because once the CO2 regulations take full effect, they cannot produce a full product line that would be cost-competitive with some other manufacturers' product lines.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations. Lastly, Defendants object to the cited declaration, as the declarant does not have expertise to express these economic or marketing opinions.

42. The manufacturers most heavily affected by the CO2 standards may be able to remain competitive in the California market for full-size trucks, but not passenger cars and smaller (LDT1) light-duty trucks. The losses those manufacturers would incur if they tried to remain in the passenger car/small truck market would bankrupt them.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations. Lastly, Defendants object to the cited declaration, as the declarant does not have expertise to express these economic or marketing opinions.

43. A manufacturer that sold a fleet of motor vehicles in California that exceeded the CO2 standards for several model years would probably never be able to come into compliance with those standards at a later time, because the standards increase in stringency each model year.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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44. Some manufacturers will respond to the CO2 regulations with a combination of product line restrictions and other measures. The product line restrictions will be significant within a few years of the time when the CO2 standards take effect.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations. Lastly, Defendants object to the cited declaration, as the declarant does not have expertise to express these economic or marketing opinions.

45. Despite uncertainty as to the eventual legal status of the CO2 regulations, the enactment of those regulations has already inflicted real and present harm on dealers in the Southern San Joaquin Valley, as a result of the product line restrictions that have been predicted if the CO2 regulation takes effect.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, the Harden declaration is inadmissible (as explained in separately filed objections).

46. For 33 dealers in the Southern San Joaquin Valley, the minimum estimated lost value caused by the pendency of the CO2 regulation approaches \$33 million. The percentage decline in estimated pre-tax profits for some of the plaintiff dealers' new-vehicle sales departments ranges from about 38% to about 180%.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, the Harden declaration is inadmissible (as explained in separately filed objections).

47. The above-stated effects on value and estimated profits are minimum effects because the analysis assumes (i) no decrease in profitability of parts or service sales or finance income, (ii) no decrease in gross margin percentages for new vehicle sales, and (iii) no growth in sales or profits from 2006 through 2011 absent the CO2 regulation, among other assumptions.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, the Harden declaration is inadmissible (as explained in separately filed objections).

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AIAM’S STATEMENTS

RESPONSE

1. The AB 1493 Regulations require significant reductions in CO2 emissions from motor vehicles.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

2. Because the amount of CO2 emitted depends only on the quantity and type of fuel burned, and because there is no exhaust aftertreatment device that can capture or reduce CO2 emissions from motor vehicles, the only known practical way to reduce CO2 from gasoline-powered motor vehicles is to improve fuel economy.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

3. In order to meet the standards set forth in the AB 1493 Regulations, CARB has determined in its Staff Report and Initial Statement of Reasons (the “ISOR”) that automobile manufacturers will need to incorporate a “near-term technology package” into their cars and trucks in order to meet with near-term standards (2009 to 2012 model years). The “near-term technology package” includes a number of automotive technologies, which when used in various combinations lead to increased fuel economy and reductions in CO2 emissions.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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4. The extent to which a particular manufacturer must include a “near-term technology package” on its cars and trucks depends on the baseline fuel economy of that manufacturer’s fleet.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

5. CARB’s analysis contained in the Addendum Presenting and Describing Revisions to the Initial Statement of Reasons (the “Revisions to ISOR”) sets forth CARB’s estimates concerning the extent to which each particular manufacturer must include a “near-term technology package” on its cars and trucks in order to meet the near-term standards.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

6. According to the analysis set forth in the Revisions to ISOR, CARB has determined that Honda will have to incorporate a “near-term technology package” on 24% of its PC/LDT1 fleet in order to meet the 2011 model year standard, while Nissan will need to incorporate a “near-term technology package” on 49% of its PC/LDT1 fleet.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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7. According to the analysis set forth in the Revisions to ISOR, CARB has determined that by the 2012 model year, Honda will need to have incorporated a “near-term technology package” on 81% of its PC/LDT1 fleet in order to meet the 2012 model year standard, while Nissan will need to have incorporated a “near-term technology package” on 93% of its PC/LDT1 fleet.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

8. Manufacturers will require a substantial amount of lead time to integrate the necessary technologies into their cars and trucks to meet the standards set forth in the AB 1493 Regulations.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

9. Lead time is necessary in order to develop the new technologies, manufacture the tooling required to produce and implement the new technology, order component parts from suppliers, test the production processes and vehicle performance, test the vehicle for safety and reliability, and obtain the necessary certifications.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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[10]. The typical product cycle for the models of cars and trucks manufactured by AIAM members is five to eight years. This product cycle is necessary to recoup the substantial investment made in developing, testing, marketing and machine tooling for a new product. If a substantial change is required to the major components of an automobile - such as to the body, engine or transmissions - before the scheduled end of the vehicle’s life cycle, then the sunk costs for that vehicle may never be adequately recouped.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

[11]. CARB based the near-term and mid-term standards in the AB 1493 Regulations on a 4-year phase in period. The phase in period is the period of time within which manufacturers will introduce the new technologies into their entire vehicle fleet.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

[12]. The California Air Resources Board staff considered “proposing more stringent vehicle standards” by “shortening the phase-in period” but “concluded that ... manufacturers would have a very difficult time incorporating the needed technologies across their fleet as rapidly as would be necessary.” CARB staff therefore concluded that “more stringent standards would not be technically feasible.”

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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[13]. CARB’s designated witness on lead time, Steve Albu, testified that it will take some manufacturers up to six years in order to bring their fleets into compliance with the 2011 model year standards, and up to seven years to comply with the 2012 model year standard.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

[14]. The model year for a given motor vehicle can begin as early as January of the preceding year.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

[15]. There has been at least one past waiver decisions where EPA did not complete its review of a California standard until after the first model year of applicability has started, and yet did not delay the effective date of the standard.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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[16]. Nothing in the Defendants’ motion papers or in the Declaration of Thomas Cackette would preclude CARB from enforcing the AB 1493 Regulations immediately after U.S. EPA renders its decision on the waiver in the first applicable model year.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

[17]. Nothing in the Defendants’ motion papers or in the Declaration of Thomas Cackette states that CARB will refrain from enforcing the AB 1493 Regulations until a sufficient amount of time has passed after U.S. EPA renders its decision on the waiver to allow the manufacturers lead time to bring their vehicles into compliance, which at a minimum would be seven years.

Immaterial and irrelevant. As explained in Defendants' reply brief, any hardship is speculative and cannot overcome the uncertainty of whether, when, and on what terms the U.S. Environmental Protection Agency will grant a preemption waiver for the challenged regulations, allowing them to become effective and enforceable (as required under the Court's order). In addition, US EPA will make an administrative determination (as directed by Congress) on whether an appropriate amount of lead time has been provided by the challenged regulations.

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Dated: November 17, 2006

Respectfully submitted,

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