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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
FRESNO DIVISION

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**CENTRAL VALLEY CHRYSLER-JEEP,
INC.; et al.,**

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Plaintiffs,

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v.

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CATHERINE E. WITHERSPOON,

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Defendant.

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Defendant Witherspoon submits this supplemental brief in response to the Court's July 26, 2005 order, regarding the parties' Stipulation and Proposed Order Resolving Ripeness Portion of Defendant's Motion to Dismiss.

The parties' stipulation simply was a compromise, whereby defendant Witherspoon would withdraw – that is, not pursue – a portion of her motion to dismiss in

NO. CIV F-04-6663 REC LJO

**DEFENDANT'S SUPPLEMENTAL
BRIEF REGARDING RIPENESS**

Date: July 25, 2005
Time: 9:00 a.m.
Courtroom: One
Judge: Hon. Robert E. Coyle

1 exchange for limited activity in this case for a period of time. Defendant Witherspoon believed
2 that such a limitation on this action, like a stay, would be an appropriate resolution of many of
3 her practical concerns about the timing of the filing of this action. (*See* Memorandum of Points
4 and Authorities in Support of Defendant’s Motion to Dismiss Plaintiffs’ First Amended
5 Complaint, filed March 7, 2005, at 34-35.) By executing this stipulation, however, defendant
6 Witherspoon did not intend to attempt to confer subject matter jurisdiction on the Court. The
7 stipulation, for example, does not state that the parties agree that this action is ripe. In fact, in
8 paragraph C of the stipulation, defendant Witherspoon specifically reserved her right to raise
9 ripeness issues later in the case. And, in paragraph D of the stipulation, the parties contemplated
10 that the Court might have to resolve the ripeness portion of defendant Witherspoon’s motion to
11 dismiss if administrative events did not occur as expected by Plaintiffs. Seen as an agreement as
12 to how the parties would approach this litigation – and not as an attempt to create subject matter
13 jurisdiction – the Court has authority to execute the stipulation and proposed order. *See Landis*
14 *v. North Am. Co.*, 299 U.S. 248, 254 (1936) (“the power to stay proceedings is incidental to the
15 power inherent in every court to control the disposition of the causes on its docket with economy
16 of time and effort for itself, for counsel, and for litigants”).

17 There is, however, the separate issue of subject matter jurisdiction. The Court is
18 correct, of course, that the parties cannot confer subject matter jurisdiction on the Court, nor does
19 it matter if the parties agree that subject matter jurisdiction exists. *United States v. Ceja-Prado*,
20 333 F.3d 1046, 1049 (9th Cir. 2003). The Court can raise the issue of subject matter jurisdiction
21 on its own, even if the parties have not raised the issue. *B.C. v. Plumas Unified School Dist.*, 192
22 F.3d 1260, 1264 (9th Cir. 1999); *Southern Pac. Transp. Co. v. City of Los Angeles*, 922 F.2d
23 498, 502 (9th Cir. 1990). And if the Court should conclude that no subject matter jurisdiction
24 exists, it has no discretion but to dismiss the action:

25 Once the district court reached the conclusion that it had no underlying original
26 subject matter jurisdiction, there was nothing left to do but to dismiss the case.
27 *See* Fed.R.Civ.P. 12(h)(3) (“*Whenever* it appears by suggestion of the parties or
28 otherwise that the court lacks jurisdiction of the subject matter, the court shall
dismiss the action.”) (emphasis added); *Ex Parte McCardle*, 74 U.S. (7 Wall.)
506, 514, 19 L.Ed. 264 (1868) (“Without jurisdiction the court cannot proceed at
all in any cause. Jurisdiction is power to declare the law, and when it ceases to
exist, the only function remaining to the court is that of announcing the fact and

1 dismissing the cause.”).

2 *Herman Family Revocable Trust v. Teddy Bear*, 254 F.3d 802, 807 (9th Cir. 2001).

3 As the Court knows, the question of prudential ripeness is an issue of subject
4 matter jurisdiction. *National Park Hospitality Ass’n v. Department of Interior*, 538 U.S. 803,
5 807-08 (2003); *Thomas v. Anchorage Equal Rights Comm’n*, 220 F.3d 1134, 1141-42 (9th Cir.
6 2000). The question of ripeness is an issue of timing, and is assessed at the time of decision, not
7 the time of the filing of the action. *Anderson v. Green*, 513 U.S. 557, 559 (1995); *Regional Rail*
8 *Reorganization Act Cases*, 419 U.S. 102, 140 (1974); *Assiniboine & Sioux Tribes v. Board of Oil*
9 *& Gas Conservation*, 792 F.2d 782, 788 (9th Cir. 1986). *But see Democratic Nat’l Comm. v.*
10 *Watada*, 198 F.Supp.2d 1193, 1197 (D. Haw. 2002) (citing *Malama Makua v. Rumsfeld*, 136
11 F.Supp.2d 1155, 1161 (D. Haw. 2001)) (stating the opposite). Even so, as of either today or the
12 date of the filing of this action, neither the Air Resources Board process nor the overall state
13 administrative process has been completed for these proposed regulatory amendments. And
14 thus, despite the parties’ stipulation, defendant Witherspoon must acknowledge that the Court
15 would be within its power to dismiss this action.

16 Defendant Witherspoon remains ready to respond to any further questions or
17 concerns the Court may have.

18 Dated: August 1, 2005

19 Respectfully submitted,

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