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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF CALIFORNIA – FRESNO**

16 CENTRAL VALLEY CHRYSLER-JEEP, INC.,
17 KITAHARA PONTIAC GMC BUICK, INC.,
18 MADERA FORD MERCURY, INC.,
19 MADERA CHEVROLET, FRONTIER
20 DODGE, INC., TOM FIELDS MOTORS, INC.,
21 PISTORESI CHRYSLER DODGE JEEP, BOB
22 WILLIAMS CHEVROLET, COURTESY
23 OLDSMOBILE CADILLAC, INC., MERLE
24 STONE CHEVROLET, INC., MERLE STONE
25 PORTERVILLE, INC., STURGEON AND
26 BECK INCORPORATED, SWANSON
27 FAHRNEY FORD, INC., GENERAL
28 MOTORS CORPORATION,
DAIMLERCHRYSLER CORPORATION,
TULARE COUNTY FARM BUREAU, and the
ALLIANCE OF AUTOMOBILE
MANUFACTURERS,

Plaintiffs,

v.

Catherine E. WITHERSPOON, in her official
capacity as Executive Officer of the California
Air Resources Board,

Defendant.

Case No. CIV-F-04-6663 REC-LJO

**PLAINTIFFS' SUPPLEMENTAL
BRIEF ON JURISDICTION**

Hearing Date: July 25, 2005
Hearing Time: 1:30 p.m.
Courtroom: One

Honorable Robert E. Coyle

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1 Pursuant to the Court's Order of July 26, 2005, plaintiffs Central Valley Chrysler-Jeep,
2 Inc., *et al.* respectfully submit this supplemental brief in support of the Court's jurisdiction to
3 execute the "Stipulation and [Proposed] Order Resolving Ripeness Portion of Defendant's
4 Motion to Dismiss," filed by defendant Catherine E. Witherspoon on behalf of plaintiffs and
5 defendant on July 22, 2005 ("the Ripeness Stipulation").

6 **Preliminary Statement**

7 This case came before the Court for a hearing on several motions on July 25, 2005. At
8 that hearing, one group of proposed intervenors led by the Sierra Club questioned the Court's
9 subject-matter jurisdiction to proceed further with this case. The importance of this issue, and
10 the potential confusion sown by the Sierra Club's argument, warrant a full review of the Court's
11 jurisdiction. These are the main points explained below in this brief:

12 • This case was ripe for adjudication when it was first filed. To the extent there was
13 any dispute on the issue, the Ripeness Stipulation proposes a schedule for further progress in the
14 litigation that addresses the specific objections raised by defendant.

15 • Any issues of ripeness that might have existed in December 2004 when this case
16 was filed are now irrelevant. The only ripeness objections to the Court's jurisdiction that have
17 been presented by defendant are purely prudential, do not undercut the Court's Article III
18 jurisdiction, and are expected to disappear altogether within a few days or weeks.

19 • The Supreme Court and the Ninth Circuit have repeatedly held that ripeness is
20 determined at the time of decision, not at the time when the case was filed. To the extent they
21 suggest otherwise, the *dicta* in the two decisions from the District of Hawaii cited in the July 26
22 Order cannot be squared with the binding Supreme Court and appellate precedent.

23 • The argument advanced by the Sierra Club -- which is that the case should be
24 dismissed because the U.S. Environmental Protection Agency ("EPA") might someday review
25 the CARB regulation for consistency with the Clean Air Act -- sidesteps the fundamental issue in
26 this case. That issue is whether CARB's regulation is preempted under the Energy Policy and
27 Conservation Act of 1975. Under binding precedent not discussed by the Sierra Club, EPA
28

1 cannot consider the issue of EPCA preemption in any proceeding it might convene under the
2 Clean Air Act. Plaintiffs' rights under EPCA can therefore only be vindicated in this Court.

3 • Even if this litigation arose only under the Clean Air Act, the Sierra Club's
4 argument would still be invalid. Contrary to the Sierra Club's assumption, defendant has not
5 committed herself to seek any review by EPA. EPA cannot review a regulation that CARB does
6 not submit to EPA. In addition, if one assumed that CARB might eventually decide to seek EPA
7 review, such a review would probably take years. The manufacturer plaintiffs do not have the
8 luxury of awaiting the result of the EPA review process before being forced to spend huge
9 resources on compliance with CARB's regulation. The Court cannot directly order CARB to
10 take its rule to EPA for review, and it certainly cannot order EPA to complete such a review
11 within a fixed period of time.

12 **I. BACKGROUND**

13 At the July 25 motions hearing, the Sierra Club presented its challenge to the Court's
14 subject-matter jurisdiction near the end of argument on its intervention motion, after the parties
15 in this case had concluded the argument on the motion to dismiss. It is therefore important to
16 begin with a brief summary of the record in this action that is relevant to the ripeness issue,
17 which the parties did not fully review at the July 25 hearing.

18 **A. Relevant Allegations of the First Amended Complaint**

19 This litigation results from legislation signed by Governor Gray Davis in July 2002. The
20 legislation directed the California Air Resources Board ("CARB") to consider adoption of motor
21 vehicle greenhouse gas regulations, and to adopt any such regulations that met various statutory
22 criteria no later than January 1, 2005.¹

23 At a public hearing held in Los Angeles in September 2004, CARB adopted greenhouse
24 gas standards that primarily regulate the levels of carbon dioxide emitted from motor vehicles. A
25

26 ¹ See Cal. Health & Safety Code § 43018.5(a) ("No later than January 1, 2005, the state board
27 shall develop and adopt regulations that achieve the maximum feasible and cost-effective
28 reduction of greenhouse gas emissions from motor vehicles.") and Plaintiffs' First Amended
Complaint, filed Feb. 16, 2005 ("FAC") ¶¶ 6-8.

1 limit on carbon dioxide at the levels required by CARB's rule is functionally the same as a limit
2 on how much gasoline a vehicle can consume, as explained in the First Amended Complaint and
3 in other papers filed with the Court.²

4 Plaintiffs' central contention is that CARB chose in September 2004 to regulate motor
5 vehicle fuel economy, in violation of several federal statutes, most notably the Energy Policy and
6 Conservation Act of 1975 ("EPCA"), 49 U.S.C. § 32919(a). See FAC ¶¶ 7-9, 34-57. The
7 dispute between the parties was clear and concrete when this action was filed. EPCA provides
8 that once federal standards are in place, no state can "*adopt* or enforce a law or regulation related
9 to fuel economy standards." 49 U.S.C. § 32919(a) (emphasis added); see FAC ¶¶ 35, 39-46.
10 CARB itself described the action it took in September 2004 as the "adoption" of standards.³

11 **B. Recent Events and the Ripeness Stipulation**

12 In her first filing in this case, defendant admitted that the case presented "significant"
13 questions of federal law.⁴ Nevertheless, defendant advanced a wide range of arguments
14 concerning "prudential" ripeness that sought either dismissal of the entire lawsuit, or to "place
15 this litigation on hold for several months."⁵

16 Plaintiffs responded at length to defendant's ripeness arguments, by explaining why this
17 case easily satisfied the prudential ripeness criteria of *Abbott Labs. v. Gardner*, 387 U.S. 136
18 (1967); *Regional Railroad Reorganization Act Cases* ("RRR Cases"), 419 U.S. 102 (1974); *Pac.*

19
20 ² See FAC ¶ 4, Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendant's
21 Motion to Dismiss or Transfer, filed May 2, 2005 ("May 2 MPA") at 7-9, and the references at
id. notes 8-11.

22 ³ See CARB Resolution 04-28 (September 24, 2004) (attached to FAC as Exhibit A) at 14
23 ("[T]he Board directs the Executive Officer to compile *the adoption* and amendments described
24 above, in accordance with the Board's direction.") (emphasis added); CARB, *News Release:*
25 *ARB Approves Greenhouse Gas Rule*, Sept. 24, 2004, available on the CARB web-site at
www.arb.ca.gov/newsrel/nr092404.htm (referring to regulation "*adopted* after a marathon public
hearing" in Los Angeles) (emphasis added).

26 ⁴ See Defendant's Memorandum of Points and Authorities in Support of Motion to Dismiss
27 Plaintiffs' First Amended Complaint, filed Mar. 7, 2005 ("Mar. 7 MPA.") at 27.

28 ⁵ See Mar. 7 MPA at 35 1.5.

1 *Gas & Elec. Co. v. State Energy Res. Conservation and Dev. Comm'n* ("PG&E"), 461 U.S. 190
2 (1983); and *Union Pac. R.R. Co. v. Cal. Pub. Util. Comm'n*, 346 F.3d 851, 871-72 & n.22 (9th
3 Cir. 2003), among other cases. In her May 27 reply brief, defendant limited her ripeness
4 objections to two remaining claims.

5 First, defendant said that litigation was premature because she had not yet submitted the
6 greenhouse gas rule adopted by CARB in September 2004 to the California Office of
7 Administrative Law ("OAL"). According to defendant, until she submitted the rule to OAL and
8 OAL had completed its review, the regulation would not "have the force of law."⁶

9 Second, defendant suggested that the parties and the Court would incur "a waste of time
10 and resources" if they briefed the fuel economy preemption issue before the D.C. Circuit issued a
11 decision in *Massachusetts v. EPA*, a case in which California and other parties challenged a
12 decision by U.S. EPA determining that Congress had made EPCA the exclusive means of
13 directly regulating motor vehicle fuel economy and greenhouse gases in the United States.⁷
14 *Massachusetts v. EPA* was decided on July 15, 2005.⁸ In its decision, the D.C. Circuit denied the
15 challenge to EPA's decision on the merits.⁹

16 The decision of the D.C. Circuit in *Massachusetts v. EPA* on July 15 therefore mooted
17 one of defendant's two grounds for objecting to the ripeness of this action. Defendant's
18 remaining objection to ripeness -- which is that the final stages of her work with OAL are not yet
19 complete -- is also expected by plaintiffs to become moot in a matter of a few weeks. CARB
20 originally proposed its greenhouse gas rule on August 7, 2004. Under the California
21 Administrative Procedure Act ("the California APA"), CARB is required to forward regulations

23 ⁶ See Defendant's Reply Memorandum of Points and Authorities in Support of Motion to
24 Dismiss Plaintiffs' First Amended Complaint, filed May 27, 2005 ("May 27 Reply MPA") at 19
1.8.

25 ⁷ See May 27 Reply MPA at 22 1.23, 23 1.1.

26 ⁸ See *Massachusetts et al. v. EPA*, No. 03-1361 (D.C. Cir. July 15, 2005).

27 ⁹ See Docket Entry No. 122 (letter from counsel advising Court of decision in *Massachusetts v.*
28 *EPA*).

1 to OAL for review within one year of the date the agency first announced its rulemaking. *See*
2 Cal. Gov't Code § 11346.4(b). Accordingly, August 6, 2005, is the deadline for CARB to submit
3 the greenhouse gas rule to OAL. The California APA gives OAL 30 working days to approve or
4 disapprove the regulation. *Id.* § 11349.3(a). The deadline for OAL to complete its review is
5 therefore September 20, 2005.

6 Against the backdrop of those two events -- the decision of the D.C. Circuit, and
7 defendant's fast-approaching deadline at OAL -- the parties were able to agree on a process for
8 going forward in this litigation. That process is outlined in the parties' Ripeness Stipulation.

9 The Ripeness Stipulation allows defendant to complete her administrative tasks at OAL
10 before having to address the merits of the litigation. The Ripeness Stipulation also provides that
11 defendant will participate in the Case Management Conference scheduled for August 25, 2005.¹⁰
12 Both parties preserved their rights to advance or oppose new grounds for deferral of claims based
13 on ripeness, if for example there is an unexpected failure by CARB or OAL to meet the
14 requirements of the California APA outlined above. *See* Ripeness Stipulation at 2-3.

15 **II. GROUNDS FOR APPROVAL OF THE RIPENESS STIPULATION**

16 The Ripeness Stipulation withdraws the ripeness issue from the questions presented in
17 defendant's motion to dismiss that was submitted at the conclusion of the hearing on July 25.
18 Because this Court plainly has subject matter jurisdiction and there are no prudential objections
19 remaining under the agreed upon schedule, the Ripeness Stipulation should be approved.

20 **A. The Court Has Article III Jurisdiction Over This Case**

21 In determining the existence of subject-matter jurisdiction, federal courts must take a
22 plaintiffs' well-pleaded allegations as true, in the absence of any competent evidence contesting
23 the allegations that are essential to establishing jurisdiction.¹¹ Defendant's motion to dismiss
24

25 ¹⁰ Absent the Stipulation, plaintiffs expected that defendant would have sought a substantial
26 postponement of the Case Management Conference, which could have engendered further delay
27 in reaching the merits. This was one of the main reasons why plaintiffs entered into the
Stipulation.

28 ¹¹ *See Bennett v. Spear*, 520 U.S. 154, 168 (1997); *Ana Int'l, Inc. v. Way*, 393 F.3d 886, 889 n.1
(9th Cir. 2004); *Wolfe v. Strankman*, 392 F.3d 358, 362 (9th Cir. 2004). When jurisdictional

