

those regulations are attached as Exhibit "A". The counterpoint regulations adopted by the Albuquerque-Bernalillo County Air Quality Control Board purport or, on information and belief, are intended to apply in the City of Albuquerque and County of Bernalillo. A copy of those regulations are attached as Exhibit "B".

2. The regulatory provisions challenged in this action that were adopted by the New Mexico Environmental Improvement Board will supplant and conflict with federal law and regulations governing the fuel economy of new motor vehicles. In addition, those regulatory provisions conflict with provisions of the federal Clean Air Act. As a result, the regulatory provisions adopted by the New Mexico Environmental Improvement Board that are challenged in this action are preempted by federal law, and are inconsistent with the Supremacy Clause in Article VI of the United States Constitution.

3. The regulation adopted by the Albuquerque-Bernalillo County Air Quality Control Board challenged in this action conflicts in its entirety with the federal Clean Air Act. Like the challenged portions for the regulation adopted by the New Mexico Environmental Improvement Board, the regulation adopted by the Albuquerque-Bernalillo County Air Quality Control Board concerning new motor vehicles is also inconsistent with the federal fuel economy law. The regulation adopted by the Albuquerque-Bernalillo County Air Quality Control Board concerning new motor vehicles is therefore preempted by federal law and violates the Supremacy Clause.

4. Defendants Curry and Santistevan are the state and local government officers charged with enforcement of the regulatory provisions challenged in this action, and are made defendants here in their official capacities only. This Court has authority to grant the relief sought under 28 U.S.C. §§ 1331, 1343, 2201 and 42 U.S.C. §§ 1983, 1988.

Parties, Jurisdiction and Venue

5. Plaintiffs are new motor vehicle dealers. Zangara Dodge, Inc. is a corporation which is engaged in the sale of new motor vehicles, with its principal place of business in Albuquerque, Bernalillo County, New Mexico. Auge Sales and Service, Inc. is a corporation which is engaged in the sale of new motor vehicles, with its principal place of business in Belen, Valencia County, New Mexico. Phil Carrell Chevrolet-Buick, Inc. is a corporation which is engaged in the sale of new motor vehicles, with its principal place of business in Carlsbad, Eddy County, New Mexico. Plaintiffs sell new motor vehicles that, under the law as it existed prior to adoption of the regulations challenged in this action, could be registered in all parts of the State of New Mexico. Plaintiffs are “dealers” under 49 U.S.C. § 32908, the federal fuel economy law.

6. Each of the regulatory provisions challenged in this action will prohibit Plaintiffs from selling new motor vehicles that do not meet the requirements set forth in those provisions. As more fully stated below, those regulatory provisions will reduce the sales of new vehicles, and as a direct result the dealer plaintiffs will lose profits and goodwill.

7. The New Mexico Environment Department is an agency organized pursuant to NMSA 1978, § 9-7A-4 and existing under the laws of New Mexico. The New Mexico Environment Department enforces regulations adopted by the State of New Mexico’s Environmental Improvement Board. Ron Curry is the Cabinet Secretary of the New Mexico Environment Department and in that capacity will enforce the regulatory provisions challenged in this action. The Albuquerque-Bernalillo County Air Quality Control Board (“the City/County Board”) is an agency organized pursuant to NMSA 1978, § 74-2-4, Revised Ordinances of Albuquerque § 9-5-1-3, and Bernalillo County Ordinance § 30-32 and existing under the laws of New Mexico. Alfredo Santistevan is the Director of the Environmental Health Department of

the City of Albuquerque and enforces regulations adopted by the City/County Board and in that capacity will enforce the regulatory provisions challenged in this action.

8. Plaintiffs have suffered and will continue to suffer harm in their respective principal places of business in this State as a result of the regulatory actions they are challenging. As more fully stated below, the existence of the regulatory provisions challenged here has reduced and will continue to reduce their value as retail automotive businesses in those locations. Venue in this Court is proper under 28 U.S.C. § 1391(b).

Background

9. Motor vehicles produce a number of air pollutants regulated by federal, state and local officials under the Clean Air Act, including the gases that form ground-level ozone (or “smog”), carbon monoxide, and other substances that are harmful to breathe. In most States, regulations adopted by the U.S. Environmental Protection Agency (“U.S. EPA”) under the Clean Air Act apply to such emissions from new motor vehicles. In addition, the Clean Air Act permits the State of California under some circumstances to adopt and enforce separate standards for smog-forming emissions and other air pollutants that have locally detrimental effects on air quality.

10. The federal Clean Air Act also permits States such as New Mexico to adopt and enforce portions of the California regulations for new motor vehicles, in lieu of the regulations adopted by the U.S. EPA. Effective December 31, 2007 and January 1, 2008, the New Mexico Environmental Improvement Board and the City/County Board recently adopted and decided to start enforcing the California standards, beginning in model year 2011.

11. The California motor vehicle emissions control program has two parts. One part regulates the gases that form smog or that, like carbon monoxide, are gases that can affect local

air quality. The decision of the New Mexico Environmental Improvement Board to require the sale of vehicles certified to the California standards for smog-forming emissions and other air pollutants that can affect local air quality are not being challenged in this litigation, except as specified in Count III of this Complaint as described in paragraphs 48 to 56 below.

12. The other part of the California vehicle program applies to the emissions from new motor vehicles that are known as “greenhouse gases.” These are the gases that disperse globally in the atmosphere and retain heat from the sun, creating the “greenhouse effect.” The portion of the new motor vehicle regulations adopted by the New Mexico Environmental Improvement Board and the City/County Board that regulate “greenhouse gases” are a subject of this action. Those provisions are contained in NMAC § 20.2.88.107 in the case of the State regulations, and in NMAC § 20.11.104.107 in the case of the City/County regulations. (*See Exhibits A and B.*)

13. The principal motor vehicle greenhouse gas released by motor vehicles is carbon dioxide, or “CO₂.” Carbon dioxide is also exhaled by humans and other animals, and is critical to plant life and thus to the production of oxygen needed by humans and other animals. It is also a natural by-product of the combustion of any material that includes carbon, such as gasoline.

14. The “greenhouse effect” is an important part of the planet’s biosphere. The heat-trapping properties of greenhouse gases, including carbon dioxide, cause the average surface temperature of the Earth to be approximately 59° Fahrenheit higher than it would be otherwise. The greenhouse effect is therefore critical to life on Earth in its current form.

15. Scientists have warned that a large increase in carbon dioxide from man-made sources could lead to excessive increases in the temperature of the biosphere, described as “global warming” or “global climate change.” Many scientists have called for measures to reduce man-made emissions of greenhouse gases, as well as measures to adapt to climate change

to the extent such change cannot be avoided. U.S. EPA is currently studying whether to adopt federal motor vehicle standards for greenhouse gas emissions.

16. The only way to achieve significant reductions in carbon dioxide from motor vehicles is to reduce the amount of carbon the vehicle burns -- and this, in turn, requires a reduction in a motor vehicle's fuel consumption. Motor vehicle fuel economy, as explained more fully below, is subject to comprehensive federal regulation by the federal government's National Highway Traffic Safety Administration ("NHTSA"). For this reason, an Executive Order issued by the President of the United States has directed U.S. EPA and NHTSA to coordinate regulatory actions directed at greenhouse gas emissions. *See* Exec. Order 13,432, 72 Fed. Reg. 27,717 (May 16, 2007) (Exhibit C).

17. Unlike smog, which can be produced and remain located in one area, carbon dioxide disperses globally, and is long-lived. As a result, effective control of CO₂ levels cannot be adequately addressed by a single nation, even a nation with the geographic size of the United States, much less an individual state or local government entity within a nation, such as New Mexico or the City of Albuquerque or Bernalillo County. To the extent that carbon dioxide from man-made sources is having an impact on the global climate, that impact is not tied to the state or country of origin even though such carbon dioxide originated from a motor vehicle located there.

18. The global dispersal of CO₂ means that any specific nation, region, or individual State cannot by itself have a significant impact on overall global climate conditions. The ambient temperature in a given State in the United States is not under the control of the State and its policymakers in the same way as the level of smog or some other harmful pollutant might be. The global dispersal of CO₂ also means that coordinated international measures are the only

effective means of addressing the issue of climate change. Each nation in the world has an interest in addressing the issue of climate change, and also in ensuring that the rest of the world is also participating in the effort to address the issue.

19. The federal law governing motor vehicle fuel economy is contained in the Energy Policy and Conservation Act (“EPCA”), 49 U.S.C. §§ 32901-32919. EPCA requires NHTSA to set national fuel economy standards at the “maximum feasible” level. *See* 49 U.S.C. § 32902. Recent amendments to EPCA specify that national average fuel economy levels for new motor vehicles must rise by about 40 percent over the next 12 years. That goal, if achieved, will have the effect of reducing carbon dioxide emissions levels from new automobiles by about 30 percent.

20. When the federal government sets and revises the national fuel economy standards, it is required by EPCA to adopt regulations that, while assuring the maximum feasible levels of control, do not unduly restrict consumer choice among a wide variety of different vehicle models. By the 2011 model year, for example, the federal fuel economy standards for pick-up trucks, sport-utility vehicles and minivans are expected to be based in part on the size of each vehicle model. Vehicles that are smaller will generally have to increase their fuel economy levels more than larger vehicles, because it is easier to increase the fuel economy of smaller vehicles than larger vehicles. This is intended to ensure that consumers who need and want larger vehicles produced by any manufacturer will be able to obtain them, although even these larger vehicles will be required to achieve significant improvements in fuel economy. This feature of the federal law is important to many residents of New Mexico and to dealers like Plaintiffs who serve them, because it ensures that those who need larger vehicles will be able to choose among a wide array of different models.

21. In a number of important ways, the regulatory provisions challenged in this action differ from the federal fuel economy regulations that they would replace.. First, the challenged regulatory provisions do not account for the size of the specific vehicles being regulated in the same way as federal law and regulation do. Second, the challenged regulatory provisions set fuel economy requirements for cars and trucks to be sold in New Mexico that will be in the aggregate far more stringent, and much more costly to meet, than the federal fuel economy standards. Third, the challenged regulatory provisions will require each vehicle manufacturer to ensure that new vehicles sold in different parts of the State of New Mexico meet specific fleet-wide average levels of fuel economy. Vehicle fleets sold in the State, *outside* the City of Albuquerque and County of Bernalillo, will have to meet specified average levels; vehicle fleets sold inside the City of Albuquerque and County of Bernalillo are also subject to specified average requirements. The two sets of regulations will thus impose the same model mix on consumers and dealers outside the relatively urban area of the City of Albuquerque and County of Bernalillo as in the City and County.

22. The last feature of the new regulations -- the requirement that, under the City/County Board's regulation, a fleet of vehicles sold in a local area meet a specified fleet-average fuel economy or emissions level -- violates not only EPCA, but the federal Clean Air Act. The federal Clean Air Act preempts any local government below the State level from attempting to adopt or enforce any regulation relating to the control of emissions from new motor vehicles, including greenhouse gas emissions and all other types of emissions from such vehicles. In addition to the fleet-averaging requirements for fuel economy and greenhouse gas emissions contained in the regulations adopted by the City/County Board, those regulations also contain fleet-mix limitations related to other vehicle emissions in addition to greenhouse gas emissions.

This will further disrupt the new-vehicle market for residents of the City of Albuquerque and County of Bernalillo and for the dealers who serve them, including Plaintiffs.

23. If fully implemented, the challenged portions of the State's regulations and the City/County's regulations would restrict the types and number of models of new motor vehicles that Plaintiffs and other similarly-situated dealers will be able to sell. For those vehicle models that remain in the market, prices of many models will increase. Those price increases will further reduce new motor vehicle sales by Plaintiffs and other similarly-situated dealers. Because future revenues, profits and goodwill are an important part of the current value of any automotive retail business, the challenged portion of the State regulation and the City/County regulation in its entirety has injured and will continue to injure Plaintiffs.

Count I
For Declaratory and Injunctive Relief under EPCA -- State Regulation

24. Plaintiffs repeat and re-allege paragraphs 1 through 23 of this Complaint as though fully set forth herein.

25. EPCA, the federal fuel economy law, requires that NHTSA's national fuel economy standards reflect a balance of competing goals, including energy independence and conservation, consumer choice, environmental protection, the economic health of the automobile industry, and the safety of the motoring public. To prevent interference with the balances struck by NHTSA, EPCA also provides that "no State ... shall have authority to adopt or enforce any law or regulation related to fuel economy standards" once the federal regulations were in place. Pub. L. No. 94-163, § 301, 89 Stat. 901, 914 (1975); *see* 49 U.S.C. § 32919(a).

26. NMAC § 20.2.88.107 is "related to fuel economy standards and average fuel economy standards," and is preempted under 49 U.S.C. § 32919(a). Federal law prohibits the

adoption of regulations related to such standards, separate and apart from any attempt to enforce such regulations.

27. In addition, NMAC § 20.2.88.107 is inconsistent with the determination under federal law of the “maximum feasible” fuel economy standards for the vehicles subject to the federal fuel economy standards, and thereby frustrates the accomplishment of the goals and purposes of EPCA. NMAC § 20.2.88.107 intrudes upon a field of regulation occupied by the federal government, conflicts with federal law and regulation, and stands as an obstacle to achievement of the objectives of Congress when it established a national program for the regulation of motor vehicle fuel economy.

28. As NHTSA has explained, “Since the way to reduce carbon dioxide emissions is to improve fuel economy, a state regulation seeking to reduce those emissions is a ‘regulation related to fuel economy standards....’” (*See* 70 Fed. Reg. 51,414, 51,457 (Aug. 30, 2005)). NHTSA found that such state regulations would interfere with its standard-setting, and thus were both expressly and impliedly preempted by the federal statute:

[A] state may not impose a legal requirement relating to fuel economy, whether by statute, regulation or otherwise. ... *A state law that seeks to reduce motor vehicle carbon dioxide emissions is both expressly and impliedly preempted.* ... For example [such a law or regulation] would interfere [with] the careful balancing of various statutory factors and other related consideration [that] we must do in order to establish average fuel economy standards....

Id. (emphasis added).

29. The United States Constitution makes federal law and regulations “the supreme Law of the Land.” United States Constitution, article VI, cl. 2. Plaintiffs have legally protected interests under the Constitution, EPCA, and other federal laws (including 42 U.S.C. § 1983) in the full enforcement of the federal fuel economy laws against defendants’ implementation of CO2 rules adopted by the Department. Plaintiffs will be actually and irreparably injured with

respect to their federally protected interests if NMAC § 20.2.88.107 is not declared unlawful and if Defendant Curry is not enjoined from implementing that regulation.

30. A clear and judicially cognizable controversy exists between plaintiffs and Defendant Curry regarding whether NMAC § 20.2.88.107 is preempted by the federal fuel economy laws. The regulation is preempted by the federal fuel economy laws and cannot be enforced. Defendant Curry disagrees and will enforce NMAC § 20.2.88.107 to the detriment of plaintiffs. Moreover, the federal fuel economy laws prohibit the adoption of the regulation challenged here, separate and apart from its enforcement.

31. Plaintiffs have no adequate legal remedy for the injuries they are suffering. To redress the violations of federal law and the interference with plaintiffs' rights, and pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and other provisions of law, including 42 U.S.C. §§ 1983, 1988, plaintiffs request a declaration that NMAC § 20.2.88.107 is preempted and unenforceable.

32. Defendant Curry is now implementing and will continue to implement NMAC § 20.2.88.107 in violation of federal law unless enjoined by this Court from doing so. Plaintiffs are therefore also entitled to injunctive relief restraining and redressing these violations of federal law under 42 U.S.C. §§ 1983, 1988 and other provisions of law.

33. An injunction will not impose hardship on Defendant Curry, who is required to comply with federal law in the administration of his office.

34. An injunction will protect the public interest by avoiding the increase in ozone-forming emissions otherwise caused by implementation of NMAC § 20.2.88.107, and will not otherwise adversely affect the public interest, because the federal government retains plenary authority to regulate motor vehicles and to permit the implementation of lawful state motor vehicle regulations.

Count II
For Declaratory and Injunction Relief under EPCA -- City/County Regulation

35. Plaintiffs repeat and re-allege paragraphs 1 through 34 of this Complaint as though fully set forth herein.

36. NMAC § 20.11.104.107 is “related to fuel economy standards and average fuel economy standards,” and is preempted under 49 U.S.C. § 32919(a). Federal law prohibits the adoption of regulations related to such standards, separate and apart from any attempt to enforce such regulations.

37. In addition, NMAC § 20.11.104.107 is inconsistent with the determination under federal law of the “maximum feasible” fuel economy standards for the vehicles subject to the federal fuel economy law, and thereby frustrates the accomplishment of the goals and purposes of EPCA. NMAC § 20.11.104.107 intrudes upon a field of regulation occupied by the federal government, conflicts with federal law and regulation, and stands as an obstacle to achievement of the objectives of Congress when it established a national program for the regulation of motor vehicle fuel economy.

38. The United States Constitution makes federal law and regulations “the supreme Law of the Land.” United States Constitution, article VI, cl. 2. Plaintiffs have legally protected interests under the Constitution, EPCA, and other federal laws (including 42 U.S.C. § 1983) in the full enforcement of the federal fuel economy laws against defendants’ implementation of CO2 rules adopted by the Board. Plaintiffs will be actually and irreparably injured with respect to their federally protected interests if NMAC § 20.11.104.107 is not declared unlawful and if Defendant Santistevan is not enjoined from implementing that regulation.

39. A clear and judicially cognizable controversy exists between plaintiffs and Defendant Santistevan regarding whether NMAC § 20.11.104.107 is preempted by the federal

fuel economy laws. The regulation is preempted by the federal fuel economy laws and cannot be enforced. Defendant Santistevan disagrees and will enforce NMAC § 20.11.104.107 to the detriment of plaintiffs. Moreover, the federal fuel economy laws prohibit the adoption of the regulation challenged here, separate and apart from its enforcement.

40. Plaintiffs have no adequate legal remedy for the injuries they are suffering. To redress the violations of federal law and the interference with plaintiffs' rights, and pursuant to 28 U.S.C. §§ 1331, 1343, 2201 and other provisions of law, including 42 U.S.C. §§ 1983, 1988, plaintiffs request a declaration that NMAC § 20.11.104.107 is preempted and unenforceable.

41. Defendant Santistevan is now implementing and will continue to implement NMAC § 20.11.104.107 in violation of federal law unless enjoined by this Court from doing so. Plaintiffs are therefore also entitled to injunctive relief restraining and redressing these violations of federal law under 42 U.S.C. §§ 1983, 1988 and other provisions of law.

42. An injunction will not impose hardship on Defendant Santistevan, who is required to comply with federal law in the administration of his office.

Count III
For Declaratory and Injunctive
Relief under the Clean Air Act -- State Regulation

43. Plaintiffs repeat and re-allege paragraphs 1 through 42 of this Complaint as though fully set forth herein. This Count of the Complaint avers that defendants are acting in violation of the Clean Air Act, and is presented as an alternative ground for relief in the event the Court does not grant the relief sought by plaintiffs under Counts I and/or II of the Complaint.

44. Section 209(a) of the Clean Air Act generally preempts States and their political subdivisions from adopting or enforcing "any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines." 42 U.S.C. § 7543(a). The challenged

portion of the State regulation that is the subject of this action, NMAC § 20.2.88.107, contains such standards. While section 209(b) of the Clean Air Act and section 177 of the Clean Air Act permit enforcement of some such standards that are identical to California standards that have obtained a waiver of federal preemption from U.S. EPA, no such waiver has been issued by U.S. EPA for the California standards on which NMAC § 20.2.88.107 is based.

45. All portions of the State regulation concerning new motor vehicles emissions adopted by the New Mexico Environmental Improvement Board that have received a waiver of federal preemption as of the date of the filing of this Complaint and that are not otherwise preempted by the federal fuel economy law, as alleged herein, will not be affected by the relief sought herein.

46. Plaintiffs have legally protected interests under the Constitution, the Clean Air Act, and other federal laws (including 42 U.S.C. § 1983) in the full enforcement of the federal Clean Air Act with respect to NMAC § 20.2.88.107, which is preempted from enforcement under 209(a) of the Clean Air Act.

47. Plaintiffs will be actually and irreparably injured with respect to their federally protected interests by enforcement of the requirements of the Clean Air Act, if NMAC § 20.2.88.107 is not declared unlawful and if defendant Curry is not enjoined from enforcing NMAC § 20.2.88.107. The public interest will be served by such declaratory and injunctive relief.

48. Separate and apart from the lack of any EPA approval for NMAC § 20.2.88.107, enforcement of NMAC § 20.2.88.107 would violate the Clean Air Act in other ways as well. NMAC § 20.2.88.107 requires certain motor vehicle manufacturers, including manufacturers who provide vehicles to Plaintiffs, to ensure that vehicles sold in New Mexico conform to

specific fleet-wide average emissions levels, and/or that the mix of different vehicle models sold in specified model years meet certain minimum percentages. Those sale mix requirements are contained in NMAC § 20.2.88.107.

49. Additional such requirements are contained, with respect to other emissions standards, in NMAC § 20.2.88.104. Those requirements force manufacturers to limit the sale in New Mexico of some types of vehicles, and the number of certain types of vehicles, that are legal for sale in California, based on differences in consumer demand in New Mexico. All such sales limits and averaging requirements are prohibited by section 177 of the Clean Air Act, 42 U.S.C. § 7607.

50. The requirements of NMAC § 20.2.88.104 and NMAC § 20.2.88.107 will interfere with and disrupt Plaintiffs' participation in the competitive new-vehicle market. Plaintiffs will lose sales, profits and goodwill as a result of enforcement of the sales mix and averaging requirements of NMAC § 20.2.88.104 and NMAC § 20.2.88.107.s

51. A clear and judicially cognizable controversy exists between plaintiffs and defendant Curry regarding whether defendants may enforce NMAC § 20.2.88.104 and NMAC § 20.2.88.107. NMAC § 20.2.88.104 and NMAC § 20.2.88.107 are preempted and cannot be enforced without a waiver of federal preemption under the Clean Air Act and without violating section 177 of the Clean Air Act. Defendant Curry is currently implementing NMAC § 20.2.88.104 and NMAC § 20.2.88.107 and will enforce them to the detriment of Plaintiffs.

52. To redress the violations of federal law and the interference with Plaintiffs' rights described herein, and pursuant to 28 U.S.C. §§ 1331, 1343, 2201-2202 and other provisions of law, including 42 U.S.C. §§ 1983, 1988, Plaintiffs request a declaration that NMAC § 20.2.88.104 and NMAC § 20.2.88.107 are preempted by the Clean Air Act.

53. Defendant Curry is now implementing and will continue to implement NMAC § 20.2.88.104 and NMAC § 20.2.88.107 in violation of the Clean Air Act and plaintiffs' rights under federal law, unless enjoined by this Court from doing so. Plaintiffs are therefore also entitled to injunctive relief restraining and redressing these violations of federal law and their rights under 42 U.S.C. §§ 1983, 1988 and other provisions of law.

54. An injunction will not impose hardship on Defendant Curry, who is required to comply with federal law in the administration of his office.

55. Plaintiffs have legally protected interests under the Constitution, the Clean Air Act, and other federal laws (including 42 U.S.C. § 1983) in the full enforcement of the federal Clean Air Act with respect to NMAC § 20.2.88.107 which has not received approval from EPA under section 209(b) of the Clean Air Act. Plaintiffs also have legally protected interests under section 177 of the Clean Air Act with respect to NMAC § 20.2.88.104, which will limit the New Mexico sales of vehicles that are legal for sale in California.

56. Plaintiffs will be actually and irreparably injured with respect to their federally protected interests by enforcement of the requirements of the Clean Air Act, if NMAC § 20.2.88.104 and NMAC § 20.2.88.107 are not declared unlawful and if Defendant Curry is not enjoined from enforcing them. The public interest will be served by such declaratory and injunctive relief.

Count IV
For Declaratory Relief and Injunctive Relief
Under the Clean Air Act -- City/County Regulation

57. Plaintiffs repeat and re-allege paragraphs 1 through 56 of this Complaint as though fully set forth herein.

58. Section 209(a) of the Clean Air Act generally preempts political subdivisions of States from adopting or enforcing “any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines.” 42 U.S.C. § 7543(a). The regulations adopted by the City/County Board concerning new motor vehicle emissions contain such standards.

59. Plaintiffs have legally protected interests under the Constitution, the Clean Air Act, and other federal laws (including 42 U.S.C. § 1983) in the full enforcement of the federal Clean Air Act with respect to the new motor vehicle emissions regulations adopted by the City/County Board published at NMAC §§ 20.11.104.1-104.112, which are preempted from enforcement under 209(a) of the Clean Air Act.

60. Plaintiffs will be actually and irreparably injured with respect to their federally protected interests by enforcement of the requirements of the Clean Air Act, if the new motor vehicle emissions regulations adopted by the City/County Board published at NMAC §§ 20.11.104.1-104.112 are not declared unlawful and if defendant Santistevan is not enjoined from enforcing those regulations. The public interest will be served by such declaratory and injunctive relief.

61. Enforcement of NMAC §§ 20.11.104.1-104.112 would violate the Clean Air Act even if the City/County Board was permitted by the Clean Air Act to adopt and enforcement regulations relating to the control of emissions from new motor vehicles. NMAC § 20.11.104.104 and NMAC § 20.11.104.17 require certain motor vehicle manufacturers, including manufacturers who provide vehicles to Plaintiffs, to ensure that vehicles sold in the City of Albuquerque and County of Bernalillo conform to specific fleet-wide average emissions levels, and/or that the mix of different vehicle models sold in specified model years meet certain

minimum percentages. Those requirements violate section 177 of the federal Clean Air Act, 42 U.S.C. § 7607.

62. A clear and judicially cognizable controversy exists between Plaintiffs and Defendant Santistevan regarding whether Defendant may enforce NMAC §§ 20.11.104.1-104.112. Plaintiffs contend that NMAC §§ 20.11.104.1-104.112 are preempted and cannot be enforced. Defendant Santistevan is currently implementing NMAC §§ 20.11.104.1-104.112 and will enforce it to the detriment of plaintiffs.

63. To redress the violations of federal law and the interference with Plaintiffs' rights described herein, and pursuant to 28 U.S.C. §§ 1331, 1343, 2201-2202 and other provisions of law, including 42 U.S.C. §§ 1983, 1988, Plaintiffs request a declaration that NMAC §§ 20.11.104.1-104.112 are preempted by the Clean Air Act.

64. Defendant Santistevan is now implementing and will continue to implement NMAC §§ 20.11.104.1-104.112 in violation of the Clean Air Act and plaintiffs' rights under federal law, unless enjoined by this Court from doing so. Plaintiffs are therefore also entitled to injunctive relief restraining and redressing these violations of federal law and their rights under 42 U.S.C. §§ 1983, 1988 and other provisions of law.

65. An injunction will not impose hardship on Defendant Santistevan , who is required to comply with federal law in the administration of his office.

66. Plaintiffs have legally protected interests under the Constitution, the Clean Air Act, and other federal laws (including 42 U.S.C. § 1983) in the full enforcement of the federal Clean Air Act with respect to NMAC §§ 20.11.104.1-104.112.

67. Plaintiffs will be actually and irreparably injured with respect to their federally protected interests by enforcement of the requirements of the Clean Air Act, if NMAC §§

20.11.104.1-104.112 are not declared unlawful and if Defendant Santistevan is not enjoined from enforcing them. The public interest will be served by such declaratory and injunctive relief.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs respectfully request that this Court enter the following relief:

A. A declaratory judgment, pursuant to 28 U.S.C. § 2201 and Rule 57 of the Federal Rules of Civil Procedure, that NMAC § 20.2.88.104, NMAC § 20.2.88.107, and NMAC §§ 20.11.104.1-104.112 violate federal law in the manner alleged above.

B. Preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendant Curry from implementing or enforcing NMAC § 20.2.88.104 and NMAC § 20.2.88.107.

C. Preliminary and permanent injunctions, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendant Santistevan from implementing or enforcing NMAC §§ 20.11.104.1-104.112.

D. An award of reasonable attorneys' fees pursuant to 42 U.S.C. § 1988 and other provisions of federal law.

E. Such other relief available under federal law that may be considered appropriate under the circumstances, including other fees and costs of this action to the extent allowed by federal law.

Respectfully submitted,

MODRALL, SPERLING, ROEHL, HARRIS &
SISK, P.A.

Electronically Filed

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