THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Zangara Dodge, Inc., a corporation; Auge Sales and Services, Inc., a corporation; Phil Carrell Chevrolet-Buick, Inc., a corporation; Quality Motor Co., Inc., a corporation; Sierra Blanca Motor Co., Inc., a corporation; Salazar Dodge Chrysler and Jeep, Inc., a corporation; Tillery Chevrolet GMC, Inc., a corporation; Gurley Motor Co., a corporation; Jack Key Motor Co., Inc., a corporation; Jack Key Motor Company of Alamogordo, LLC; Jack Key Motor Company of Deming, LLC; Jim Spence Oldsmobile, Cadillac, GMC, Nissan, Inc., a corporation; Friday Motors, Inc., a corporation; Las Cruces Automotive Group, Inc., a corporation; The Krumland Company, LLC; T & L Motors, LLC; Jet Equities, LLC; and the National Automobile Dealers Association, a corporation, *Plaintiffs*, v. Ron Curry, in his official capacity as Secretary of the New Mexico Department of Environment; New Mexico Department of Environment; New Mexico Environmental Improvement Board; Albuquerque – Bernalillo County Air Quality Control Board; and John Soladay, in his official capacity as Acting Director of the Environmental Health Department of the City of Albuquerque, *Defendants.*	)	Case No. CIV 07-1305 ACT/LFG

FIRST AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Pursuant to Rule 15(a) of the Federal Rules of Civil Procedure, Plaintiffs Zangara Dodge, Inc., Auge Sales and Service, Inc., Phil Carrell Chevrolet-Buick, Inc., Quality Motor Co., Inc., Sierra Blanca Motor Co., Salazar Dodge Chrysler and Jeep, Inc., Tillery Chevrolet GMC, Inc., Gurley Motor Co., Jack Key Motor Co., Inc., Jack Key Motor Company of Alamogordo, LLC, Jack Key Motor Company of Deming, LLC, Jim Spence Oldsmobile, Cadillac, GMC, Nissan,

Inc., Friday Motors, Inc., Las Cruces Automotive Group, Inc., The Krumland Company, LLC, T & L Motors, LLC, Jet Equities, LLC, and the National Automobile Dealers Association, through their attorneys, file this First Amended Complaint against Defendants, and state as follows:

Introduction

1. This action seeks declaratory and injunctive relief under federal law against enforcement by Defendants of certain provisions contained in regulations adopted by the State of New Mexico and the Albuquerque-Bernalillo County Air Quality Control Board, which became effective by operation of law on or about January 1, 2008.

2. The pertinent regulatory provisions adopted by the New Mexico Environmental Improvement Board (the "State Board") were attached as Exhibit A to the Complaint filed December 27, 2007. The regulations in Exhibit A (the "State regulations") regulate the sale of new motor vehicles in and into portions of the State outside the City of Albuquerque and County of Bernalillo. The pertinent regulatory provisions adopted by the Albuquerque-Bernalillo County Air Quality Control Board (the "City/County Board") were attached as Exhibit B to the Complaint filed December 27, 2007. The regulations in Exhibit B (the "City/County regulations") regulate the sale of new motor vehicles in and into the City of Albuquerque and County of Bernalillo.

3. The regulatory provisions challenged in this action conflict with and are preempted by federal law and regulations governing the fuel economy of new motor vehicles, including the Energy Policy and Conservation Act of 1975 ("EPCA"), which was amended by the United States Congress in the Energy Independence and Security Act of 2007 ("EISA"), Public Law No. 110-140 (Dec. 19, 2007). In addition, as set forth below, certain of the regulatory provisions challenged in this action conflict with and are preempted by provisions of the Clean Air Act, 42

U.S.C. §§ 7401-7671. As a result, those regulatory provisions violate the Supremacy Clause in Article VI of the United States Constitution.

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

Additional Facts concerning Parties, Jurisdiction and Venue

5. All Plaintiffs other than the National Automobile Dealers Association ("NADA") are automotive retail businesses, and they are referred to herein as the "dealer Plaintiffs." Zangara Dodge, Inc., is located in the City of Albuquerque. Auge Sales and Serices, Inc. is located in Belen, New Mexico, about 20 miles south of Albuquerque. Tillery Chevrolet GMC, Inc., is located in Moriarty, New Mexico, about 20 miles east of Albuquerque. All other dealer Plaintiffs are also located in the State of New Mexico.

6. Prior to adoption of the regulations challenged in this action, the dealer Plaintiffs would have been entitled to sell new motor vehicles that could be registered in all parts of the State of New Mexico. The dealer Plaintiffs are "dealers" under 49 U.S.C. § 32908, the federal fuel economy law.

7. NADA is a not-for-profit corporation that represents approximately 19,000 franchised automobile and truck dealers in the United States. NADA's members sell new and used motor vehicles and they engage in the vehicle service, repair, and parts sales business. The members of NADA employ more than 1.3 million people nationwide, although many of its members are defined as small businesses by the U.S. Small Business Administration. NADA's

members include approximately 95 percent of the automotive dealerships in the State of New Mexico.[1]

8. The New Mexico Environment Department (the "Department") is an agency organized pursuant to NMSA 1978, § 9-7A-4 and existing under the laws of the State of New Mexico. The Department enforces regulations adopted by the State Board. Ron Curry is the Cabinet Secretary of the Department and in that capacity will enforce the regulatory provisions challenged in this action. 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 the State of New Mexico. John Soladay is the Acting Director of the Environmental Health Department of the City of Albuquerque and enforces regulations adopted by the City/County Board. In that capacity, he will enforce the regulatory provisions challenged in this action.

9. The dealer Plaintiffs, who are dealers in the State of New Mexico, and all other New Mexico dealers who are members of NADA 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. Those harms include but are not limited to the effects set forth below.

10. Each of the regulatory provisions challenged in this action will prohibit the dealer Plaintiffs and all other New Mexico dealers who are members of NADA from selling new motor vehicles that do not meet the requirements set forth in those provisions. Studies have shown that compliance with those regulatory provisions will increase the costs of new motor vehicles.

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[1] Each Plaintiff on the Complaint filed on December 27, 2007 has consented to the conduct of all dispositive proceedings before the United States Magistrate Judge assigned to this case pursuant to Rule 73.1 of the Rules of this Court. All other Plaintiffs also so consent.

11. The increased costs caused by the challenged regulatory provisions will create upward price pressure in the new vehicle retail market. One of the studies to which paragraph 10 refers, prepared by the California Air Resources Board in 2004, estimated that this upward price pressure would cause a 4.7 percent drop in new vehicle sales when regulations similar to the regulatory provisions challenged in this action are fully implemented. Other studies predict larger reductions in new vehicle sales in States that enforce the standards challenged by Plaintiffs in this action.

12. A reduction in new vehicle sales of 4.7 percent would be the equivalent of a recession in the automobile industry. As a result of the reduction in new vehicle sales, the dealer Plaintiffs and all other New Mexico dealers who are members of NADA will sustain economic harm through lost profits and goodwill compared to the status quo prior to adoption of the regulatory provisions challenged in this action.

13. In addition, the City/County regulations will disrupt the new vehicle market in the City and County, and in the State of New Mexico as a whole, by requiring that the sales mix of vehicles sold in the City and County meet specific average emission levels. This will restrict the ability of the dealer Plaintiffs and all other New Mexico dealers who are members of NADA to maximize sales and will restrict consumer choice. This will cause further economic harm through lost profits and goodwill for the dealer Plaintiffs and all other New Mexico dealers who are members of NADA.

14. The interests of the dealer Plaintiffs and all other New Mexico dealers who are members of NADA that will be adversely affected by the challenged regulatory provisions are interests protected by federal law. The federal fuel economy laws and the Clean Air Act are intended to ensure that decisions to increase regulatory costs through measures directed at new

motor vehicles conform with criteria established by Congress, and are made by officials and agencies who are responsible to Congress and to the Executive authority of the federal government. The harms suffered by the dealer Plaintiffs and all other New Mexico dealers who are members of NADA are injuries that federal law is designed to avoid, and they are directly traceable to the actions of Defendants that violate federal law.

15. Dealers in nearby States which have not adopted (and where local government agencies have not adopted) the same regulatory provisions challenged in this action will not suffer the same or similar adverse effects on their business, nor will dealers in any other State which has not adopted those same regulatory provisions. Those effects place the dealer Plaintiffs and all other New Mexico dealers who are members of NADA within a uniquely affected class harmed by the regulatory provisions challenged in this action.

16. Future revenues, profits, and goodwill are an important part of the current value of any automotive retail business. The value of automotive dealerships in the State of New Mexico will be reduced compared to the value of dealerships in other States where the regulatory provisions challenged in this action do not apply. This reduction in value is another injury caused by the regulations challenged in this action that the dealer Plaintiffs and all other New Mexico dealers who are members of NADA have suffered and will continue to suffer.

17. Venue in this Court is proper under 28 U.S.C. § 1391(b) because among other things the actions violating federal law stated in the Complaint impose injury in this District, Defendants reside here, and the regulatory provisions challenged here will be enforced here.

Background

18. 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.

19. The 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 State Board and the City/County Board adopted the California standards, beginning in model year 2011.

20. 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 decisions of the State Board and the City/County 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.

21. The other part of the California vehicle program applies to the emissions from new motor vehicles that are known as "greenhouse gases." These are gases that disperse globally in the atmosphere and retain heat from the sun, creating the "greenhouse effect." The portions of the new motor vehicle regulations adopted by the State 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 of the Complaint filed December 27, 2007.)

22. The principal greenhouse gas released by motor vehicles is carbon dioxide, or "CO_2." CO_2 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.

23. The "greenhouse effect" is an important part of the Earth's biosphere. The heat-trapping properties of greenhouse gases, including CO_2, 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.

24. Scientists have warned that a large increase in CO_2 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.

25. The principal way to achieve significant reductions in carbon dioxide from a motor vehicle is to reduce the amount of carbon-based fuel it burns -- and this, in turn, requires a reduction in its consumption of such fuel. 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 directed U.S. EPA, NHTSA, and other federal agencies to coordinate regulatory actions directed at greenhouse gas emissions. *See* Exec. Order 13,432, 72 Fed. Reg. 27,717 (May 16, 2007).

26. Unlike smog, which can be produced and remain located in one area, CO_2 disperses globally and is long-lived. As a result, effective control of CO_2 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 the state of New Mexico, the City of Albuquerque, or Bernalillo County. To the extent that CO_2 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 CO_2 originated from a motor vehicle located there.

27. The global dispersal of CO_2 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 CO_2 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.

28. The federal law governing motor vehicle fuel economy is contained in 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. In December 2007, EISA specified that national average fuel economy levels for new motor vehicles must rise by at least 40 percent over the next 12 years. That statutory goal will have the effect of reducing carbon dioxide emissions levels from new automobiles by about 30 percent.

29. Under EISA, Congress directed NHTSA to promulgate "reformed" fuel economy standards. The reformed approach to regulating motor vehicle fuel economy requires the use of

an attribute-based approach (originally recommended by the National Academy of Sciences in 2002) designed to increase the flexibility of the industry in meeting higher fuel economy requirements in order to help preserve consumer choice. This critical feature of the federal law is important to residents of the state of New Mexico and to Plaintiffs alike, because it helps ensure that customers requiring vehicles of different types and sizes will be able to choose among a wide array of different models.

30. On April 22, 2008, NHTSA published its first proposed regulations to implement the requirements of EISA. Together with other recent regulatory actions, the standards proposed by NHTSA on April 22 would create new fuel economy standards nationwide for light trucks through model year 2015. NHTSA's new proposed standards would also create new fuel economy standards for passenger cars beginning in model year 2011 and extending through model year 2015. NHTSA will propose additional fuel economy standards for cars and light trucks for model years subsequent to model year 2015 at a later time.

31. As NHTSA stated in its April 22 publication, "[s]ince the carbon dioxide (CO_2) emitted from the tailpipes of new motor vehicles is the natural by-product of the combustion of fuel, the increased standards would also address climate change by reducing tailpipe emissions of CO_2. Those emissions represent 97 percent of the total greenhouse gas emissions from motor vehicles. Implementation of the new standards would dramatically add to the billions of barrels of fuel already saved since the beginning of the CAFE program in 1975." NHTSA predicts that the nationwide regulations proposed on April 22 will save almost 55 billion gallons of gasoline over the life of the vehicles subject to the new standards, and reduce emissions of CO_2 from the same vehicles by more than half a trillion metric tons.

32. Consistent with the instructions of Congress in EISA, NHTSA's new proposal implements the reforms in the fuel economy program recommended by the National Academy of Sciences in 2002. NHTSA explains in its proposal that its "new approach is a substantial improvement" over earl ier regulations and "avoids cr eating undue risks of adverse safety and employment impacts and distributes compliance responsibilities among the vehicle manufacturers more equitably."

33. In a number of important ways, the regulatory provisions challenged in this action differ from the federal fuel economy regulations that they would replace, and conflict in fundamental ways with the standards proposed by NHTSA on April 22 as well as the overall federal fuel economy program. First, as described above, the challenged regulatory provisions do not account for the size of the specific vehicles being regulated in the same way as the federal law and regulations do. This will create incentives or requirements for the industry to restrict the sales of certain types and sizes of vehicles, the very scenario that the newly reformed federal fuel economy program is designed to avoid.

34. Second, the challenged regulatory provisions set fuel economy requirements for cars and trucks to be sold in the State of New Mexico that will be in the aggregate far more stringent, and much more costly to meet, than the federal fuel economy standards, and therefore also will result in the adverse effects on the dealer Plaintiffs and all other New Mexico dealers who are members of NADA described above.

35. 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 will also be 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 they will within the borders of the City of Albuquerque and County of Bernalillo, notwithstanding differences in consumer demand in those geographic areas. This will effectively restrict consumer choice, contrary to the goals and purposes of federal law, and thus will adversely affect the dealer Plaintiffs and all other New Mexico dealers who are members of NADA.

36. The last feature of the new regulations -- the requirement that, under the City/County regulation, a fleet of vehicles sold in a local area meet a specified fleet-average fuel economy or emissions level -- violates both the federal fuel economy law and the Clean Air Act. The 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.

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

37. Plaintiffs repeat and re-allege paragraphs 1 through 36 of this Complaint as though fully set forth herein.

38. Under EPCA (the federal fuel economy law), 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 and average fuel economy standards" once the federal regulations are in place. Pub. L. No. 94-163, § 301, 89 Stat. 901, 914 (1975); *see* 49 U.S.C. § 32919(a).

39. NMAC § 20.2.88.107 is "related to fuel economy standards and average fuel economy standards," and is thus 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.

40. 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 and EISA, including those enunciated and applied in NHTSA's April 22, 2008 publication. NMAC § 20.2.88.107 intrudes upon the field of regulation occupied by the federal government, conflicts with federal law and regulation, and stands as an obstacle to the achievement of the objectives of Congress when it established a national program for the regulation of motor vehicle fuel economy.

41. As NHTSA has explained, "[s]ince 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.*
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> . . . .

> For example [such a law or regulation] would interfere [with] the careful balancing of various statutory factors and other related considerations [that] we must do in order to establish average fuel economy standards . . . .

Id. (emphasis added).

42. As NHTSA explained in its April 22, 2008 publication, the conflicts between state greenhouse gas regulations and the federal fuel economy program have been made even clearer by the enactment of EISA. NHTSA stated:

> The enactment of EISA has increased the conflict between state regulations regulating CO_2 tailpipe emissions from automobiles and EPCA. A conflict between state and federal law arises when compliance with both federal and state regulations is a physical impossibility or when state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Contrary to the recommendations of NAS, the judgment of NHTSA, and the mandate of Congress, the state regulations regulating CO_2 tailpipe emissions, which are equivalent in effect to fuel economy standards, are not attribute-based, thus presenting risks to safety and employment.

43. The United States Constitution makes federal law and regulations "the supreme Law of the Land." United States Constitution, article VI, cl. 2.

44. 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 the motor vehicle greenhouse gas rules adopted by the State Board.

45. 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. The public interest will be served by such declaratory and injunctive relief.

46. 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.

47. 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, and 2201 and other provisions of law, including 42 U.S.C. §§ 1983 and 1988, Plaintiffs request a declaration that NMAC § 20.2.88.107 is preempted and unenforceable.

48. Defendant Curry is 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 and 1988 and other provisions of law.

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

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

50. Plaintiffs repeat and re-allege paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. 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.

52. 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 the achievement of the objectives of Congress when it established a national program for the regulation of motor vehicle fuel economy.

53. The United States Constitution makes federal law and regulations "the supreme Law of the Land." United States Constitution, article VI, cl. 2.

54. 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 motor vehicle greenhouse gas rules adopted by the City/County Board.

55. 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 Soladay is not enjoined from implementing that regulation. The public interest will be served by such declaratory and injunctive relief.

56. A clear and judicially cognizable controversy exists between Plaintiffs and Defendant Soladay 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 Soladay 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.

57. 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, and 2201 and other provisions of law, including 42 U.S.C. §§ 1983 and 1988, Plaintiffs request a declaration that NMAC § 20.11.104.107 is preempted and unenforceable.

58. Defendant Soladay is 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 and 1988 and other provisions of law.

59. An injunction will not impose hardship on Defendant Soladay, 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

60. Plaintiffs repeat and re-allege paragraphs 1 through 59 of this Complaint as though fully set forth herein. This Count of the Complaint contends that Defendants are acting in violation of the Clean Air Act, and it seeks relief in the alternative to the relief sought in Count I of the First Amended Complaint, if the Court does not grant the relief sought in Count I.

61. Section 177 of the Clean Air Act prohibits States from taking action that would prohibit or limit, directly or indirectly, the sale of new motor vehicles that meet State of California new motor vehicle emission standards. 42 U.S.C. § 7507.

62. The State regulations specify that, in general, only new motor vehicles meeting the California standards may be sold. In addition, NMAC § 20.2.88.107 requires motor vehicle manufacturers who provide vehicles to dealer Plaintiffs and all other New Mexico dealers who are members of NADA, to ensure that vehicles sold in the State of New Mexico conform to specific fleet-wide average greenhouse gas emissions levels, and/or that the mix of different

vehicle models sold in specified model years meet certain minimum percentages. Those requirements will 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. Such sales limits are prohibited by section 177 of the Clean Air Act.

63. 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, and 2201 and other provisions of law, including 42 U.S.C. §§ 1983 and 1988, Plaintiffs request a declaration that NMAC § 20.2.88.107 is preempted and unenforceable.

64. 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 Clean Air Act with respect to NMAC § 20.2.88.107, which is preempted from enforcement under section 177 of the Clean Air Act.

65. 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.

66. The requirements of NMAC § 20.2.88.107 will interfere with and disrupt the participation of dealer Plaintiffs and all other New Mexico dealers who are members of NADA 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 § 20.2.88.107.

67. A clear and judicially cognizable controversy exists between Plaintiffs and Defendant Curry regarding whether Defendants may enforce NMAC § 20.2.88.107. NMAC § 20.2.88.107 cannot be enforced without violating section 177 of the Clean Air Act. Defendant Curry will enforce NMAC § 20.2.88.107 to the detriment of Plaintiffs.

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

69. Defendant Curry will continue to implement 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 and 1988 and other provisions of law.

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

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

71. Plaintiffs repeat and re-allege paragraphs 1 through 70 of this Complaint as though fully set forth herein.

72. 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.

73. The City of Albuquerque and the County of Bernalillo are not States. Because they are not States, the City of Albuquerque and the County of Bernalillo cannot adopt or enforce any standards related to the control of emissions from new motor vehicles or regulations that contain such standards.

74. 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, and 2201 and other provisions of law, including 42 U.S.C. §§ 1983 and 1988, Plaintiffs request a declaration that NMAC § 20.11.104.107 is preempted and unenforceable.

75. 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 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 Section 209(a) of the Clean Air Act.

76. 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 Soladay is not enjoined from enforcing those regulations. The public interest will be served by such declaratory and injunctive relief.

77. 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 enforce some regulations relating to the control of emissions from new motor vehicles. NMAC

§ 20.11.104.104 and NMAC § 20.11.104.107 require motor vehicle manufacturers who provide vehicles to dealer Plaintiffs and all other New Mexico dealers who are members of NADA 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 Clean Air Act, 42 U.S.C. § 7607, for the same reasons as stated with respect to the State regulations in Count III of this First Amended Complaint.

78. A clear and judicially cognizable controversy exists between Plaintiffs and Defendant Soladay regarding whether Defendant may enforce NMAC §§ 20.11.104.1-104.112. NMAC §§ 20.11.104.1-104.112 are preempted and cannot be enforced. Defendant Soladay is currently implementing NMAC §§ 20.11.104.1-104.112 and will enforce them to the detriment of Plaintiffs.

79. To redress the violations of federal law and the interference with Plaintiffs' rights described herein, and pursuant to 28 U.S.C. §§ 1331, 1343, and 2201-2202 and other provisions of law, including 42 U.S.C. §§ 1983 and1988, Plaintiffs request a declaration that NMAC §§ 20.11.104.1-104.112 are preempted by the Clean Air Act.

80. Defendant Soladay is 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 and 1988 and other provisions of law.

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

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 Soladay 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.

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

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