

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

ZANGARA DODGE, INC., et al.,

Plaintiffs,

vs.

No. **CIV 07-1305 MCA/ACT**

RON CURRY, in his official capacity
as Secretary of the New Mexico
Department of Environment, et al.,

Defendants,

and

ENVIRONMENT NEW MEXICO, et al.,

Defendant-Intervenors.

ORDER DENYING MOTIONS WITHOUT PREJUDICE

THIS MATTER comes before the Court on the following motions: (1) *Plaintiffs' Motion for Summary Judgment on Count IV of the Second Amended Complaint (Preemption Under the Clean Air Act* [Doc. 41], filed July 2, 2008; (2) *Plaintiffs' Motion for Summary Judgment on Counts I and II of the Second Amended Complaint (Preemption Under the Federal Fuel Economy Law)* [Doc. 49], filed July 8, 2008; (3) *Defendants' Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Rule 12(c) Motion for Judgment on the Pleadings* [Doc. 86], filed August 12, 2008; and (4) *Defendants' Unopposed Motion for Extension of Page Limits for Defendants' Reply Brief and Exhibits* [Doc. 147],

filed January 29, 2009. Having reviewed the parties' submissions and the applicable law, and being fully advised in the premises, the Court finds that:

1. The Local Rules of this District provide for the filing of a motion, a response, and a reply. See D.N.M. LR-Civ. 7.1, 7.4;
2. Contemporaneously with its motion, a movant may file a single, separate brief or memorandum containing legal authority and a statement of facts. See D.N.M. LR-Civ. 7.3(a); 56.1(b);
3. The time permitted for responses and replies is ordinarily 14 days. See D.N.M. LR-Civ. 7.4(a);
4. It is improper to raise new arguments or submit new evidence for the first time in a reply brief. See FDIC v. Noel, 177 F.3d 911, 915-16 (10th Cir. 1999); Beaird v. Seagate Tech., Inc., 145 F.3d 1159, 1163-65 (10th Cir. 1998);
5. The filing of a surreply requires leave of the Court. See D.N.M. LR-Civ. 7.4(b);
6. In this case, the parties' voluminous, piecemeal filings do not comply with the above rules and do not provide the Court with an organized approach for addressing the issues presented;
7. For example, instead of filing a single consolidated motion with a single supporting memorandum and attached exhibits, Plaintiffs initially filed a *Motion for Summary Judgment On Counts I and II of the Second Amended Complaint (Preemption Under the Federal Fuel Economy Law)* [Doc. 49] with two separate briefs [Docs. 50, 51], then filed an *Errata* [Doc. 100], a *Corrected Memorandum* [Doc. 101], and a second *Errata* [Doc. 136];

8. Instead of filing a single consolidated response with attached exhibits, Defendants responded with several separate filings of their own, including a response brief [Doc. 93] that was combined in the same document with the memorandum in support of Defendants' motion to dismiss, as well as a separate *Response to Plaintiff's Statement of Undisputed Facts* [Doc. 90], and a separate filing entitled *Objections to Declarations of James M. Lyons and Douglas L. Greenhaus* [Doc. 91], which then prompted Plaintiffs to file a *Response to Defendants' Evidentiary Objections* [Doc. 108] and an additional declaration [Doc. 109];

9. After numerous filing errors [Docs. 87, 88, 89, 92], Defendants, in turn, filed their *Motion to Dismiss* [Doc. 86] with a supporting memorandum that is divided into three separate filings [Doc. 93, 93-2, 93-3] and combined with Defendants' response brief as noted above;

10. In response to Defendants' motion to dismiss, Plaintiffs filed numerous declarations as separate filings [Docs. 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131] rather than as attachments to their response brief [Doc. 113];

11. The parties have filed additional evidence for the first time with their reply briefs [Docs. 111-3, 111-4, 111-5, 111-6, 111-7, 134-2, 134-3, 134-4, 134-5, 134-6, 134-7, 134-8, 134-9, 134-10, 134-11], as well as an errata [Doc. 139] with a corrected additional exhibit;

12. Plaintiffs then filed a surreply styled as a *Response to Defendants' Objections* [Doc. 135] without first obtaining leave of the Court;

13. In addition to filing a separate motion for summary judgment addressing Counts I and II of the *Second Amended Complaint*, Plaintiffs filed a *Motion for Summary Judgment on*

Count IV of the Second Amended Complaint (Preemption Under the Federal Clean Air Act)
[Doc. 41];

14. The status of the latter motion is unclear, however, because Plaintiffs filed a *Motion to Stay* consideration of that motion on October 15, 2008, which was granted on condition that they file a status report with the Court on or before October 31, 2008 [Docs. 104, 107]; however, no such status report addressing that motion was filed by that date;

15. The parties have requested and received multiple extensions of time and page-limit extensions, with the result that briefing on dispositive motions took approximately six months to complete and now includes over one thousand pages of documents [Docs. 16, 39, 53, 78, 83, 84, 95, 96, 102, 103, 105, 106, 132, 133, 147];

16. During that six-month period, the Court notes that significant governmental and regulatory changes have occurred, including the passage of legislation directed at the automobile industry, and a decision by the Administrator of the Environmental Protection Agency to reconsider the previous denial of a waiver of preemption for the Greenhouse Gas Regulations contained in the California State Motor Vehicle Pollution Control Standards. See 74 Fed. Reg. 7040 (Feb. 12, 2009);

17. As a result of the events described above, the parties' filings in this case may not accurately reflect and account for recent developments or changed circumstances which could affect this Court's jurisdiction over the issues presented.

In light of these findings, the applicable law, and the Court's inherent power to regulate and properly manage its docket, promote judicial efficiency, and deter frivolous

filings, see Martinez v. IRS, 744 F.2d 71, 73 (10th Cir. 1984), the Court concludes that grounds exist for denying all of the pending motions without prejudice and granting Plaintiffs and Defendants leave to each file one consolidated dispositive motion that argues all legal theories with regard to all counts and that complies with the local rules regarding motion practice. The Court further concludes that there is good cause for requiring the parties to submit hard copies of their motion papers to the Court in tabbed, indexed binders, in addition to filing such papers electronically.

IT IS, THEREFORE, ORDERED that the following motions are **DENIED WITHOUT PREJUDICE**: (1) *Plaintiffs' Motion for Summary Judgment on Count IV of the Second Amended Complaint (Preemption Under the Clean Air Act* [Doc. 41]; (2) *Plaintiffs' Motion for Summary Judgment on Counts I and II of the Second Amended Complaint (Preemption Under the Federal Fuel Economy Law)* [Doc. 49]; (3) *Defendants' Rule 12(b)(1) Motion to Dismiss for Lack of Subject Matter Jurisdiction and Rule 12(c) Motion for Judgment on the Pleadings* [Doc. 86]; and (4) *Defendants' Unopposed Motion for Extension of Page Limits for Defendants' Reply Brief and Exhibits* [Doc. 147].

IT IS FURTHER ORDERED that Plaintiffs are granted leave to file one single consolidated dispositive motion and one single consolidated supporting memorandum with attached exhibits by no later than April 1, 2009, and a courtesy copy of any such motion, supporting memorandum, and all attached exhibits shall be submitted to chambers in a tabbed, indexed binder concurrently with that filing;

IT IS FURTHER ORDERED that Defendants are granted leave to file one single consolidated dispositive motion and one single consolidated supporting memorandum with attached exhibits by no later than April 1, 2009, and a courtesy copy of any such motion, supporting memorandum, and all attached exhibits shall be submitted to chambers in a tabbed, indexed binder concurrently with that filing.

IT IS FURTHER ORDERED that, with respect to the above motions, the non-movants are granted leave to file one single consolidated response brief with attached exhibits by no later than May 1, 2009, and a courtesy copy of any such response brief and all attached exhibits shall be submitted to chambers in a tabbed, indexed binder concurrently with that filing.

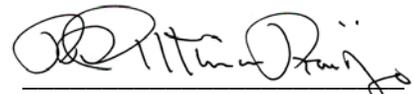
IT IS FURTHER ORDERED that, with respect to the above response briefs, the movants are granted leave to file one single consolidated reply brief without any attached exhibits by no later than June 1, 2009, and a courtesy copy of any such reply brief shall be submitted to chambers concurrently with that filing.

IT IS FURTHER ORDERED that each movant shall promptly file a notice of completion of briefing on the above motions as soon as the reply brief is filed, and the Court will then consider whether to schedule oral argument on the motions.

IT IS FURTHER ORDERED that the page limits stated in D.N.M. LR-Civ. 7.5 and 10.5 shall not apply to the above filings, and the parties may seek leave of the Court for reasonable extensions of page limits as are necessary to present all issues and all exhibits in a single, consolidated filing.

IT IS FURTHER ORDERED that the parties must request and obtain leave of Court in writing before filing any documents other those described above, and before filing any documents in a form and manner other than that described above.

SO ORDERED, this 3rd day of March, 2009, in Albuquerque, New Mexico.


M. CHRISTINA ARMIÑO
United States District Judge