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**IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

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

Plaintiffs,

v.

**James N. GOLDSTENE, in his official
capacity as Executive Officer of the
California Air Resources Board,**

Defendant,

**THE ASSOCIATION OF
INTERNATIONAL AUTOMOBILE
MANUFACTURERS,**

Plaintiff-Intervenor,

**SIERRA CLUB, NATURAL
RESOURCES DEFENSE COUNCIL,
ENVIRONMENTAL DEFENSE,
BLUE WATER NETWORK, GLOBAL
EXCHANGE, AND RAINFOREST
ACTION NETWORK,**

Defendant-Intervenors.

CV F 04-6663 AWI LJO

**MEMORANDUM OPINION
AND ORDER ON PLAINTIFF-
INTERVENOR'S MOTION
FOR RECONSIDERATION
AND PLAINTIFFS' MOTION
FOR MODIFICATION OF
TERMS OF INJUNCTIVE
RELIEF**

[Documents 665 and 672]

1 In its memorandum opinion and order filed January 16, 2007, the court enjoined the
2 “State of California and/or any of its political subdivisions and agencies:”

3 from the enforcement of any provision of California Health and Safety Code,
4 section 43018.5(b)(1), such injunction to remain in effect until the earlier of
5 such time as [Environmental Protection Agency (“EPA”)] may issue a waiver
6 of federal preemption to the State of California or the time Congress may pass,
7 and the President may sign into law, legislation permitting California to carry
8 out such regulation.

9 Doc. # 606 at 23 (hereinafter, the “January 16 Order”). The court’s memorandum opinion
10 and order filed December 11, 2007, and refiled as corrected on March 26, 2008, (the “March
11 26 Order”) granted motions for summary judgment by defendant State of California
12 (“Defendant”) and defendant intervenors, Sierra Club, et al. (“Defendant-intervenors”) as to
13 the remaining claims in this case and left the injunction established by the January 16 Order
14 undisturbed. As of the present time, EPA has not granted a waiver of federal preemption, nor
15 has Congress passed any legislation that would allow California to implement the fuel
16 economy provisions of California Health and Safety Code section 43018.5(b)(1) (hereinafter
17 the “AB1493 regulations”).

18 Now before the court are two motions, one by Plaintiff-intervenor, Association of
19 International Automobile Manufacturers (“AIAM”) and the other by plaintiffs Central Valley
20 Chrysler-Jeep, et al. (“Plaintiffs”), that together request the court modify the scope of
21 injunctive relief granted by the January 16 Order and re-visit its interpretation of the
22 preemptive force of the Clean Air Act. For the reasons that follow, the court will deny the
23 motions.

24 **FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

25 AIAM filed its motion to modify the scope of the injunction and to re-interpret the
26 preemptive language of section 209 of the Clean Air Act, 42 U.S.C. § 7543, on April 4, 2008.
27 Doc. # 665. Opposition to AIAM’s motion was filed on April 25, 2008, and AIAM’s reply
28 was filed on May 5, 2008. Plaintiffs filed their motion to modify injunctive relief on April
29 28, 2008. Defendant and Defendant-intervenors filed their opposition on May 23, 2008.
30 Plaintiffs filed their corrected reply on June 12, 2008. The court vacated the scheduled

1 hearing date of May 12, 2008, set a further briefing schedule, and took the matter under
2 submission as of June 9, 2008.

3 The focus of both AIAM's and Plaintiffs' motions is an executive order promulgated
4 by California Air Resources Board ("CARB") that Plaintiffs and AIM contend constitute an
5 attempt by CARB to enforce the AB1493 regulations (the "Executive Order"). The
6 Executive Order, as provided by AIAM in their moving brief, states as follows in pertinent
7 part:

8 A January 16, 2007 Order currently enjoins the Executive Officer from
9 enforcing any provision of California Health and Safety Code section
10 43018.5(b)(1) concerning certification to the requirements for 2009 and
11 subsequent model passenger cars, light duty trucks and medium-duty vehicles
12 adopted pursuant to AB 1493. (Document 606, Case No. 1:04-CV-06663 -
13 AWI - GSA, U.S. Dist. CT. E. Dist. Of CA (Fresno Div.)). ***If said injunction
14 ceases to be in effect, the manufacturer will have 45 days from the ARB
15 notification to demonstrate compliance with AB 1493 requirements,***
16 including determination of the greenhouse gas values for the test group listed
17 in this Executive Order. Nothing in this Executive Order is intended to
18 constitute enforcement of any requirement under AB 1493 for 2009 model
19 year vehicles.

20 Doc. # 665 at 4:10-4:16 (emphasis provided by AIAM).

21 LEGAL STANDARD

22 AIAM's contends, in part, that section 209(a) of the Clean Air Act, which generally
23 preempts state regulation of motor vehicle emissions, should be interpreted as being
24 disjunctive from the provisions of 209(b) of the Clean Air Act, which provides that EPA may
25 grant a waiver of federal preemption for automotive emissions standards developed by
26 California. Because the court did not adopt this interpretation of section 209 of the Clean Air
27 Act in either the January 16 or the March 26 Orders, the court construes AIAM's request for
28 re-interpretation of the Clean Air Act as a motion for reconsideration pursuant to Rule 60(b)
of the Federal Rules of Civil Procedure.

Rule 60(b) permits a district court to relieve a party from a final order or judgment on
grounds of: "(1) mistake, inadvertence, surprise, or excusable neglect; (3) fraud . . . of an
adverse party, . . . or (6) any other reason justifying relief from the operation of the
judgment." The motion for reconsideration must be made within a reasonable time, in any

1 event “not more than one year after the judgment, order, or proceeding was entered or taken.”

2 Id.

3 Motions to reconsider are committed to the discretion of the trial court. Combs v.
4 Nick Garin Trucking, 825 F.2d 437, 441 (D.C.Cir. 1987); Rodgers v. Watt, 722 F.2d 456,
5 460 (9th Cir. 1983) (*en banc*). To succeed, a party must set forth facts or law of a strongly
6 convincing nature to induce the court to reverse its prior decision. See, e.g., Kern-Tulare
7 Water Dist. v. City of Bakersfield, 634 F.Supp. 656, 665 (E.D.Cal. 1986), *aff’d* in part and
8 *rev’d* in part on other grounds, 828 F.2d 514 (9th Cir. 1987), *cert. denied*, 486 U.S. 1015, 108
9 S.Ct. 1752, 100 L.Ed.2d 214 (1988).

10 AIAM and Plaintiffs also request that the court exercise its power to modify the
11 existing injunction. A court’s authority to modify the terms of injunctive relief is inherent,
12 A&M Records, Inc. v. Napster, Inc., 284 F.3d 1091, 1098 (9th Cir. 2002), being derived both
13 from the court’s powers in equity and from Rule 60(b). Earth Island Inst. v. S. California
14 Edison, 166 F.Supp.2d 1304, 1309 (S.D. Cal. 2001). A court has discretionary power to
15 modify an injunction when changing circumstances, or a better appreciation of the facts in
16 light of experience indicate existing injunctive orders are not well adapted to the purpose for
17 which they were made. Id.; see also System Federation No. 91 v. Wright, 364 U.S. 642, 647-
18 648 (1961).

19 DISCUSSION

20 I. Re-interpretation of Section 209 of the Clean Air Act

21 Section 209(a) of the Clean Air Act provides as follows, in pertinent part:

22 No state or political subdivision shall adopt or attempt to enforce any standard
23 relating to the control of emissions from new motor vehicles or new motor
vehicle engines subject to this part.

24 42 U.S.C. § 7543(a). Section 209(b) provides, in pertinent part:

25 (1) The Administrator shall, after notice and opportunity for public hearing,
26 waive application of this section to any State which *has adopted* standards
27 (other than crankcase emission standards) for the control of emissions from
28 new motor vehicles or new motor vehicle engines prior to March 30, 1966, if
the State determines that the State standards will be, in the aggregate, at least
as protective of public health and welfare as applicable Federal standards. No
such waiver shall be granted if the Administrator finds that –

¶ ¶

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State Standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

42 U.S.C. § 7543(b) (italics added).

“In statutory interpretation, courts must adhere to the plain language of a statute unless ‘literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.’ [Citation.]” Resolution Trust Corp. v. Bayside Developers, 43 F.3d 1230, 1236 (9th Cir. 1995). AIAM contends that the disjunctive wording in section 209(a), providing that no “political subdivision shall adopt *or* attempt to enforce any standard” means that “adopting a regulation and enforcing it are two statutorily, and indeed conceptually, different government activities and must be treated as such by courts.” Doc. # 665 at 7: 8-9. AIAM contends that because the word “or” indicates disjunction between the two categories of adoption and enforcement, the doing of either by a state violates the terms of section 209(a). See Zorich v. Long Beach Fire Dept., 118 F.3d 682, 684-685 (9th Cir. 1997) (“or” rather than “and” shows intent to apply statutory provision to each category listed so long as congressional intent is not defeated).

It is not necessary to resort to the canons of statutory interpretation to see the flaw in AIAM’s argument. The use of the word “or” in section 209 indicates a disjunction between the two verbs on either side of the word “or;” those verbs being “adopt” and “attempt to enforce.” There is absolutely no support for the proposition that, because the word “or” is used to indicate a disjunction between two verbs in subsection 209(a), that the provisions of the entire subsection are somehow disjoined from the provisions of any other subsection, including subsection 209(b). The meaning and purpose of subsection 209(b) is plain on its

1 face – it constitutes an exception to the preemptive force of section 209(a). Subsection
2 209(b) provides that where California (the only state that fits the qualifying description of
3 having regulated prior to March 30, 1966), has *adopted* a regulation of motor vehicle engine
4 emissions, those regulations *shall* be granted a waiver from the preemptive force of
5 subsection 209(a) *if* the specified requirements are met. Although section 209(a) may
6 prohibit a state from adopting *or* attempting to enforce “any standard relating to the control of
7 emissions from new motor vehicles,” that prohibition simply does not apply where California
8 *adopts* regulations under the terms and conditions specified by section 209(b). There is
9 absolutely rule of statutory construction that does what AIAM invites the court to do; that is,
10 to invalidate the exception because the rule contains the word “or.”

11 AIAM contends its interpretation of the interplay between subsections 209(a) and
12 209(b) of the Clean Air Act must prevail because that interpretation does not negate
13 congressional intent. This is simply not the case. Without any support for the proposition,
14 AIAM contends that it was Congress’s intent to prevent the sort of harm that AIAM alleges
15 the automobile manufacturers will suffer – being burdened with the dilemma of whether to
16 invest in carbon dioxide reducing technology or risk being out of compliance with standards
17 that may or may not be granted waiver of preemption sometime in the future. Whether or not
18 Congress actually had that intent, it is indisputable that the plain language of subsection
19 209(b) provides an exception to subsection 209(a) that allows California to *adopt* automobile
20 emissions regulations and submit same to EPA for their consideration. AIAM cannot escape
21 the fact that their interpretation of the interplay between subsections 209(a) and 209(b) would
22 require that courts thwart the clearly stated intent of Congress to allow California to *adopt*
23 regulations under subsection 209(b) that would be granted waiver from the application of
24 subsection 209(a) if the statutory prerequisites are met.

25 The court will decline AIAM’s invitation to interpret the provisions of subsection
26 209(a) of the Clean Air Act as disjunctive from the provisions of subsection 209(b) because
27 the interpretation requested is without support in law, logic, or grammar.
28

1 **II. Scope of Injunctive Relief**

2 Both Plaintiffs and AIAM contend that the Executive Order quoted above constitutes
3 an attempt by CARB to enforce the terms of the AB 1493 regulations even though a waiver
4 of federal preemption has been denied by EPA. In addition, Plaintiffs contend that EPA's
5 denial of California's request for waiver of federal preemption constitutes a change in
6 circumstances such that the injunctive relief previously granted by the court should be
7 modified to prevent California's attempt to enforce the AB 1493 regulations.

8 ***A. The Executive Order Does Not Attempt Enforcement of the AB 1493***
9 ***Regulations***

10 Plaintiffs and AIAM contend that the Executive Order is an impermissible attempt to
11 enforce the AB 1493 regulations because it requires proof of compliance from manufacturers
12 within 45 days of notification by CARB following the grant of waiver of federal preemption
13 by EPA. Plaintiff's contention derives from the undisputed fact that compliance with
14 substantially more stringent carbon dioxide emissions standards requires a multi-year period
15 of research and development before necessary changes can be made at the level of the
16 production line. Plaintiffs contend the need for a multi-year development period means that
17 manufacturers will be forced into the unpalatable Hobson's choice of undertaking substantial
18 current investment to meet standards they believe may never be imposed or to forego current
19 investment and be caught in non-compliance if and when the standards are granted waiver of
20 preemption.

21 Plaintiffs contend that EPA's determination of whether proposed California
22 Regulations allow sufficient lead time to implement the changes necessary uses the state's
23 final adoption of their AB 1493 regulations as the starting point for the EPA's determination
24 of sufficient lead time for purposes of 42 U.S.C. § 7521(a)(2). Thus, they argue, the clock for
25 compliance with the terms of AB 1493 began to run in 2004, when California adopted the
26 AB 1493 regulations, rather than at some future time when EPA may grant the waiver of
27 federal preemption. Defendant does not dispute this contention and evidence offered by
28 Defendant supports the contention. See California State Motor Vehicle Pollution Control

1 Standards; Waiver of Federal Preemption; Decision of the Administrator (Medium-duty
2 Waiver); 59 Fed. Reg. 48625 (Sept 22, 1994) and supporting Decision Document Excerpt;
3 Exhibit 1 to Defendant's Request for Judicial Notice, Doc. # 670-3 (hereinafter the "Decision
4 Document") at 39 (holding that the "lead time clock" starts when California "adopts" the
5 regulations).

6 From these undisputed facts, Plaintiffs contend that CARB's Executive Order
7 announcing its intent to enforce the AB 1493 regulations if and when EPA grants a waiver of
8 federal preemption without committing to the provision of further lead time is tantamount to
9 enforcement of the AB 1493 regulations. Plaintiffs content CARB's stated intent to enforce
10 the AB 1493 regulations presents the manufacturers with a Hobson's choice that requires
11 manufacturers to investing now to comply with regulations that may never be promulgated so
12 that they are not caught at some later time out of compliance with regulations whose lead
13 time is inadequate by the time the regulations are finally put into effect. The court disagrees
14 with Plaintiff's characterization of CARB's Executive Order.

15 CARB's Executive Order does not, on its face, invoke the provisions of AB 1493 or
16 impose any present restriction on manufacturers' ability to market automobiles that are not in
17 compliance with the emissions regulations of AB 1493 in California. The Executive Order,
18 to the extent it has been quoted by Plaintiffs, merely states what has been assumed, or should
19 have been assumed by the parties all along – California intends to enforce its AB 1493
20 regulations if and when it can.

21 In its January 16 Order, the court enjoined California or any of its political
22 subdivisions from enforcement of the provisions of AB 1493 until such time as EPA may
23 grant a waiver of federal preemption or the legislature may pass and the President sign a law
24 otherwise permitting enforcement of the AB 1493 regulations. The court's January 16 order
25 acknowledged that CARB would be able to enforce the AB 1493 regulations so far as the
26 Clean Air Act is concerned if and when a waiver of federal preemption is granted. EPA to
27 this point has refused to grant the waiver. So far as the Clean Air Act is concerned, CARB is
28 in no more or less of a position to enforce its AB 1493 regulations now than it was at the time

1 the January 16 Order was filed. While it is true that the court's March 26 Order made the
2 imposition of the AB 1493 regulations more of a present possibility by holding that those
3 regulations were not preempted by the Energy Policy Conservation Act ("EPCA") or by the
4 foreign policy of the United States, the preemptive effect of the Clean Air Act on the AB
5 1493 regulations remains the same. CARB's Executive Order changes absolutely nothing.

6 Characterizations of CARB's Executive Order aside, the substance of Plaintiff's
7 contentions with regard to CARB's Executive Order are no different, qualitatively or
8 quantitatively, from their contentions with regard to the scope of the injunctive relief offered
9 by the January 16 Order. Plaintiffs' and AIAM's basic contention is that the court should
10 broaden the scope of the injunctive relief so that the manufactures are not subjected to the
11 Hobson's choice of unnecessary research and development or risk of regulatory non-
12 compliance. The court will next undertake examination of Plaintiffs' and AIAM's arguments
13 with respect to the scope of the court's injunctive orders with the understanding that CARB's
14 Executive Order is a non-issue in that discussion.

15 ***B. Changing Circumstance and the January 16 Injunctive Order***

16 As previously noted, changing circumstance justifies a court's reexamination of
17 previously-issued injunctive orders. Earth Island Inst., 166 F.Supp.2d at 1309. Plaintiffs and
18 AIAM allege two circumstances have changed since the court issued its injunctive relief in
19 the January 16 Order. First, Plaintiffs contend that CARB's Executive Order, to the extent
20 quoted above, constitutes a changed circumstance. The court has examined and rejected that
21 contention. Second, Plaintiffs and AIAM contend that the fact EPA has rejected California's
22 request for waiver of federal preemption with respect to its AB 1493 regulations is a changed
23 circumstance warranting re-examination of the injunctive orders. This contention is similarly
24 not persuasive.

25 While it is certainly true that the Administrator has issued a rejection of California's
26 application for waiver of federal preemption, the rejection cannot be considered final where
27 California has made clear its intent to appeal the decision and the DC Circuit has not made
28 any determination of the validity of EPA's rejection as yet. Indeed, if the decision of the

1 EPA were final, there would be no point in the instant motions because the January 16
2 injunction against enforcement by California would remain in effect. The fact that Plaintiffs
3 and AIAM have moved to enlarge the scope of the court's injunctive relief in light of EPA's
4 action on California's waiver request is implicit recognition that EPA's rejection of
5 California's request for waiver remains very much a contested issue that is subject to reversal
6 either by EPA or by judicial review or by legislative action at sometime in the future.

7 While EPA's refusal to grant California its request waiver of federal preemption is an
8 event of sorts in California's effort to enforce its AB 1493 regulations, it does not represent a
9 change of circumstances that would compel reexamination of this court's injunctive relief
10 granted in the January 16 Order. At the time the January 16 Order was filed, California had
11 not been granted a waiver of federal preemption. That remains the case as of this writing.
12 Plaintiffs are not entitled to a revision of the injunctive relief granted by this court on a theory
13 of changing circumstances.

14 *C. Equitable Considerations and the Scope of Injunctive Relief*

15 The remainder of Plaintiffs' arguments concerning the scope of relief granted by the
16 January 16 Order focus on the inequity Plaintiff-manufacturers claim they face in confronting
17 the Hobson's choice of committing financial resources to compliance with regulations that
18 may never be implemented, but will place non-compliant manufacturers at a significant
19 disadvantage if they ever are implemented. In its January 16 Order, the court held:

20 Plaintiffs' concerns with respect to the lead time necessary for regulatory
21 compliance, as expressed in their opposition to the Plaintiffs' instant motion
22 for summary judgment, cannot be redressed by the court because the FAC
23 does not request the court to mandate some particular lead time for
24 compliance should an EPA waiver become effective and does not offer any
25 legal basis for altering the California legislation to require such a mandate.

26 January 16 Order at 10:9-13. The court further opined in its order that discretion to make the
27 determination of adequate lead time was vested in EPA by the terms of the Clean Air Act and
28 there is no legal support for the contention this court has authority to modify or circumscribe
the authority vested in EPA by the Clean Air Act.

Plaintiffs contend that the court was erroneous to the extent it opined that EPA has

1 authority to modify or determine lead times for the enforcement of new standards adopted by
2 California. As Plaintiffs put it, EPA is without “plenary authority to modify a California
3 regulation in the manner suggested by Defendant.” Combining this assertion with the
4 undisputed fact that the starting point for the running of the lead-time clock is the date of
5 final adoption of the regulation by California, Plaintiffs assert that EPA is not able to address
6 inequities that may arise from the eventual grant of a waiver of federal preemption where, as
7 here, the waiver may occur at a time well after a substantial part of the lead time has run.
8 From this, Plaintiffs contend that it is this court that must prevent an inequitable outcome by
9 expanding the scope of injunctive relief so that the Plaintiff auto manufacturers are not
10 unfairly burdened.

11 For purposes of Plaintiffs’ motions under consideration here, the court need not make
12 a determination of whether EPA can, in fact, make adjustments to the lead time provided by
13 California’s AB 1493 regulations.¹ In its January 16 Order, the court observed:

14 . . . whatever California may seek to impose by way of enforcement dates, the
15 fact is that the final decision with respect to the establishment of reasonable
16 enforcement dates rests with EPA’s discretion. EPA is not a party to this case,
17 and this court consequently has no authority to impose limits on EPA’s
18 exercise of discretion, should it choose to exercise that discretion at some time
19 in the future.

20 January 16 Order, Doc. # 606, at 10:10-14. The court’s observation derives from the
21 statutory structure of the waiver process. The waiver provisions of the Clean Air Act provide
22 that a waiver of federal preemption shall be granted if, *inter alia*, the Administrator [i.e., the
23 Director of the EPA] finds that the proposed regulations and enforcement procedures are not
24 inconsistent “with section 7521(a) of this title.” 42 U.S.C. § 7543(b)(1)(C). Section
25 7521(a)(2) provides that:

26 Any regulation prescribed under paragraph (1) of this subsection (and any

27 ¹ At a minimum, information submitted by Defendants strongly suggests that,
28 should EPA determine that lead time provided by California be insufficient, EPA can make that
determination thereby forcing California to revise and re-adopt its regulation incorporating lead-
times that are in accord with EPA findings. The re-adopted regulation is then approved by EPA.
See Decision Document at 40.

1 revision thereof) shall take effect after such period as the *Administrator finds*
2 *necessary* to permit the development and application of the requisite
3 technology, giving appropriate consideration to the cost of compliance within
4 such period.

5 Id. (italics added). Thus, Congress has allocated the determination of what lead-time is
6 required to implement a given regulation to the Administrator [Director of the EPA] in the
7 first instance, not the courts.

8 Defendant and Defendant-intervenors contend, and the court has agreed, that the issue
9 of determination of the required lead time for implementation of changes necessary to comply
10 with the AB 1493 regulations has been committed to the EPA, not the courts. Defendant
11 disputes Plaintiffs' contention that EPA lacks power to adjust the starting point for the
12 running of any time limits for compliance imposed by the AB 1493 regulations. Defendants
13 cite Green Mountain Chrysler Plymouth Dodge Jeep v. Crombie, 508 F.Supp.2d 295, 349 (D.
14 Vt. 2007), to illustrate their point that EPA may, if it finds the statutory lead-time
15 insufficient, delay implementation of the waiver in order to provide adequate lead time.
16 Defendants also allege in their opposition, somewhat in passing, that experts for Plaintiff
17 automobile manufacturers are currently capable of complying with the near-term standards
18 set by the AB 1943 regulations.

19 In their reply, Plaintiffs seize upon Defendant's allegation that compliance with the
20 near-term standards set by the AB 1493 regulations is not possible and that injunctive relief is
21 necessary to avert future economic harm. Plaintiffs devote a good deal of effort and a great
22 deal of documentation to show that, should EPA grant a waiver of federal preemption now,
23 there is no reasonable possibility that the Plaintiff auto manufacturers will be able to comply
24 with the AB1493 regulations within the time limits that began to run when California
25 adopted the regulations. Plaintiffs look to this court to supply protection against what they
26 perceive as the possibility of exposure to economic harm from non-compliance with a
27 regulatory regime whose requirements they are unprepared to meet.

28 In requesting this court modify the scope of injunctive relief granted by the January 16
Order, Plaintiffs and AIAM fundamentally misperceive the purpose of the court's injunction.

1 The court's purpose in granting the injunction was to prevent California from enforcing the
2 terms of their AB1493 regulations so long as such enforcement is unlawful under the Clean
3 Air Act, nothing more.

4 While the court is mindful of the concerns raised by Plaintiff automobile
5 manufacturers in their motion, it is not this court's role to assure that they will have sufficient
6 time to actually implement the required changes if and when the waiver of federal preemption
7 is granted. This court is not empowered to make the necessary determination of how much
8 lead time is necessary where Congress has clearly and unequivocally delegated that
9 determination to EPA.

10 To the extent it is Plaintiffs' contention that the court has jurisdiction to preemptively
11 override any possible future determination by EPA as to the appropriate lead-time, Plaintiffs
12 have not provided adequate legal support for that contention. However, even if the court was
13 empowered to address the equitable concerns raised by Plaintiffs by expanding the scope of
14 the injunctive relief, Plaintiffs have failed to demonstrate any entitlement to equitable relief
15 from the application of California's AB 1493 regulations.

16 Equitable relief is the result of, among other things, a balancing of hardships in favor
17 of the party requesting the injunctive relief. International Jensen, Inc. v. Metrosound U.S.A.,
18 Inc., 4 F.3d 819, 822 (9th Cir.1993). While Plaintiffs complain of the unfairness to them
19 from being forced into the previously discussed Hobson's choice, they fail to address how the
20 harm they may experience in having to make a difficult business decision outweighs the harm
21 to California from lost opportunity to reduce greenhouse gas emissions and harm to those
22 automobile manufacturers who made the decision to devote resources to meeting the AB
23 1493 regulations within the lead time provided. See Int'l Harvester Co. v. Ruckelshaus, 478
24 F.2d 615, 637,638 (D.C. Cir. 1973) (examining adequacy of EPA's examination of effects of
25 relaxation of lead-time provisions on public welfare and on companies that invested in
26 methodologies to achieve compliance within the original lead time). To the extent Plaintiffs
27 claims there is an inherent inequity in being force to make the complained-of decision,
28 Plaintiffs are obliged to recognize and address the burdens that a court-imposed modification

1 of the proper lead time as determined by EPA would place on others. Plaintiffs are then
2 required to show how the burden placed on them by the un-modified regulations is more
3 weighty. This balancing of burdens has not been addressed to any significant degree.

4 At an even more fundamental level, Plaintiffs have failed to show how issues of
5 equity are implicated here. Plaintiffs' argument invites the court to view the choice the auto
6 manufacturers feel forced into as being inequitable in and of itself, but provides no legal
7 foundation for such a view. Environmental regulation is a constantly evolving part of the
8 normal business landscape and Plaintiffs provide no basis for the notion that courts should
9 insulate businesses from the consequences of business decision that are related to pending
10 environmental regulation.

11 There is no suggestion by any party that Plaintiffs were unaware of California's AB
12 1493 regulations at the time of their adoption, if not before. Plaintiffs' arguments suggest,
13 without actually so stating, that at least some of the Plaintiff auto manufacturers made a
14 conscious decision to proceed on the assumption that a waiver of federal preemption would
15 never be granted by EPA. If it turns out that the manufacturers that made that assumption are
16 wrong, those Plaintiff auto manufacturers may well be at a significant disadvantage relative
17 to auto manufacturers that are currently positioned more favorably with respect to
18 compliance. But, so far as this court can discern, the choice to proceed as though California
19 would never be granted waiver of federal preemption is fundamentally just a business
20 decision that, like any other, may have negative consequences if wrongly made. It is not up
21 to the courts to deflect the burden of such business decisions.

22
23 In accordance with the foregoing discussion, the motions of Plaintiffs and AIAM to
24 modify the injunctive relief granted by this court's January 16 Order is DENIED. AIAM's
25 motion to reexamine the court's prior interpretation of section 209 of the Clean Air Act is
26 likewise DENIED. The parties are ORDERED to meet and confer to determine if there are
27 any remaining issues in this case. The parties shall file a stipulation, or, if agreement is not
28 reached, shall file separate letters stating their determinations of whether any issues remain

1 for this court to decide. If the parties agree that no issues remain for decision in this case, the
2 parties shall jointly or separately file a proposed order of judgment. Letters or stipulations
3 regarding issues remaining in this case and/or joint or separate proposed orders of judgment
4 shall be filed not later that thirty (30) days from the date of service of this order.

5

6 IT IS SO ORDERED.

7 **Dated: June 23, 2008**

/s/ Anthony W. Ishii
UNITED STATES CHIEF DISTRICT JUDGE

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