

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

STATE OF CALIFORNIA et al.,)	
)	
<i>Plaintiffs,</i>)	
)	
CALPINE CORPORATION et al.,)	
)	
<i>Intervenor Plaintiffs,</i>)	Civil Action No. 1:19-cv-02826-KBJ
)	
v.)	consolidated with Nos. 1:19-cv-02907-KBJ
)	and 1:19-cv-03436-KBJ
ELAINE L. CHAO, in her official capacity)	
as Secretary of the United States)	
Department of Transportation, et al.,)	
)	
<i>Defendants,</i>)	
)	
CENTER FOR SUSTAINABLE)	
AUTOMOTIVE REGULATION et al.,)	
)	
<i>Intervenor Defendants.</i>)	

NOTICE OF DEVELOPMENTS IN RELATED LITIGATION

Plaintiffs in Cases No. 1:19-cv-02826 and 1:19-cv-02907 hereby notify this Court of recent developments in related litigation in the U.S. Court of Appeals for the District of Columbia Circuit. In *Union of Concerned Scientists v. National Highway Traffic Safety Administration (UCS v. NHTSA)*, D.C. Cir. No. 19-1230, and consolidated cases, parties including all the plaintiffs and intervenor-plaintiffs here protectively petitioned for review of the same National Highway Traffic Safety Administration (NHTSA) regulations that are being challenged in this Court. Petitioners in the D.C. Circuit also are challenging final actions that the U.S. Environmental Protection Agency (EPA) issued alongside those NHTSA regulations but that the D.C. Circuit must review directly.

On December 18, 2019, NHTSA and EPA moved that the D.C. Circuit expedite its consideration of the consolidated petitions for review. The agencies asked the court of appeals to establish a schedule for merits briefing that would allow for oral argument in Spring 2020. On December 24, 2019, the Center for Sustainable Automotive Regulation and Association of Global Automakers, Inc.,[†] filed a motion requesting the same relief. On February 4, 2020, the D.C. Circuit denied both motions to expedite because the movants did not provide “‘strongly compelling’ reasons to justify expedition.” Order, *UCS v. NHTSA*, *supra*, at 1 (attached as Ex. A).

Meanwhile, on December 26, 2019, state and municipal petitioners (most of whom are plaintiffs in Case No. 1:19-cv-02826 in this Court) moved that the D.C. Circuit hold the consolidated petitions in abeyance pending (1) EPA’s disposition of two petitions for administrative reconsideration, and (2) this Court’s disposition of the challenge to NHTSA’s regulations. On the same day, public-interest organization petitioners (most of whom are plaintiffs in Case No. 1:19-cv-02907 in this Court) also moved that the D.C. Circuit hold the consolidated petitions in abeyance pending this Court’s disposition of the challenge to NHTSA’s regulations. NHTSA and EPA opposed the motions for abeyance and contended that the D.C. Circuit should order the parties to proceed to briefing the merits of their actions alongside the question whether the court of appeals has jurisdiction to directly review NHTSA’s regulations. *See* U.S. Opp. to Motions to Hold Pets. in Abeyance, *UCS v. NHTSA*, *supra*, at 2 (Jan. 10, 2020). On February 4, 2020, the same motions panel of the D.C. Circuit denied the motions for abeyance without comment. Ex. A, at 1.

On its own motion, the D.C. Circuit has ordered the parties to submit by March 5, 2020, “a proposed briefing format for the briefing of all the issues in these consolidated cases.” Ex. A, at 2.

[†] The Association of Global Automakers, Inc. has since notified this Court that its name has changed to the Automotive Regulatory Council, Inc. *See* Notice of Name Change, Dkt. No. 54 (Jan. 10, 2020).

Although the question of statutory subject-matter jurisdiction to review NHTSA's regulations was discussed in the procedural-motions briefing in the D.C. Circuit, the motions panel was not asked to and did not resolve that question. It remains fully briefed and pending in this Court.

Respectfully submitted,

/s/ Jonathan A. Wiener

Jonathan A. Wiener (CA SBN 265006)
California Department of Justice
Natural Resources Law Section
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102
(415) 510-3549
jonathan.wiener@doj.ca.gov
Counsel for Plaintiffs in Case No. 1:19-cv-02826

/s/ Matthew Littleton

Matthew Littleton (D.C. Bar No. 1602328)
Donahue, Goldberg, Weaver & Littleton
1008 Pennsylvania Avenue SE
Washington, DC 20003
(202) 683-6895
matt@donahuegoldberg.com
Counsel for Plaintiffs in Case No. 1:19-cv-02907

Dated: February 6, 2020