

DISTRICT COURT, DENVER COUNTY, COLORADO
1437 BANNOCK STREET
DENVER, COLORADO 80202

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FILING ID: 13A863A31B4E7
CASE NUMBER: 2019CV34156

Plaintiff:

FREEDOM TO DRIVE INC.

v.

Defendant:

THE COLORADO AIR QUALITY CONTROL COMMISSION

↑ COURT USE ONLY ↑

Attorneys for Plaintiff:

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Case Number: 2019CV34156

Division: 259 Courtroom:

[CORRECTED] JOINT MOTION TO HOLD CASE IN ABEYANCE

Plaintiff Freedom to Drive Inc. (“FTD”) and Defendant Colorado Air Quality Control Commission (“Commission”) (collectively, the “Parties”), by and through their undersigned counsel, and in support of the portion of the Commission’s previous November 22, 2019 Motion to Hold Case in Abeyance, or Alternatively, to Dismiss (“Combined Motions”) requesting an abeyance, respectfully and jointly move for an order holding this case in abeyance pending resolution of the below mentioned federal litigation. As good cause for this Joint Motion, Parties state as follows:

1. On October 29, 2019 FTD timely filed the Complaint initiating this action for judicial review of the Commission’s final agency action promulgating the Colorado Zero Emission Vehicle Regulation.

2. On November 11, 2019 FTD timely filed a waiver of service signed by counsel for the Commission.

3. On November 11, 2019, the Commission filed the Combined Motions.

4. FTD’s response deadline to the Combined Motions is today, December 13, 2019.

5. During preparation of its response to the Combined Motions, FTD contacted the Commission, and the Parties came to an agreement that it is in the interest of judicial efficiency and conservation of party resources to hold the current action in abeyance until the conclusion of current ongoing proceedings in federal courts in the District of Columbia Court of Appeals and the District Court for the District of Columbia involving challenges to the Environmental Protection Agency’s and National Highway Traffic and Safety Administration’s final rule titled “The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84

Fed. Reg. 51310 (Sept. 27, 2019) (“Federal Litigation”) have been fully resolved, including through certiorari.

6. In order to not prejudice either party, the Parties agree that due to the statutory timeframes and statute of limitations for challenging the Commission’s final agency action under the Colorado Administrative Procedure Act, this case should be held in abeyance.

7. In further order to not prejudice either party, the Commission agrees to withdraw without prejudice the portion of the Combined Motions seeking dismissal of this action, should this Court grant this Joint Motion, but that the Commission (and any defendant-intervenors) should be given leave to file new responsive pleadings if the abeyance of this case is lifted. The Commission’s agreement to withdraw the portion of the Combined Motions seeking dismissal of this action is conditioned upon the Court entering an order holding this matter in abeyance. In the event the Court were to deny this joint motion, the Commission agrees to an extension of FTD’s deadline for responding to the Commission’s Motion to Dismiss, for a period of fourteen (14) days from the date of the Court’s order.

8. Therefore, in the event this case is reinstated by order of this Court or upon motion of either Party, the Parties agree that the Commission (and any intervenors) should be afforded of fourteen (14) days to file a new responsive pleading, which time runs from an order of this Court lifting the abeyance or from expiration of the abeyance according to its terms (if the Court were to require a specific timeframe upon the requested abeyance).

WHEREFORE, for the reasons set forth above, the Parties respectfully request that this Court GRANT this Joint Motion in its entirety and enter the attached proposed ORDER holding

this case in abeyance, withdrawing the portion of the Combined Motions seeking dismissal of this action, and allowing the Commission (or any defendant-intervenors) fourteen (14) days from the date of any order of this Court lifting the abeyance to file a responsive pleading.

Respectfully submitted this 13th day of December 2019.

GREENBERG TRAURIG, LLP

s/ Paul M. Seby

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of December 2019, a copy of the foregoing **JOINT MOTION TO HOLD CASE IN ABEYANCE** was filed with the Court via the Colorado Court's E-Filing System and served upon counsel for the Defendant electronically through the same.

s/ Susan E. Law

Susan E. Law