

1 JON WALLACE UPTON, SBN 46089  
2 KIMBLE, MACMICHAEL & UPTON  
3 Fig Garden Financial Center  
4 5260 North Palm Avenue, Suite 221  
5 Fresno, California 93792-9489  
6 Telephone: (559) 435-5500  
7 Facsimile: (559) 435-1500

8 RAYMOND B. LUDWISZEWSKI  
9 CHARLES H. HAAKE, SBN 190178  
10 GIBSON, DUNN & CRUTCHER LLP  
11 1050 Connecticut Ave. NW  
12 Washington, D.C. 20036  
13 Telephone: (202) 955-8500  
14 Facsimile: (202) 467-0539

15 Attorneys for Proposed Intervenor,  
16 Association of International Automobile Manufacturers

17 UNITED STATES DISTRICT COURT  
18 EASTERN DISTRICT OF CALIFORNIA – FRESNO

19 CENTRAL VALLEY CHRYSLER-JEEP, INC.,  
20 KITAHARA PONTIAC GMC BUICK, INC.,  
21 MADERA FORD MERCURY, INC., MADERA  
22 CHEVROLET, FRONTIER DODGE, INC.,  
23 TOM FIELDS MOTORS, INC., PISTORES  
24 CHRYSLER DODGE JEEP, BOB WILLIAMS  
25 CHEVROLET, COURTESY OLDSMOBILE  
26 CADILLAC, INC., MERLE STONE  
27 CHEVROLET, INC., MERLE STONE  
28 PORTERVILLE, INC., STURGEON AND  
BECK INCORPORATED, SWANSON  
FAHRNEY FORD, INC., and the ALLIANCE  
OF AUTOMOBILE MANUFACTURERS,

Plaintiffs,

v.

Catherine E. WITHERSPOON, in her official  
capacity as Executive Officer of the California  
Air Resources Board,

Defendants.

CASE NO. CIV-F-04-6663-REC-LJO

**REQUEST OF THE ASSOCIATION OF  
INTERNATIONAL AUTOMOBILE  
MANUFACTURERS FOR LEAVE TO FILE  
OPPOSITION TO DEFENDANT'S MOTION  
TO DISMISS FIRST AMENDED  
COMPLAINT**

DATE: June 13, 2005  
TIME: 1:30 p.m.  
COURTROOM.: One  
JUDGE: Robert E. Coyle

Proposed Intervenor, the Association of International Automobile Manufacturers ("AIAM"), hereby respectfully submits this Request for Leave To File its Opposition to the Defendant's Motion to Dismiss the First Amended Complaint. AIAM's Opposition Brief is attached hereto as Exhibit "A." The grounds for this request are as follows.

1 On December 7, 2004, *Central Valley Chrysler-Jeep* Plaintiffs filed this action seeking to  
2 enjoin the Executive Officer of the California Air Resources Board (“CARB”) from implementing  
3 and enforcing regulations approved by CARB relating primarily to the emission of carbon dioxide  
4 from motor vehicles (the “CARB Greenhouse Gas Regulations”). These regulations impose strict  
5 limits for the fleet-wide average carbon dioxide (“CO<sub>2</sub>”) emissions from passenger cars, light-duty  
6 trucks, and medium-duty passenger vehicles that are produced and delivered for sale in California for  
7 each model year beginning with the 2009 model year. The *Central Valley Chrysler-Jeep* Plaintiffs'  
8 Complaint alleged that these regulations are preempted by the Energy Policy and Conservation Act  
9 of 1975 (“EPCA”), as amended 49 U.S.C. §§ 32901 (County 1), and are also preempted by the Clean  
10 Air Act, 42 U.S.C. §§ 7401, *et seq.* (Count 2), among other causes of action. Subsequently, on or  
11 about February 16, 2005, the *Central Valley Chrysler-Jeep* Plaintiffs filed a First Amended  
12 Complaint ("FAC") asserting the same causes of action pled in the original Complaint.

13 On February 3, 2005, AIAM filed a Motion to Intervene as Plaintiffs in this action along with  
14 a Proposed Complaint in Intervention. AIAM's Proposed Complaint in Intervention also sets forth  
15 causes of action under EPCA and the Clean Air Act. AIAM's Motion to Intervene was originally set  
16 to be heard on March 7, 2005. However, pursuant to a stipulation between the parties and an order of  
17 this Court, the hearing was moved to June 13, 2005, the same date scheduled for a hearing on the  
18 Defendant's Motion to Dismiss the *Central Valley Chrysler-Jeep* Plaintiffs' FAC.

19 As set forth in AIAM's Proposed Complaint in Intervention, AIAM is a not-for-profit trade  
20 association of manufacturers, manufacturer-authorized importers, and distributors of motor vehicles  
21 manufactured both in and outside of the United States. AIAM members include American Honda  
22 Motor Company, Inc.; American Suzuki Motor Corporation; Aston Martin Lagonda of North  
23 America, Inc.; Ferrari North America, Inc.; Hyundai Motor America; Isuzu Motors America, Inc.;  
24 Kia Motors America, Inc.; Maserati North America, Inc.; Mitsubishi Motors North America, Inc.;  
25 Nissan North America, Inc.; Peugeot Motors of America, Inc.; Renault, SA; Subaru of America, Inc.;  
26 and Toyota Motor North America, Inc. AIAM's members account for approximately 40 percent of  
27 all passenger cars and light trucks sold annually in the State of California. Accordingly, AIAM  
28 represents a significant portion of the automobile industry which is impacted by the challenged

1 regulations. Moreover, as global manufacturers which are not situated similarly to the *Central Valley*  
2 *Chrysler-Jeep* Plaintiffs in areas such as technology and product mix, AIAM will offer a unique  
3 perspective in this litigation.

4 The Defendant's Motion to Dismiss the *Central Valley Chrysler-Jeep* FAC argues that the  
5 causes of action in the FAC are not ripe for review and that the doctrine of primary jurisdiction  
6 prevents this Court from considering the Clean Air Act count. Although AIAM's Motion to  
7 Intervene is still pending, AIAM seeks leave through this Request to file this Opposition to the  
8 Motion Dismiss the First Amended Complaint because, as a practical matter, the adjudication of that  
9 Motion would be directly applicable to AIAM's Proposed Complaint In Intervention. It is therefore  
10 important to AIAM that this Court not judge the ripeness of AIAM's Proposed Complaint in  
11 Intervention without allowing AIAM the opportunity to be heard on the issues presented in the  
12 Motion to Dismiss. AIAM further believes that judicial economy will be served by allowing the  
13 parties with an interest in the outcome of the Motion to Dismiss to be heard during the hearing on  
14 June 13.

15 As set forth more fully in AIAM's Opposition to Motion to Dismiss the First Amended  
16 Complaint, AIAM has endeavored not to duplicate the arguments which have been set forth in the  
17 *Central Valley Chrysler-Jeep* Plaintiffs' Opposition Brief. Rather, AIAM seeks file the attached brief  
18 in order to focus on certain issues pertinent to the ripeness inquiry not directly addressed in the  
19 *Central Valley Chrysler-Jeep* Plaintiffs' Brief.

20 Therefore, AIAM respectfully requests that this Court grant it permission to file the attached  
21 Opposition to Motion to Dismiss the First Amended Complaint, and that this Court consider AIAM's  
22 brief in deciding that Motion.

23 DATED: May 2, 2005

24 KIMBLE, MACMICHAEL & UPTON

25  
26 By: \_\_\_\_\_/ss/

27 Jon Wallace Upton

Attorneys for Intervenor,  
Association of International Automobile Manufacturers

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28