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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., PISTORESI  
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

**NOTICE OF MOTION AND  
MOTION BY THE ASSOCIATION OF  
INTERNATIONAL AUTOMOBILE  
MANUFACTURERS TO INTERVENE AS  
PLAINTIFF; MEMORANDUM OF POINTS  
AND AUTHORITIES**

**[FED. R. CIV. PROC. 24(a) and (b)]**

DATE: March 7, 2005  
COURTROOM.: One  
TIME: 1:30 p.m.  
JUDGE: Robert E. Coyle

**TO ALL PARTIES AND THEIR ATTORNEY OF RECORD,**

**PLEASE TAKE NOTICE** that on Monday, March 7, 2005 at 2005, at 1:30 p.m., or as soon  
thereafter as the matter may be heard before the Honorable Robert E. Coyle in Courtroom One of the

1 United States District Court for the Eastern District of California, located at 1130 O Street, Fresno,  
2 California, the Association of International Automobile Manufacturers (“AIAM”) will and hereby  
3 does move this Court to allow it to intervene in the above entitled action under Rule 24 of the Federal  
4 Rules of Civil Procedure. AIAM is a trade association of manufacturers, manufacturer-authorized  
5 importers, and distributors of motor vehicles whose members include American Honda Motor  
6 Company, Inc.; American Suzuki Motor Corporation; Aston Martin Lagonda of North America, Inc.;  
7 Ferrari North America, Inc.; Hyundai Motor America; Isuzu Motors America, Inc.; Kia Motors  
8 America, Inc.; Maserati North America, Inc.; Mitsubishi Motors North America, Inc.; Nissan North  
9 America, Inc.; Peugeot Motors of America, Inc.; Renault, SA; Subaru of America, Inc.; and Toyota  
10 Motor North America, Inc. AIAM seeks to intervene in order to submit the Complaint in  
11 Intervention, (attached hereto as Exhibit A) on behalf of the plaintiffs.

12 AIAM is entitled to intervention as of right pursuant to Rule 24(a) of the Federal Rules of  
13 Civil Procedure because (1) its application to intervene is timely, (2) it has an interest relating to the  
14 subject matter of this action, (3) it is so situated that the disposition of this action may, as a practical  
15 matter, impede its ability to protect its interests, and (4) its interests are not adequately represented by  
16 the plaintiffs.

17 Alternatively, AIAM is entitled to permissive intervention pursuant to Rule 24(b) of the  
18 Federal Rules of Civil Procedure because (1) this Court has an independent ground for jurisdiction  
19 over AIAM’s claims under 42 U.S.C. § 1983, (2) this application to intervene is timely, (3) the  
20 claims AIAM seeks to assert have questions of law or fact in common with the present action, and (4)  
21 allowing AIAM to intervene at this early stage of proceedings will not unduly delay or prejudice this  
22 Court's adjudication of the original parties' rights.

23 This Motion is based on this Notice of Motion and Motion, the supporting Memorandum of  
24 Points and Authorities, all pleadings, records and papers filed in this action, such matters as the Court

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1 may judicially notice, and such further evidence or argument as may be presented at or before the  
2 hearing of this motion.

3 DATED: February 3, 2005

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5 KIMBLE, MACMICHAEL & UPTON

6  
7 By: \_\_\_\_\_/ss/\_\_\_\_\_

8 Jon Wallace Upton

9 Attorneys for Intervenor,  
10 Association of International Automobile Manufacturers  
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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

On December 7, 2004, Plaintiffs filed the underlying action, *Central Valley Chrysler-Jeep, et al. v. Witherspoon*, Case No. CIV-F-04-6663-REC-LJO (the “*Central Valley Chrysler-Jeep Action*”) for declaratory and injunctive relief. The action seeks to enjoin the Executive Officer of the California Air Resources Board (“CARB”) from implementing and enforcing regulations recently approved by CARB relating primarily to the emission of carbon dioxide from motor vehicles (the “CARB Greenhouse Gas Regulations”). These regulations impose strict limits for the fleet-wide average carbon dioxide (“CO<sub>2</sub>”) emissions from passenger cars, light-duty trucks, and medium-duty passenger vehicles that are produced and delivered for sale in California for each model year beginning with the 2009 model year.

The Association of International Automobile Manufacturers (“AIAM”) seeks to intervene in this action on behalf of its members, which include American Honda Motor Company, Inc.; American Suzuki Motor Corporation; Aston Martin Lagonda of North America, Inc.; Ferrari North America, Inc.; Hyundai Motor America; Isuzu Motors America, Inc.; Kia Motors America, Inc.; Maserati North America, Inc.; Mitsubishi Motors North America, Inc.; Nissan North America, Inc.; Peugeot Motors of America, Inc.; Renault, SA; Subaru of America, Inc.; and Toyota Motor North America, Inc. These companies – which account for approximately 40 percent of all passenger cars and light trucks sold annually in the State of California – are significantly impacted by the CARB Greenhouse Gas Regulations. The regulations impose strict emissions and de facto fuel economy standards for motor vehicles sold in California that are different from standards set by the federal government or by any other state. In order to meet these new California-specific standards on the timetable set by CARB, AIAM members would be forced to develop and implement substantial motor vehicle design and manufacturing changes. These changes require AIAM members to undertake immediate and intensive capital investments in both their research and development and their manufacturing sides of operations.

1 The CARB Greenhouse Gas Regulations, however, are preempted by federal laws and  
2 regulations mandating uniform, nationwide standards for fuel economy (the Energy Policy and  
3 Conservation Act of 1975 (“EPCA”), as amended 49 U.S.C. §§ 32901, *et seq.*) and for vehicular  
4 emissions (the Federal Clean Air Act, 42 U.S.C. §§ 7401, *et seq.* (the “CAA”)). Accordingly, AIAM  
5 seeks to challenge these regulations on behalf of its member companies.

6 AIAM is entitled to intervention as of right pursuant to Rule 24(a) of the Federal Rules of  
7 Civil Procedure. First, this motion is timely as it has been brought just over a month and a half after  
8 the *Central Valley Chrysler-Jeep* plaintiffs filed this action, and before an answer has been filed or  
9 discovery commenced. Second, AIAM has an interest in the action because its member companies  
10 will be forced to incur significant capital expenditures in order to comply with the CARB  
11 Greenhouse Gas Regulations. Third, the disposition of this case may as a practical matter impede the  
12 ability of AIAM to protect the interests of its members because this Court’s determination regarding  
13 the constitutionality of the CARB Greenhouse Gas Regulations would likely be viewed as persuasive  
14 to any other court considering the same question, thus in effect binding AIAM to the holding.  
15 Finally, AIAM’s ability to protect the interests of its members is not adequately represented by the  
16 *Central Valley Chrysler-Jeep* plaintiffs which represent different automobile manufacturers with  
17 different views concerning fuel economy and emissions regulations, and international uniformity.

18 Alternatively, AIAM is entitled to permissive intervention under the provisions of Rule 24(b).  
19 First, an independent ground for jurisdiction over AIAM’s Complaint in Intervention exists under 42  
20 U.S.C. § 1983. Second, as discussed above, AIAM’s motion is without question timely. Third, the  
21 claims AIAM seeks to assert and those asserted in the *Central Valley Chrysler-Jeep* Action present  
22 common questions of law and fact concerning the constitutionality of the CARB Greenhouse Gas  
23 Regulations. Finally, because AIAM seeks to intervene at the outset of this litigation, there will be  
24 no undue delay or prejudice of this Court’s adjudication of the original parties’ rights.

25 Accordingly, this Court should grant AIAM’s Motion to Intervene either as of right pursuant  
26 to Rule 24(a) or permissively under Rule 24(b). Only through intervention will AIAM be able to  
27 adequately represent the interests of its members which will suffer substantial and irreparable injury  
28 on account of the CARB Greenhouse Gas Regulations.

1 **II. ARGUMENT**

2 **A. AIAM May Intervene As Of Right.**

3 Federal Rule of Civil Procedure 24(a)(2) governs intervention of right, providing in relevant  
4 part:

5 Upon timely application anyone shall be permitted to intervene in an action:

6 [W]hen the applicant claims an interest relating to the property or transaction which is  
7 the subject of the action and the applicant is so situated that the disposition of the  
8 action may as a practical matter impair or impede the applicant’s ability to protect that  
9 interest, unless the applicant’s interest is adequately represented by existing parties.

10 Fed. R. Civ. Proc. 24(a)(2); *see also* *Yorkshire v. United States Internal Revenue Serv.*, 26 F.3d 942,  
11 944 (9th Cir. 1994). “Federal Rule of Civil Procedure 24(a) establishes four requirements for  
12 intervention as of right: timeliness; an interest relating to the subject of the action; practical  
13 impairment of the party’s ability to protect that interest; and inadequate representation by the parties  
14 to the suit.” *Id.*

15 “Generally, Rule 24(a)(2) is construed broadly in favor of proposed intervenors.” *United*  
16 *States ex rel. McGough v. Covington Techs. Co.*, 967 F.2d 1391, 1394 (9th Cir. 1992). As this  
17 Circuit has noted

18 A liberal policy in favor of intervention serves both efficient resolution of issues and  
19 broadened access to the courts. By allowing parties with a *practical* interest in the  
20 outcome of a particular case to intervene, we often prevent or simplify future litigation  
21 involving related issues; at the same time, we allow an additional interested party to  
22 express its views before the court.

23 *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1496 n. 8 (9th Cir. 1995) (internal  
24 quotation omitted). Here, considering AIAM’s substantial practical interest in this litigation and  
25 construing Rule 24(a)(2) broadly in favor of intervention, AIAM should be allowed to intervene as of  
26 right.

27 **1. AIAM’s Motion To Intervene Is Timely.**

28 The timeliness requirement, rather than imposing a precise time limit, means that a proposed  
intervenor must act with dispatch. *See Nissei Sangyo Am., Ltd. v. United States*, 31 F.3d 435, 438  
(7th Cir. 1994); *see also San Jose Mercury News, Inc. v. United States District Court-Northern*  
*District (San Jose)*, 187 F.3d 1096, 1100-01 (9th Cir. 1999). Acting with dispatch is synonymous  
with a reasonableness standard: a potential intervenor needs to be reasonably diligent in learning of a

1 suit that might affect its rights, and upon so learning, it needs to act reasonably promptly to intervene.  
2 *See Nissei Sangyo*, 31 F.3d at 438. Three factors determine whether a motion for intervention is  
3 timely: (1) the stage of the proceeding at which an applicant seeks to intervene; (2) the prejudice to  
4 other parties; and (3) the reason for and length of the delay. *San Jose Mercury News*, 187 F.3d at  
5 1100-01.

6 There can be no doubt that this application to intervene is timely. The *Central Valley*  
7 *Chrysler-Jeep* plaintiffs filed this action on December 7, 2004, just over a month and a half ago. No  
8 answer has been filed and there has been no discovery conducted. There can therefore be no  
9 prejudice to any of the parties should AIAM intervene in this case at this time. Accordingly, AIAM's  
10 application is timely.

11 **2. AIAM Has An Interest Related To The Subject Of The Action.**

12 “An applicant has a ‘significant protectable interest’ in an action if (1) it asserts an interest  
13 that is protected under some law, and (2) there is a ‘relationship’ between its legally protected  
14 interest and the plaintiff’s claims.” *U.S. v. City of Los Angeles*, 288 F.3d 391, 398 (9th Cir. 2002)  
15 (citation omitted). The relationship requirement is met “if the resolution of the plaintiff’s claims  
16 actually will affect the applicant.” *Id.* “The ‘interest’ test is primarily a practical guide to disposing  
17 of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and  
18 due process.” *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th Cir. 1980).

19 A regulated entity has a sufficient interest in an action concerning a regulation to which it is  
20 subject to support intervention as of right. *Conservation Law Foundation of New England, Inc. v.*  
21 *Mosbacher*, 966 F.2d 39 (1st. Cir. 1992) (commercial fishing groups may intervene as of right in  
22 action brought by public interest organizations to require Secretary of Commerce to adopt regulations  
23 to eliminate overfishing). Here, AIAM unquestionably has a “significant protectable interest” in the  
24 outcome of this litigation. Its members include some of the largest automobile manufacturers in the  
25 world such as Honda, Nissan, Subaru and Toyota, and account for about 40 percent of all passenger  
26 cars and light trucks sold annually in the State of California. The CARB Greenhouse Gas  
27 Regulations set mandatory limits on fleet-wide emissions of CO<sub>2</sub> from motor vehicles manufactured  
28 by AIAM members beginning with the 2009 model year. These regulations impose substantial

1 compliance costs on AIAM members. In order to accomplish the mandated reduction in CO<sub>2</sub>  
2 emissions on the timetable set by the regulations, automobile manufacturers have to make immediate  
3 and intensive capital investments to produce and integrate the required technologies. Because AIAM  
4 members are directly and substantially impacted by the CARB Greenhouse Gas Regulations, AIAM  
5 has an interest in the subject matter of this action.

6 **3. AIAM Will Suffer Practical Impairment Of Its Ability To Protect Its**  
7 **Interest Should It Not Be Permitted To Intervene.**

8 Not only does AIAM have a substantial interest in the subject matter of this litigation, but it  
9 would also have standing to pursue its own separate action challenging the constitutionality of the  
10 CARB Greenhouse Gas Regulations on behalf of its members if this Court were to deny intervention.  
11 However, AIAM would suffer a practical disadvantage in protecting the interests of its members if it  
12 were forced to pursue its own action due to the impact of *stare decisis*. Several courts have stated  
13 that *stare decisis* by itself may furnish the practical disadvantage required for the movant to be  
14 entitled to intervention as of right. *Smith v. Pangilinan*, 651 F.2d 1320, 1325 (9th Cir. 1981); *Blake*  
15 *v. Pallan*, 554 F.2d 947, 954 (9th Cir. 1977); *Francis v. Chamber of Commerce of United States*, 481  
16 F.2d 192, 195 (4th Cir. 1973).

17 The legality of the California regulation will be determined in this action, and this Court's  
18 determination on the matter will likely guide any other court in another jurisdiction that might have  
19 to consider the issue at a later time. *See Sierra Club v. Glickman*, 82 F.3d 106, 109 (5th Cir. 1996)  
20 (where pending matter is a case of first impression, *stare decisis* weighs in favor of intervention).  
21 For that reason, even if AIAM were not a party to this action but instead pursued a separate matter  
22 challenging these regulations, it would nevertheless be bound as a practical matter by the decision of  
23 this Court. The only practical way, therefore, for AIAM to protect the interests of its members is  
24 through intervening in this action.

25 **4. AIAM's Interests Are Not Adequately Protected By The Central Valley**  
26 **Chrysler-Jeep Plaintiffs.**

27 To determine whether the existing parties adequately represent an applicant's interest, a court  
28 should consider:

(1) whether the interest of a present party is such that it will undoubtedly make all the  
intervenor's arguments; (2) whether the present party is capable and willing to make

1 such arguments; and (3) whether the would-be intervenor would offer any necessary  
2 elements to the proceedings that other parties would neglect.

3 *City of Los Angeles*, 288 F.3d at 398. “The applicant-intervenor’s burden in showing inadequate  
4 representation is minimal: it is sufficient to show that representation *may* be inadequate.” *Forest*  
5 *Conservation Counsel*, 66 F.3d 1489, 1498 (9th Cir. 1995).

6 This “minimal” showing is made here. AIAM’s ability to protect the interests of its members  
7 is not adequately represented by the *Central Valley Chrysler-Jeep* plaintiffs because those plaintiffs  
8 represent different automobile manufacturers which may have a different perspective when it comes  
9 to automotive fuel economy and emissions standards and different goals in this litigation. As global  
10 manufacturers, AIAM’s members have a critical need for both national and international uniformity  
11 in emissions and fuel economy standards that impact the design and manufacture of automobiles.  
12 Accordingly, AIAM’s proposed Complaint in Intervention is focused on this need for uniformity, and  
13 how Congress recognized the importance of uniform standards in enacting the preemption provisions  
14 of both EPCA and the CAA. The *Central Valley Chrysler-Jeep* plaintiffs may not share the same  
15 international perspective as AIAM, and their complaint raises issues not espoused by AIAM.  
16 Therefore, the arguments they will advance concerning the constitutionality of the CARB  
17 Greenhouse Gas Regulations will likely be framed differently and have a different perspective than  
18 the arguments AIAM will raise.

19 Moreover, not all automobile companies are similarly situated with regard to technology and  
20 product mix, and some manufactures will consequently prioritize issues in this litigation differently  
21 from others. Thus, in the event that this matter is resolved through a stipulated settlement between  
22 CARB and the *Central Valley Chrysler-Jeep* Plaintiffs – and without the involvement of and input  
23 from AIAM – there is the potential that AIAM’s members will be prejudiced by the settlement. The  
24 only way for AIAM to protect the unique interests of its members is to participate in this action.

25 Indeed, courts have allowed intervention of right in situations like this one where the  
26 proposed intervenor has a substantial interest in the subject matter of the litigation which may be  
27 impaired in its absence, even though another member of the intervenor’s industry was already  
28 seeking the requested relief in the action. In *NRDC v. United States Nuclear Regulatory*  
*Commission*, 578 F.2d 1341 (10th Cir. 1978), the district court had denied the request by uranium

1 mills to intervene as of right in an action seeking to enjoin agencies from issuing licenses for the  
2 operation of uranium mills in New Mexico without first preparing environmental impact statements,  
3 on the ground that another member of the uranium industry was already a party to the action. The  
4 district court denied intervention even though the proposed intervenors were the largest holders of  
5 uranium properties in New Mexico. The Tenth Circuit reversed, citing the “minimal” burden of  
6 showing inadequate representation. *Id.* at 1345. The court found that “[w]hile the interest of the two  
7 applicants may appear similar, there is no way to say that there is no possibility that they will not be  
8 different [*sic*] and the possibility of divergence of interest need not be great in order to satisfy the  
9 burden of the applicants” to show lack of adequate representation. *Id.* at 1346. This minimal  
10 showing, combined with the substantial interest of the movants in the subject matter of the litigation  
11 and the fact that “the threat of loss of their interest and inability to participate is of such magnitude as  
12 to impair their ability to advance their interest,” compelled the court to hold that it was error to deny  
13 leave to intervene. *Id.* at 1343.

14         The same result should be reached here for the reasons set forth in *NRDC v. United States*  
15 *Nuclear Regulatory Commission*. AIAM members include some of the largest automobile  
16 manufacturers in the world, and account for approximately 40 percent of all passenger cars and light  
17 trucks sold annually in the State of California. AIAM’s members, therefore, unquestionably have a  
18 substantial interest in this litigation and “the threat of loss of their interest and inability to participate  
19 is of such magnitude as to impair their ability to advance their interest.” Because “there is no way to  
20 say that there is no possibility” that the interests of the *Central Valley Chrysler-Jeep* plaintiffs will be  
21 different from AIAM’s, the minimal showing of inadequate representation has been made.

22         Finally, simply allowing AIAM to file a brief as *amicus curiae* in support of the *Central*  
23 *Valley Chrysler-Jeep* plaintiffs in this action would not be sufficient for AIAM to protect the interests  
24 of its members in challenging the constitutionality of the CARB Greenhouse Gas Regulations.  
25 *Forest Conservation Council*, 66 F.3d at 1498 (“We reject appellees’ claim that *amicus curiae* status  
26 is sufficient for appellants to protect their interests by expressing their concerns to the court regarding  
27 the propriety and scope of injunctive relief.”)

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1 **B. Alternatively, AIAM May Permissively Intervene Under Rule 24(b).**

2 Even if this Court determines that AIAM cannot intervene as a matter of right under Rule  
3 24(a), it should nonetheless permit AIAM to intervene under Rule 24(b). Rule 24(b) provides that:

4 Upon timely application anyone may be permitted to intervene in an action:

5 (2) when an applicant’s claim or defense and the main action have a question of law or  
6 fact in common...

7 In exercising its discretion the court shall consider whether the intervention will  
8 unduly delay or prejudice the adjudication of the rights of the original parties.

9 Fed. R. Civ. Proc. 24(b)(2). In *Venegas v. Skaggs*, 867 F.2d 527, 529 (9th Cir. 1989), aff’d, *Venegas*  
10 *v. Mitchell*, 495 U.S. 82 (1990), the Ninth Circuit explained that a court may exercise its discretion in  
11 allowing permissive intervention under Rule 24(b) if the applicant can establish (1) an independent  
12 ground for jurisdiction over its claims or defenses, (2) that its application to intervene is timely, and  
13 (3) that the applicant’s claim or defense has a question of law and fact in common with the main  
14 action. 867 F.2d at 529; see also *U.S. v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002). The  
15 application of those facts here weighs heavily in favor of granting AIAM permissive intervention.  
16 *Kootenai Tribe of Idaho v. Veneman*, 313 F.3d 1094, 1111 (9th Cir. 2002) (permissive intervention  
17 allowed where “intervenor asserted defenses of the Roadless Rule directly responsive to the claim  
18 for injunction” and “the intervention motions were filed near the case outset and the defendant-  
19 intervenors said they could abide the court's briefing and procedural scheduling orders.”)

20 **1. This Court Has Jurisdiction Over AIAM’s Claims Pursuant To 42 U.S.C.  
21 § 1983.**

22 This Court has an independent ground for jurisdiction to entertain AIAM’s Complaint In  
23 Intervention under 42 U.S.C. § 1983, because it seeks declaratory and injunctive relief under the  
24 Supremacy Clause in Article VI of the United States on the ground that the CARB Greenhouse Gas  
25 Regulations are preempted by federal law.

26 **2. AIAM’s Motion to Intervene Is Timely.**

27 As discussed above, AIAM’s Motion to Intervene is timely because it acted reasonably  
28 promptly in seeking such motion. In determining whether an application is timely under Rule 24(b),  
a court should apply the same test that it uses to determine whether an application is timely under  
Rule 24(a), discussed above. See *League of United Latin Am. Citizens v. Wilson*, 131 F.3d 1297,

1 1308 (9th Cir. 1997). As noted above, a court may consider three factors in deciding whether a  
2 motion to intervene is timely. *See Wilson*, 131 F.3d at 1308. Those three factors are: (1) the stage of  
3 the proceedings when the applicant seeks to intervene; (2) the prejudice to the other parties; and (3)  
4 the reason for and length of the delay. *See id.* Here, AIAM seeks to intervene before a responsive  
5 pleading has been filed by the defendant, and neither discovery nor any other court proceedings have  
6 begun. None of the existing parties will be prejudiced by AIAM's intervention. For all the reasons  
7 discussed above, AIAM's application is therefore timely.

8 **3. AIAM's Claims Have Questions Of Law And Fact In Common With The**  
9 **Present Action.**

10 "The existence of a 'common question' is liberally construed." *Bureerong v. Uvawas*, 167  
11 F.R.D. 83, 85 (C.D. Cal. 1996). AIAM's Complaint in Intervention and the *Central Valley Chrysler-*  
12 *Jeep* plaintiffs' Complaint have common questions of law and fact concerning the constitutionality of  
13 the CARB Greenhouse Gas Regulations. Both the *Central Valley Chrysler-Jeep* plaintiffs'  
14 Complaint and AIAM's Complaint in Intervention allege that the regulations are preempted by EPCA  
15 and the CAA.

16 **4. AIAM's Intervention Will Not Unduly Delay Or Prejudice The**  
17 **Adjudication Of The Rights Of The Original Parties.**

18 Because this litigation began just over a month and a half ago, and no responsive pleadings  
19 have yet been filed and no discovery has yet been conducted, permitting AIAM to intervene will  
20 neither delay nor prejudice the adjudication of the rights of the original parties. *See Rivers v.*  
21 *Califano*, 86 F.R.D. 41, 44 (S.D.N.Y. 1980). Indeed it will ensure that all parties with a stake in this  
22 dispute will have a chance to be heard.

23 **III. CONCLUSION**

24 The Association of International Automobile Manufacturers and its members undoubtedly  
25 have a substantial interest in this action challenging the CARB Greenhouse Gas Regulations, and  
26 these interests may be compromised should it not be allowed to intervene. AIAM has met the

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1 requirements for intervention of right and, in the alternative, permissive intervention. Accordingly,  
2 AIAM respectfully requests that its Motion to Intervene be granted.

3 DATED: February 3, 2005

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5 KIMBLE, MACMICHAEL & UPTON

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7 By: \_\_\_\_\_/ss/\_\_\_\_\_

8 Jon Wallace Upton

9 Attorneys for Intervenor,  
10 Association of International Automobile Manufacturers  
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