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IN THE UNITED STATES DISTRICT COURT

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FOR THE EASTERN DISTRICT OF CALIFORNIA

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FRESNO DIVISION

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

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Plaintiffs,

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v.

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**CATHERINE E. WITHERSPOON,**

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Defendant.

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TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

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PLEASE TAKE NOTICE that on June 13, 2005 at 1:30 p.m., or as soon thereafter as

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the matter may be heard in the above-entitled court, located at 1130 O Street, Fresno, California,

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defendant Catherine E. Witherspoon will move and hereby does move the Court to dismiss the

NO. CIV F-04-6663 REC LJO

**DEFENDANT'S NOTICE OF  
MOTION AND MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT**

[Fed. R. Civ. P. 12(b)(1), (b)(3), (b)(6)]

Hearing: June 13, 2005  
Time: 1:30 p.m.  
Courtroom: One  
Judge: Hon. Robert E.  
Coyle

1 action pursuant to Federal Rule of Civil Procedure 12, subsections (b)(1), (b)(3), and (b)(6),  
2 because of lack of jurisdiction over the subject matter, because of improper venue, and/or  
3 because Plaintiffs' first amended complaint fails to state a claim upon which relief can be  
4 granted. The grounds for this motion are that: (1) Plaintiffs filed this action in the wrong  
5 division of this Court; (2) Plaintiffs' action is not ripe for review; and (3) Plaintiffs' second claim  
6 (preemption under the Clean Air Act) is barred by the primary jurisdiction doctrine.

7 Alternatively to seeking dismissal of this entire action, defendant Witherspoon will move and  
8 hereby does move the Court to transfer venue to the Sacramento Division of this Court; stay this  
9 action; and dismiss or stay Plaintiffs' second claim.

10 The motion will be based of this Notice of Motion and Motion; the accompanying  
11 Memorandum of Points and Authorities, Declaration of Robert Cross, Request for Judicial  
12 Notice, and Appendix of Other Authorities; the hearing on this motion; and the pleadings filed in  
13 this action.

14 Dated: March 7, 2005

15 Respectfully submitted,

16 **BILL LOCKYER**  
Attorney General of the State of California

17  
18 /s/ Marc N. Melnick

19 **MARC N. MELNICK**  
20 Deputy Attorney General  
Attorneys for Defendant

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