

United States District Court, D. Vermont.  
GREEN MOUNTAIN CHRYSLER-PLYMOUTH-DODGE-JEEP, et al., Plaintiffs,  
Association of International Automobile Manufacturers, Plaintiff,

v.

Thomas W. TORTI, Secretary of the Vermont Agency of Natural Resources, et al.,  
Defendants.

Case Nos. 2:05-CV-302, and 2:05-CV-304.

February 9, 2006.

### Defendants' Memorandum in Support of Motion to Stay Cases

Defendants (the "State") move for a stay of these cases pending the outcome of an almost identical case now before the United States District Court for the Eastern District of California, which will have a significant, if not dispositive, effect on this case. A ruling in California could entirely obviate the need for this Court to consider the claims presented in these cases or could greatly narrow the scope of discovery and issues for trial. A stay would conserve resources of the Court and the parties without undue prejudice to Plaintiffs.

### INTRODUCTION

Plaintiffs claim that Vermont's regulations establishing greenhouse gas ("GHG") emissions standards for new automobiles are preempted by federal law. The regulations, however, were developed by the State of California, which is the only state that has authority under the federal Clean Air Act ("CAA"), 42 U.S.C. <section> 7401 et seq., to develop its own motor vehicle emission standards. Other states, including Vermont, are permitted to adopt standards identical to those in California as an alternative to the federal standards.

In December of 2004, some of these same Plaintiffs [FN1] filed lawsuits in state and federal courts in California challenging California's regulations and the California state law directing the California Air Resources Board to develop and implement those regulations. Central Valley Chrysler-Jeep, Inc., et al. v. Catherine Witherspoon, No. CIV-F-04-6663 (E.D. California) ("Central Valley Chrysler"); see also Fresno Dodge, Inc., et al. v. California Air Resources Board, No. 04-CE CG 0398 (County of Fresno) ("Fresno Dodge"). The constitutional and statutory claims asserted by plaintiffs in the California litigation are virtually identical to the claims asserted in the present cases. Thus, in this challenge to Vermont's regulations, which simply incorporate California's regulations by reference, the Plaintiffs seek to invoke this Court's jurisdiction in an attempt to litigate the same issues they are simultaneously litigating in both federal and state courts in California.

FN1. The duplicate parties are the Alliance of Automobile Manufacturers

("AAM"), General Motors Corp. ("GM Corp."), and Daimler Chrysler Corp. ("Daimler Corp.") in 05-CV-302 (collectively the "AAM Plaintiffs"), and the Association of International Automobile Manufacturers ("AIAM") in 05-CV-304.

Under the principles of comity among federal district courts and pursuant to the "first filed" rule, this Court should invoke its inherent power to regulate its docket and stay these cases pending the resolution of Central Valley Chrysler. Moreover, as set forth below, a stay of this case would unquestionably serve the interests of judicial economy. Moreover, a stay would not unduly prejudice the Plaintiffs, would avoid a great and possibly unnecessary burden on the State, and would serve the public good. Accordingly, the State's motion to stay these cases should be granted.

## STATUTORY AND REGULATORY BACKGROUND

### Statutory Background

Congress enacted the Clean Air Act "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." 42 U.S.C. <section> 7401(b)(1). The CAA establishes a comprehensive program for controlling and improving the nation's air quality in which the "States and the Federal Government [are] partners." *General Motors Corp. v. United States*, 496 U.S. 530, 532 (1990). However, it vests the federal government with the "almost exclusive responsibility for establishing automobile emission standards for new cars." *Motor & Equipment Mfrs. Ass'n of the United States v. Nichols*, 142 F.3d 449, 452 (D.C. Cir. 1998) ("MEMA III"); see 49 U.S.C. <section><section> 7521, 7543(a). Thus, in general, "state regulation of automotive tailpipe emissions is preempted by the federal Clean Air Act." *Motor Vehicle Mfrs. Ass'n of the United States, Inc. v. New York Dep't of Env'tl. Conservation*, 79 F.3d 1298, 1302 (2d Cir. 1996) ("MVMA V").

The critical exception is for the State of California, which is permitted to establish its own automobile standards for new automobiles, subject to approval of a preemption waiver by the U.S. Environmental Protection Agency. 49 U.S.C. <section> 7543(b). The California exception is intended " 'to afford California the broadest possible discretion in selecting the best means to protect the health of its citizens and the public welfare.' " *MEMA III*, 142 F.3d at 453 (citing H.R.Rep. No. 95-294, at 301-302 (1977)).

Equally as important, Congress enacted and subsequently amended section 177 of the CAA so that "states attempting to combat their own pollution problems could adopt California's more stringent emission controls." *Motor Vehicle Mfrs. Ass'n v. New York State Dept. of Env'tl. Conservation*, 17 F.3d 521, 531 (2d Cir. 1994) ("MVMA II") (citing H.Rep. No. 294, 95th Cong., 1st Sess. 309-10 (1977)); 49 U.S.C. <section> 7507. This so-called "piggy-back"

provision "was designed to provide states with another tool in their efforts to meet the [National Ambient Air Quality Standards]" of the CAA and is "carefully circumscribed to avoid placing an undue burden on the automobile manufacturing industry." *American Automobile Mfrs. Ass'n v. Cahill*, 973 F.Supp. 288, 295 (N.D.N.Y. 1997) ("MVMA VI"). Thus, the effect of sections 177 and 209 is that "new motor vehicles must be either 'federal cars' designed to meet EPA's standards or 'California cars' designed to meet California's standards." *MEMA III*, 142 F.3d at 453 (quoting *Engine Mfrs. Ass'n v. EPA*, 88 F.3d 105, 1080 (D.C. Cir. 1996)) (internal quotations omitted).

### Regulatory Background

California Assembly Bill 1493, introduced by Assemblywoman Fran Pavley, required the California Air Resources Board ("CARB") to "develop and adopt regulations that achieve the maximum feasible and cost-effective reduction of greenhouse gas emissions from motor vehicles." Cal. Health & Safety Code <section> 43018.5. In response, CARB developed regulations to control greenhouse gas emissions from motor vehicles. See California Code, Title 13, Section 1961.1. These emissions standards will be gradually phased in between model-years 2009 and 2016. California's regulations were adopted on September 15, 2005, and became operative on January 1, 2006.

As required by section 177 of the CAA, the GHG emission standards in Vermont's Air Pollution Control regulations must be, and indeed are, "identical to the California standards." 49 U.S.C. <section> 7507. Thus, contrary to Plaintiffs' assertions in their complaint, Vermont's regulations are not simply "based" or "modeled on rules adopted in California in 2004." AAM Complaint, <paragraph><paragraph> 57, 55. Rather, Vermont incorporated California's regulations by reference--without modification. Compare Vermont's Air Pollution Control Regulations, Subchapter XI and Appendix F with California Code, Title 13, Sections 1961 and 1961.1. Vermont filed its GHG regulations with the Secretary of State on November 7, 2005, and the regulations became effective as of November 22, 2005.

### LEGAL STANDARD

The power of federal district courts "to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants." *Landis v. North American Co.*, 299 U.S. 248, 254 (1936). Furthermore, "as between federal district courts, [], though no precise rule has evolved, the general principle is to avoid duplicate litigation." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976) (addressing principles that govern "situations involving the contemporaneous exercise of concurrent jurisdictions"). See also *Curtis v. Citibank*, 226 F.3d 133, 138 (2d Cir. 2000) ("[A]s part of its general power to administer its

docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit.").

The court should consider the following factors to determine whether to issue a stay:

(1) the private interests of the plaintiffs in proceeding expeditiously with the civil litigation as balanced against the prejudice to the plaintiffs if delayed; (2) the private interests of and burden on the defendants; (3) the interests of the courts; (4) the interests of persons not parties to the civil litigation; and (5) the public interest.

Kappel v. Comfort, 914 F.Supp. 1056, 1058 (S.D.N.Y. 1996) (granting stay where there was a related case in federal district court in Pennsylvania). The court balances these factors on a case-by-case determination with the basic goal being to avoid prejudice. *Id.*

## ARGUMENT

This Court should stay these cases pending resolution of Central Valley Chrysler for three reasons. First, judicial economy and adherence to the "first filed" rule is served by staying these cases. Second, the Plaintiffs will suffer little prejudice by a stay. Third, the burden on the State outweighs the private interests of the Plaintiffs in proceeding with this litigation at this point in time.

I. Judicial Efficiency Is Maximized By A Stay Because Central Valley Chrysler Involves The Same Threshold Issues, And California Is The More Appropriate Forum To Fully Develop These Issues.

Many of the same Plaintiffs in these cases have already raised virtually identical challenges to a California state law and its implementing regulations in Central Valley Chrysler (and Fresno Dodge). Indeed, the authority of Vermont to enforce its regulations rests on the validity of California's state law and its regulations, which are the precise issues the courts are now considering in California. Furthermore, this Court has "the obligation to assure that this court's exercise of its jurisdiction does not have an avoidably harmful impact on cases already pending before another court." Kappel v. Comfort, 914 F.Supp. at 1059 (granting stay where there was a related federal district court case); Fort Howard Paper Co. v. William D. Witter, Inc., 787 F.2d 784, 790 (2d Cir. 1986) (absent special circumstances, the first filed of two competing lawsuits should have priority). The fact that Vermont adopted by reference regulations developed by California (that are now being challenged in California) is an especially strong reason for staying these cases.

The analysis of the issues in this case will be driven by California's unique status under the Clean Air Act and could involve extensive analysis concerning the development and impact of California's regulations. This Court's decision could also result in an implicit determination concerning the constitutionality of California's state law and the legality of its regulations. Judicial economy and comity therefore weigh in favor of staying these cases pending resolution of the "first filed" case in California, which directly addresses, in the first instance, the validity of California's state law and the other core issues that have been subsequently challenged here.

A. The "First Filed" Rule Applies To These Cases.

This Court should stay these cases pending resolution of Central Valley Chrysler under the "first filed" rule. *First City National Bank and Trust v. Simmons*, 878 F.2d 76, 79, (2d Cir. 1989) (citing *Motion Picture Lab. Technicians Loc. 780 v. McGregor & Werner, Inc.*, 804 F.2d 16, 19 (2d Cir. 1986) ("where there are two competing lawsuits, the first suit should have priority, absent the showing of balance of convenience or special circumstances giving priority to the second."); *West Gulf Maritime Ass'n v. ILA Deep Sea Local 24*, 751 F.2d 721, 729 (5th Cir. 1985) (district court may stay or dismiss an action where the issues presented can be resolved in an earlier-filed action pending in another district court).

Both sets of Vermont and California complaints raise virtually identical claims that can be resolved in the earlier-filed suit in California:

. Preemption under the Energy Policy and Conservation Act of 1975, 49 U.S.C. <section><section> 329021-32919. Compare, Count I, Central Valley Chrysler AAM Complaint (attached as Exhibit 1) with Count I, AAM Complaint. [FN2]

FN2. The AIAM complaints in both Central Valley Chrysler (attached as Exhibit 2) and 05-CV-304 are also identical, but AIAM only raises Counts I and II.

. Preemption under <section> 209(a) of the Clean Air Act, 42 U.S.C. <section> 7543(a). Compare, Count II, Central Valley Chrysler AAM Complaint with Count II, AAM Complaint.

. Preemption under the foreign policy of the U.S. and the foreign affairs power of the Federal Government. Compare, Count III, Central Valley Chrysler AAM Complaint with Count IV, AAM Complaint.

. Violation of the Dormant Commerce Clause of the United States Constitution. Compare, Count IV, Central Valley Chrysler AAM Complaint with Count V, AAM Complaint.

. Violation of the Sherman Act, 15 U.S.C. <section> 1. Compare, Count V, Central Valley Chrysler AAM Complaint with Count VI, AAM Complaint.

This Court can also look to the contested legal issues and facts in the Scheduling Conference Order in Central Valley Chrysler to fully appreciate the duplicative nature (and magnitude) of the work that Plaintiffs are trying to repeat here. Exhibit 3 and 4 (Scheduling Conference Order and Civil Docket in Central Valley Chrysler).

For example, the State expects that, if these cases go forward at this time, this Court would be duplicating efforts in evaluating numerous contested legal issues identified by the parties in Central Valley Chrysler:

. Whether the doctrine of primary jurisdiction applies to the claim of preemption under the Clean Air Act.

. Whether the GHG rule is "related to fuel economy standards and average fuel economy standards," and is preempted under 49 U.S.C. <section> 32919(a).

. Whether the GHG rule intrudes upon a field of regulation occupied by the federal government.

. Whether the GHG rule is inconsistent with NHTSA's determination of the "maximum feasible" corporate average fuel economy standards for cars and light-duty trucks, based upon NHTSA's assessment of technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy, 49 U.S.C. <section> 32902(f), and thereby frustrates the accomplishment of federal objectives.

. Whether the GHG rule is a standard related to the control of emissions from new motor vehicles preempted by section 209(a) of the Clean Air Act.

. Whether the GHG rule intrudes upon the foreign policy of the United States and the foreign affairs prerogatives of the President and Congress of the United States.

. Whether the alleged coordination required by the GHG rule will have a substantial effect on interstate commerce and is prohibited by federal antitrust law.

. Whether any part of the GHG rule found to be unlawful can be severed by the Court from other parts of the regulation.

. Whether the GHG rule qualifies for a waiver under Clean Air Act section 209(b).

Scheduling Conference Order, p. 13-14.

Furthermore, Plaintiffs' factual allegations, which mirror in significant part those have asserted in *Central Valley Chrysler*, very likely will be disputed here. However, these disputed factual issues are most appropriately resolved in the California litigation. These include:

- . The costs and efficacy of the technologies that potentially could be utilized to achieve compliance with the GHG rule.
- . Market demand and consumer preferences for those same technologies at different costs.
- . The impact of the GHG rule on environmental conditions in California.
- . The impact of the GHG rule on employment in the automobile industry in the U.S.
- . The impact of the GHG rule on motor vehicle safety.
- . The impact of the GHG rule on the federal motor vehicle fuel economy program.
- . The impact of the GHG rule on consumer choice and consumer welfare in the U.S.
- . The impact of the GHG rule's requirements for aggregation of different manufacturers' product lines on competition.
- . The impact of the GHG rule on national control of United States policy related to the international control of greenhouse gas emissions and the issue of global climate change.
- . The dollar amount of the operational cost savings from the GHG rule.
- . The extent to which the GHG rule will provide benefits to the California economy.

Scheduling Conference Order, pp. 11-12. Thus, if these cases are not resolved by dispositive motions, this Court should defer the adjudication of these factual disputes to the parties in California--especially in light of the extensive discovery that is already underway and also because the regulations were developed by the State of California, which is defending the case. [FN3] See Exhibit 5 (Affidavit of Thomas Moye), <paragraph>11 (noting CARB's "extensive resources and expertise" in this area).

FN3. Although the AAM Plaintiffs in this case raise one Vermont-specific claim (Count III), that claim should also be stayed because a decision in California could likewise dispose of the claim or significantly narrow the scope of discovery issues for trial on that claim.

Finally, this Circuit has noted that courts must be wary of allowing duplicate litigation to proceed. In *Semmes Motors, Inc. v. Ford Motor Co.*, 429 F.2d 1197, 1203 (2d Cir. 1970), the court warned that the deviation from the "first filed" rule gives rise "to the danger that plaintiffs may engage in forum shopping or, more accurately, judge shopping. When they see a storm brewing in the first court, they may try to weigh anchor and set sail for the hopefully more favorable waters of another district."

This Court should reject Plaintiffs' attempt to engage in duplicative litigation.

B. The Resolution Of Central Valley Chrysler Could Entirely Dispose Of This Case Or, At The Very Least, Substantially Narrow Any Remaining Issues.

California's promulgation of its GHG regulations, pursuant to a California state law, provides the underlying authority for the State of Vermont to adopt and enforce the regulations challenged by the Plaintiffs here. 49 U.S.C. <section><section> 7507, 7543(b). Therefore, a ruling in *Central Valley Chrysler* would significantly affect all aspects of this case. That case, not the Vermont cases, should address the fundamental issue of whether these GHG regulations are valid as either a matter of California state law or constitutional law. A final ruling in California would therefore dictate whether other states can lawfully enforce these regulations. In addition, as noted in Defendants' Notice of Related Cases (filed January 10, 2006), some of these Plaintiffs have brought suit in several state courts. Piecemeal litigation in New York, Oregon, Maine, and Vermont does not serve judicial efficiency--especially when the California litigation may have a profound effect on all these cases. See *Colorado River Water Conservation District v. United States*, 424 U.S. at 818-20 (in general, courts should avoid piecemeal resolution of issues that call for a uniform result).

If Plaintiffs AAM, GM Corp., Daimler Corp. and AIAM are successful in *Central Valley Chrysler*, and the California state law (or its regulations) are ultimately found either invalid or unconstitutional, the State of Vermont could no longer meet the requirements of section 177 of the CAA, thereby rendering this case moot. 49 U.S.C. <section> 7507. Thus, it makes little sense to litigate any of the claims here, especially duplicate claims, when the court in *Central Valley Chrysler* is currently considering these same issues in the context of both California's state law and California's subsequent development of the exact regulations that Vermont has incorporated

by reference.

Furthermore, if the California regulations are upheld, these Plaintiffs could be prevented from re-litigating these same claims in this Court under the doctrine of claim preclusion or res judicata. [FN4] Because of "the obvious difficulties of anticipating the claim or issue-preclusion effects of a case that is still pending, a court faced with a duplicative suit will commonly stay the second suit, dismiss without prejudice, enjoin the parties from proceeding with it, or consolidate the two actions." *Curtis v. Citibank*, 226 F.3d at 138.

FN4. This concern is separate from whether this Court should stay the case because of duplicative litigation. See, *supra.*, pp. 7-10. Although the rule against duplicative litigation is "distinct from but related to the doctrine of claim preclusion or res judicata," they serve similar policies, including "to foster judicial economy and the 'comprehensive disposition of litigation.'" *Curtis v. Citibank*, 226 F.3d at 138.

In sum, unlike the resolution of California litigation, which will have a profound, if not a dispositive, effect on this litigation, a decision in these cases will do little to advance the resolution of Central Valley Chrysler (beyond supplying persuasive authority).

## II. A Stay Of This Litigation Does Not Unduly Prejudice The Out-Of-State Automobile Manufacturers Or The Vermont Automobile Dealers.

Given the limited import of a decision by this Court to the Plaintiffs' interests, a delay in this litigation pending a decision in California will not prejudice the Plaintiffs in any meaningful way. Indeed, Plaintiffs' success on the merits in this case would have an inconsequential impact on either the out-of-state or in-state Plaintiffs. The limited interest that Plaintiffs have in proceeding expeditiously with this litigation is outweighed by the burden on the State to litigate these cases at this time.

The out-of-state Plaintiffs, including General Motors Corp., Daimler Chrysler Corp., the Alliance of Automobile Manufacturers, [FN5] and the Association of International Automobile Manufacturers, [FN6] face little burden in waiting for the resolution of Central Valley Chrysler. They are all parties in the California litigation and have been, and will continue to, vigorously assert the same exact arguments they would assert here. It is difficult to see any prejudice that will result from waiting the outcome of that case, which would likely control the outcome of this case.

FN5. The AAM includes the BMW Group, Daimler Chrysler Corp., Ford Motor Co., General Motors Corp., Mazda North American Operations, Mitsubishi Motor Sales of America, Porsche Cars North America, Toyota Motor North America, and

Volkswagen of America.

FN6. The AIAM includes American Honda Motor Company, Inc., American Suzuki Motor Corporation, Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., 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., and Hyundai Motor America.

In addition, they face little burden as automobile manufacturers if this litigation is delayed until Central Valley Chrysler is resolved. New automobile and light truck sales for franchised dealers in Vermont in 2004 were approximately 40,000. [FN7] The sales of new automobiles and light trucks in California in 2004, on the other hand, totaled over 2,000,000. [FN8] Thus, the automobile manufacturers produce 50 times more automobiles and light trucks for California dealers than they do for Vermont. Put another way, California sells more automobiles and light trucks in about a week than Vermont sells in an entire year. Furthermore, nationwide sales of new automobiles for 2004 were approximately 13.5 million, which puts Vermont sales at 0.3 % of the U.S. share of new automobile and light truck sales. [FN9]

FN7. See "2004 Economic Impact Report: The Economic Impact of Franchised New Vehicle Dealerships on the Vermont Economy," Vermont Automobile Dealer Association, p.6, <http://www.vermontada.org/docs/ImpactStudy2005.pdf> (last accessed February 8, 2006).

FN8. See "2005 State Economic Impact Report of California Franchised New Car and Truck Dealerships," p. 3; <http://www.cmcd.org/economic05.pdf> (last accessed February 8, 2006).

FN9. See U.S. Bureau of Transportation statistics, Retail New Passenger Car Sales, [http://www.bts.gov/publications/national\\_transportation\\_statistics/2005/html/table\\_01\\_16.html](http://www.bts.gov/publications/national_transportation_statistics/2005/html/table_01_16.html) (last accessed February 8, 2006).

These statistics illustrate the minimal impact of this litigation on Plaintiffs' planning and manufacturing estimates as compared to their existing obligation to develop by model-year 2009 a vastly greater number of "California cars" for sale in California, New York, Massachusetts, New Jersey, Connecticut, Maine, Oregon, and Washington that all have the California regulations in place. [FN10] Thus, a delay until the California court decides, in the first instance, whether the rules are valid, will not unduly prejudice the Plaintiffs--especially in consideration of the very small number of automobiles needed for Vermont.

FN10. New York's regulations became effective on December 22, 2005;

Massachusetts: December 30, 2005; New Jersey: January 17, 2006; Connecticut: December 22, 2005; Maine: December 19, 2005; Oregon: January 1, 2006; and Washington: January 1, 2006.

The Vermont Plaintiffs that are not parties in Central Valley Chrysler will similarly suffer little prejudice from waiting for resolution of that case. The in-state Plaintiffs are automobile and light truck dealers, including Green Mountain Chrysler-Plymouth-Dodge-Jeep, Green Mountain Ford-Mercury, and Joe Tornabene's GMC. These dealers allege that the GHG standards will "reduce the new-vehicle sales" resulting in "losses in profits and goodwill." AAM Complaint, <paragraph>18.

It is clear that a stay of this case pending the resolution of the California litigation will not prejudice these Plaintiffs. First, these dealers have little, if any, involvement in the development, planning or manufacturing of new automobiles. Second, and more importantly, the in-state dealers will not receive any new vehicles that are subject to the GHG emission standards until at least two years from now. Thus, these Plaintiffs will not be unduly burdened by a stay of this litigation because, even assuming Plaintiffs allegations are true, any impact on new vehicle sales is more than two years away.

### III. The Burden On The State And On Other Persons That Are Not Party To This Litigation Outweighs The Negligible Burden On Plaintiffs.

In consideration of the extensive litigation that has been on-going in California for the past year, and due to the burden that it would place on the Court, the State, and other persons not party to this litigation, [FN11] this Court should stay this litigation at this time.

FN11. The burden on persons not party to this litigation is clear. The California plaintiffs, for example, have issued countless subpoenas to third-parties scheduling depositions and requesting enormous amounts of documents. Many parties will likewise be burdened with duplicative or unnecessary work if similar subpoenas are issued in these cases.

The Affidavit of Thomas Moyer, Chief of the Mobile Sources Section of Vermont's Agency of Natural Resources, sets forth the burden that this litigation would have on the Mobile Sources Section, which is the section that oversees the challenged regulations. Moyer Aff. (Exhibit 5), <paragraph> <paragraph>1-2. For example, Mr. Moyer reviewed the Scheduling Conference Order as well as the California plaintiffs' initial discovery requests, and concluded that "[l]itigating a case of this magnitude, including responding to discovery requests similar to those made by plaintiffs in California, would require scientific expertise and resources on a scale with those of California." Moyer Aff., <paragraph>13; see Exhibit 6 and 7 (Plaintiffs' First

Set of Interrogatories and Request for Production of Documents in Central Valley Chrysler).

Furthermore, the Plaintiffs state that this "case is largely going to be driven by expert testimony." [FN12] See AAM Plaintiffs' letter of December 22, 2005 to Defendants (Exhibit A of Plaintiffs' Response to Defendants' Motion for Enlargement of Time). As set forth in Mr. Moye's affidavit, the State will "incur significant costs and suffer enormous burden on staff resources in defending this action." Moye Aff., <paragraph>12. The burden "may include retaining multiple expert witnesses, such as engineers, economists, climate change scientists, and air quality modelers, and managing the review and production of voluminous documents and records in discovery." Id. In addition, unlike CARB, which employs more than 1,000 staff, Vermont's Air Pollution Control Division employs approximately 31 staff, with only three people dedicated to the Mobile Sources Section. Id. at <paragraph>2. Thus, the burden on the State would be "hugely disproportionate to its resources and would severely impact the Mobile Sources Section, forcing a reprioritization of the section's responsibilities such that approximately 75% of current responsibilities would have to be suspended." [FN13] Id. at <paragraph>13.

FN12. Even though the State believes that many claims could be resolved through dispositive motions, it is clear that these Plaintiffs intend to engage in extensive discovery.

FN13. Mr. Moye also describes all the programs that would be impacted, including: (1) the Vehicle Emissions Controls Inspection and Maintenance Program, (2) the Heavy Duty Diesel Vehicle Emissions Program, (3) the Automotive Technician Training Program, and (4) the Public Education and Outreach Program. Moye Aff., <paragraph><paragraph>4-10.

Finally, because the Vermont Legislative session, which runs from January through approximately early June, is "an especially critical time period for the Mobile Sources Section," responding to discovery requests during this time period "would severely limit [the Section's] ability to provide adequate support to the Vermont Legislature." Id. at <paragraph>14.

In sum, the enormous burden on the State to litigate this case without the benefit of a ruling in California far outweighs the minimal impact a stay would have on the Plaintiffs.

## CONCLUSION

Of course, the State is fully prepared and committed to defend this case if this case is not stayed. However, upon balance, the Court and the State should not be required to duplicate work, especially when the California litigation could dispose or drastically narrow the scope of these cases. For all of the

foregoing reasons, this Court should issue a stay pending resolution of Central Valley Chrysler. [FN14]

FN14. The State is prepared to provide the Court with status reports on the California litigation at specified time intervals as the Court sees fit.

Motions, Pleadings and Filings (Back to top)

. 2006 WL 1521865 (Trial Motion, Memorandum and Affidavit) Reply of Intervenor to Plaintiffs' Conditional Opposition (Apr. 4, 2006)Original Image of this Document (PDF)

. 2006 WL 1203225 (Trial Motion, Memorandum and Affidavit) Defendants' Reply to Plaintiffs' Memorandum in Opposition to Motion to Stay Cases (Mar. 13, 2006)Original Image of this Document (PDF)

. 2006 WL 812029 (Trial Pleading) Defendants' Answer to Complaint Filed by Green Mountain Chrysler-Plymouth- Dodge-Jeep, et al. (Feb. 24, 2006)Original Image of this Document (PDF)

. 2006 WL 812016 (Trial Motion, Memorandum and Affidavit) Memorandum in Opposition to Motion to Stay Cases (Feb. 23, 2006)Original Image of this Document (PDF)

. 2006 WL 812015 (Trial Motion, Memorandum and Affidavit) Memorandum in Support of Motion of Conservation Law Foundation, Sierra Club, Natural Resources Defense Council, Environmental Defense and Vermont Public Interest Research Group to Intervene as Party Defendants (Feb. 21, 2006)Original Image of this Document with Appendix (PDF)

. 2:05cv00302 (Docket) (Nov. 18, 2005)

. 2:05cv00304 (Docket) (Nov. 18, 2005)

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