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11 **UNITED STATES DISTRICT COURT**  
12 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

13 PETER VELASCO, *et al.*,

14 Plaintiffs,

15 v.

16 CHRYSLER GROUP LLC,

17 Defendant.  
18  
19

Case No. 2:13-cv-08080-DDP (VBKx)

**MEMORANDUM IN SUPPORT OF  
MOTION TO INTERVENE**

Date: December 1, 2014

Time: 10:00 a.m.

Judge: Honorable Dean D. Pregerson

Courtroom: 3

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1 **INTRODUCTION**

2 The Center for Auto Safety (“the Center”) moves to intervene pursuant to  
3 Federal Rule of Civil Procedure 24(b) for the limited purpose of seeking public  
4 access to the sealed court records in *Velasco v. Chrysler*, No. 2:13-cv-08080-DDP.  
5 It is difficult to imagine a situation in which the public’s interest in access to court  
6 records would be stronger than this case, where the records might demonstrate that  
7 the cars they are driving are unsafe.  
8

9 As explained below, the Center has a strong interest in the sealed court records  
10 in this lawsuit: It has received over one hundred fifty complaints about a dangerous  
11 malfunction in the Totally Integrated Power Module (“TIPM”) of certain Chrysler  
12 models – the defect alleged in the complaint; it has petitioned the National  
13 Highway Traffic Safety Administration (NHTSA) to investigate these reports; and  
14 it plans to use evidence related to the defect to evaluate any possible safety risk,  
15 inform NHTSA, and educate the public. The documents filed in conjunction with  
16 the parties’ briefing on the plaintiffs’ motion for a preliminary injunction could aid  
17 the Center in its efforts to investigate whether certain Chrysler vehicles do, indeed,  
18 contain a defective TIPM, and, if so, educate the public and the government about  
19 the safety risks such a defect might pose.  
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1 The Center meets the requirements for permissive intervention under Rule  
2 24(b) and should be permitted to intervene for the limited purpose of seeking  
3 public access to these documents.  
4

5 **FACTUAL BACKGROUND**

6 On November 1, 2013, the plaintiffs filed a putative class action on behalf of  
7 consumers in six states alleging that several Chrysler vehicles contain a defective  
8 TIPM, that this defect is dangerous to drivers, and that Chrysler is aware of the  
9 defect but nevertheless concealed it from its customers and refused to help with  
10 repairs. (*See* Compl. [Docket No. 1].) On September 18, 2014, the plaintiffs filed  
11 a motion for preliminary injunction, arguing that “[t]he risk of serious injury from  
12 widespread TIPM failures . . . is too high to justify keeping Chrysler’s customers in  
13 the dark any longer.” (Pls.’ Mem. Supp. Mot. Prelim. Inj. [Docket No. 49] at 2.)  
14 But as this Court is aware, most of the documents filed in conjunction with the  
15 motion – including Chrysler’s entire memorandum in opposition – were filed under  
16 seal. (*See* Docket Nos. 48, 53-57, 61-66, 73-74.) And the precise relief the  
17 plaintiffs requested – that is, the warning they have asked this Court to require  
18 Chrysler to issue – is redacted. (*See* Pls.’ Mem. Supp. Mot. Prelim. Inj. 1, 6.) So  
19 too is much of (what appears to be) the plaintiffs’ description of evidence of the  
20 defect, possibly from Chrysler itself; the dangers the defect might pose; and  
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1 Chrysler’s knowledge – and concealment – of the problem. (*See id.* at 1, 4-5, 8-  
2 11.)

3  
4 The plaintiffs explain why, in their view, it is essential that Chrysler warn its  
5 customers now: “What makes Chrysler’s silence particularly dangerous is that –  
6 [redacted].” (*Id.* at 8.) The public – some of whose safety might be at risk – have  
7  
8 an exceedingly strong interest in knowing what is behind that redaction – and,  
9 more generally, what information the sealed documents in this case contain.  
10

11 The Center moves to intervene for the limited purpose of seeking access to  
12 these records. In conjunction with this motion to intervene, the Center has also  
13 filed a motion to unseal.  
14

### 15 INTERESTS OF MOVANT

16 The Center has a strong interest in intervening in this case to obtain access to  
17 the documents sealed in this proceeding. The Center is a national non-profit  
18 devoted to promoting automobile and highway safety. (Ditlow Decl. ¶ 2.) Its goal  
19 is to make cars and roads safer by educating the public, testifying before Congress,  
20 and petitioning federal agencies to investigate – and, where necessary, remedy –  
21 automobile safety issues. (*See id.* ¶¶ 2-3.)  
22  
23

24 The Center has a long history of working to get defective vehicles and unsafe  
25 equipment off the road. It has repeatedly petitioned NHTSA to investigate unsafe  
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1 vehicles and had a substantial role in bringing about the four largest automobile-  
2 related recalls in American history. (*Id.* ¶ 3.)

3  
4 The Center is particularly concerned about the alleged TIPM defect at issue in  
5 this case. As of the filing of this motion, it has received over one hundred fifty  
6 consumer complaints about TIPM malfunction in Chrysler vehicles. (*Id.* ¶ 5.) On  
7 August 21, 2014, it petitioned NHTSA to investigate. (*Id.* ¶ 6.) The agency has  
8 120 days – or until December 19, 2014 – to decide whether to grant the petition.  
9 (*Id.* ¶ 8.) During that time, the Center will continue to submit further information  
10 in support of its petition, including – if they are unsealed – any relevant  
11 information obtained from the court records in this case. (*Id.*) In addition, the  
12 Center will share any information it receives with its members, the public, and  
13 should there be a congressional hearing on the matter, with Congress. (*Id.* ¶ 10.)

## 14 ARGUMENT

### 15 INTERVENTION IS WARRANTED BECAUSE THE CENTER FOR 16 AUTO SAFETY MEETS THE PREREQUISITES FOR PERMISSIVE 17 INTERVENTION UNDER FEDERAL RULE OF CIVIL PROCEDURE 18 24(B).

19 Courts have long recognized that the public has a presumptive right of access to  
20 judicial records. *See, e.g., Nixon v. Warner Commc'ns*, 435 U.S. 589, 597 (1978);  
21 *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006).

22 Nonparties to a civil lawsuit may seek access to sealed court records by moving for  
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1 permissive intervention under Federal Rule of Civil Procedure 24(b).<sup>1</sup> *San Jose*  
2 *Mercury News, Inc. v. U.S. District Court-Northern District (San Jose)* 187 F.3d  
3  
4 1096, 1100 (9th Cir. 1999); *cf. Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470,  
5 472 (9th Cir. 1992) (noting the “ample support” for recognizing Rule 24(b)  
6 intervention “as a proper method to modify a protective order”). The Ninth  
7 Circuit has instructed that Rule 24 should be construed liberally “in favor of  
8 applicants for intervention.” *Washington State Bldg. & Construction Trades*  
9 *Council, AFL-CIO v. Spellman*, 684 F.2d 627, 630 (9th Cir. 1982).

12 Ordinarily, a party seeking permissive intervention must demonstrate: “(1)  
13 independent grounds for jurisdiction; (2) the motion is timely; and (3) the  
14 applicant’s claim or defense, and the main action, have a question of law or a  
15 question of fact in common.” *San Jose Mercury News*, 187 F.3d at 1100 (internal  
16 quotation marks omitted). Where, however, as here, intervenors “do not seek to  
17 litigate a claim on the merits,” but rather intervene for the limited purpose of  
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22 <sup>1</sup> To be sure, the application of Rule 24(b) to nonparties seeking access to  
23 court documents is an awkward fit. Nevertheless, every court of appeal to consider  
24 the issue, including the Ninth Circuit, has concluded that permissive intervention is  
25 an appropriate vehicle to challenge the sealing of court records. *See, e.g., Jessup v.*  
26 *Luther*, 227 F.3d 993, 997 (7th Cir. 2000); *EEOC v. National Children’s Center*,  
27 146 F.3d 1042, 1045 (D.C. Cir. 1998); *Beckman Indust. Inc.*, 966 F.2d at 473; *In re*  
28 *Beef Indust. Antitrust Litig.*, 589 F.2d 786, 789 (5th Cir. 1979). As explained  
below, these courts have simply liberally interpreted the requirements of Rule 24 in  
this context to accommodate intervention.

1 seeking access to documents, “an independent jurisdictional basis is not required.”  
2 *Beckman*, 966 F.2d at 473; *see San Jose Mercury News*, 187 F.3d at 1100. Thus,  
3  
4 the Center need only show that its motion is timely and that it shares a common  
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6 question of law or fact with the main action. It can easily do so.

7 **I. THE CENTER’S MOTION TO INTERVENE IS TIMELY**

8  
9 Courts in the Ninth Circuit consider three factors to determine whether a motion  
10 to intervene is timely: “(1) the stage of the proceeding at which an applicant seeks  
11 to intervene; (2) prejudice to other parties; and (3) the reason for and length of  
12 [any] delay.” *San Jose Mercury News*, 187 F.3d at 1100-01. All three factors  
13  
14 weigh in favor of granting the Center’s motion.

15  
16 There has been no delay in seeking intervention. The plaintiffs’ application to  
17 seal evidence was granted on September 26, 2014. (*See Order Granting Pls.’ Am.*  
18 *Application To Seal Evid.* [Docket No. 52].) The motion for preliminary  
19 injunction was not fully briefed until October 13, 2014. (*See Reply* [Docket No.  
20 68].) And the hearing on that motion is not scheduled until October 27, 2014. (*See*  
21 *Order Stip. To Continue Hearing* [Docket No. 59].) “[D]elays measured in years  
22 have been tolerated where an intervenor is pressing the public’s right of access to  
23  
24 judicial records.” *San Jose Mercury News*, 187 F.3d at 1101; *see also S.E.C. v.*  
25 *AOB Commerce, Inc.*, No. CV 07-4507 (CAS), 2013 WL 5405697, at \*1 (C.D.  
26  
27 Cal. Sept. 23, 2013) (permitting intervention for the purpose of unsealing  
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1 documents “five years after th[e] case was settled”). Here, the Center has moved  
2 to intervene within a few weeks. Thus, it has moved without delay to enter the  
3 litigation at precisely the stage in which the documents it seeks to access were  
4 sealed. The first and third factors therefore counsel in favor of granting the  
5 Center’s motion. *Cf. San Jose Mercury News*, 187 F.3d at 1101 (holding that  
6 intervention twelve weeks after entry of an order sealing a document was timely).  
7  
8

9 So too does the second factor: Permitting the Center to intervene for the limited  
10 purpose of unsealing documents will not prejudice the parties. The Center does  
11 not seek to intervene in the merits of the lawsuit, or, in fact, to participate in the  
12 lawsuit in any way. It seeks intervention only because, as explained above, that is  
13 the procedural vehicle by which it may request access to court records that – in its  
14 view – ought to be public. There is, therefore, no reason to believe that the  
15 Center’s intervention will “cause disruption or delay in the proceedings.”<sup>2</sup> *See*  
16 *Citizens for Balanced Use v. Montana Wilderness Ass’n*, 647 F.3d 893, 897 (9th  
17 Cir. 2011); *United Nuclear Corp. v. Cranford Ins. Co.*, 905 F.2d 1424, 1427 (10th  
18 Cir. 1990) (explaining that where intervention is limited to the “collateral purpose”  
19 of seeking access to court documents, “prejudice in the adjudication of the rights of  
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25 <sup>2</sup> Furthermore, the Ninth Circuit has explained that, “assuming an intervenor  
26 does assert a legitimate, presumptive right to open the court record of a particular  
27 dispute, the potential burden or inequity to the parties should affect not the right to  
28 intervene but, rather, the court’s evaluation of the merits of the applicant’s motion  
to lift the protective order.” *San Jose Mercury News*, 187 F.3d at 1101 (internal  
quotation marks omitted).

1 the existing parties” is not “a concern”); *Pub. Citizen v. Liggett Grp., Inc.*, 858  
2 F.2d 775, 786 (1st Cir. 1988) (“[I]f the desired intervention relates to an ancillary  
3 issue and will not disrupt the resolution of the underlying merits, untimely  
4 intervention is much less likely to prejudice the parties.”). The Center thus meets  
5 all three prongs of the Ninth Circuit’s timeliness standard.  
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8 **II. THE CENTER’S MOTION TO INTERVENE SHARES A**  
9 **QUESTION OF LAW IN COMMON WITH THE MAIN ACTION**

10  
11 Several courts have held that the question of whether documents should be  
12 sealed is itself a question of law in common with the main action sufficient to  
13 support permissive intervention. *See, e.g., Jessup*, 227 F.3d at 998-99 (7th Cir.  
14 2000) (“Although the Parties take a very different view [than the intervenor] of the  
15 matter of confidentiality, nevertheless, that confidentiality is – in the language of  
16 Rule 24(b)(2) – a ‘question of law . . . in common’ between the Parties and the  
17 [intervenor].” (alteration in original)); *Pansy v. Borough of Stroudsburg*, 23 F.3d  
18 772, 778 (3d Cir. 1994) (“By virtue of the fact that the [intervenors] challenge the  
19 validity of the Order of Confidentiality entered in the main action, they meet the  
20 requirement of Fed. R. Civ. P. 24(b)(2) that their claim must have ‘a question of  
21 law or fact in common’ with the main action.”). Although the Ninth Circuit has  
22 not explicitly affirmed this principle, it has repeatedly upheld the intervention of  
23 nonparties for purposes of challenging a protective order in cases where there was  
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1 no common question except the propriety of the order. *See Kamakana*, 447 F.3d at  
2 1176; *San Jose Mercury News*, 187 F.3d at 1100. And in doing so, it has  
3 characterized its own caselaw as “holding that . . . [a] strong nexus of fact or law  
4 [is] not required where [an] intervenor merely seeks to challenge a protective  
5 order.” *Id.* (citing *Beckman*, 966 F.2d at 473-74).  
6  
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8 The reason for this is clear: If courts insisted that intervenors seeking court  
9 records raise a common question with the main action beyond the question of  
10 whether the records should be sealed, there would be no way for members of the  
11 public to gain access to records unless they had some personal interest in the case.  
12 This would vitiate the public’s right of access to court records. *See Jessup*, 227  
13 F.3d at 998; *see also Kamakana*, 447 F.3d at 1178 (explaining the importance of  
14 and justification for the common law right of access to judicial records).  
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18 Accordingly, the Center’s contention that records in this case should be unsealed is  
19 sufficient to support its motion for intervention.<sup>3</sup>  
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26 <sup>3</sup> Even if the Center were required to demonstrate an additional common  
27 question of law or fact, it could do so: The Center’s goal is to determine whether  
28 the TIPM on certain Chrysler vehicles is defective. This question is at the heart of  
the main action.

1 **CONCLUSION**

2 Because the Center satisfies all the requirements for permissive intervention for  
3 the purpose of access to court records, its motion to intervene should be granted.  
4

5  
6 DATE: October 23, 2014

7 Respectfully submitted,

8  
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