

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN**

UNITED STATES OF AMERICA,

Plaintiffs,

v.

VOLKSWAGEN AG, AUDI AG,
VOLKSWAGEN GROUP OF
AMERICA, INC., VOLKSWAGEN
GROUP OF AMERICA
CHATTANOOGA OPERATIONS,
LLC, DR. ING. H.C. F. PORSCHE AG,
and PORSCHE CARS NORTH
AMERICA, INC.,

Defendants.

Case No. 2:16-cv-10006

Judge Laurie J. Michelson

Magistrate Judge Michael J. Hluchaniuk

**MOTION TO INTERVENE AS OF RIGHT BY PLAINTIFF-
INTERVENORS MARIA BOURN, DAVID WATSON, STEPHEN VERNER,
MARK SCHUMACHER, AND
THE CENTER FOR AUTO SAFETY**

Date: January 4, 2016

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CONCISE STATEMENT OF THE ISSUES PRESENTED

Maria Bourn, David Watson, Stephen Verner, Mark Schumacher, and the Center for Auto Safety (“CAS”) (collectively, “Proposed Plaintiff-Intervenors”) move to intervene as a matter of right in the instant action pursuant to Fed. R. Civ. P. 24(a)(1) and Section 304(b)(1)(B) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(b)(1)(B). Should the Proposed Complaint in Intervention be filed? a

Proposed Plaintiff-Intervenors say:	Yes
Plaintiff United States of America says:	No opposition.
Defendants say:	No
The Court should say:	Yes

CONTROLLING AUTHORITY

Fed. R. Civ. P. 24(a)(1)

Section 304(b)(1)(B) of the Clean Air Act, 42 U.S.C. § 7604(b)(1)(B)

TABLE OF AUTHORITIES

Other Authorities

CAA § 302(e), 42 U.S.C. § 7602(e).....	5
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Rules

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MOTION

Maria Bourn, David Watson, Stephen Verner, Mark Schumacher, and the Center for Auto Safety (“CAS”) (collectively, “Proposed Plaintiff-Intervenors”) move to intervene as a matter of right in the instant action. In support of their Motion, the Proposed Plaintiff-Intervenors rely on the facts, law and argument set forth in their Brief in Support, which is hereby incorporated by reference.

In compliance with Local Rule 7.1, the Proposed Plaintiff-Intervenors have sought concurrence in the relief requested, and counsel for Plaintiff, United States of America, have indicated that they do not oppose the relief requested.

BRIEF IN SUPPORT

I. INTRODUCTION

Maria Bourn, David Watson, Stephen Verner, Mark Schumacher, and the Center for Auto Safety (“CAS”) (collectively, “Proposed Plaintiff-Intervenors”) hereby move to intervene as a matter of right in the above-captioned action pursuant to Fed. R. Civ. P. 24(a)(1) and section 304(b)(1)(B) of the Clean Air Act (“CAA”), 42 U.S.C. § 7604(b)(1)(B).

The United States has informed Proposed Plaintiff-Intervenors that it does not oppose their intervention.

II. FACTS

This action was filed on January 4, 2016, by the United States on behalf of the Administrator of the U.S. Environmental Protection Agency. Defendants in this

action are Volkswagen AG (“VWAG”), Volkswagen Group of America, Inc. (“VWoA”), Volkswagen Group of America Chattanooga Operations, LLC (“VWoA Chattanooga”), Audi AG, and Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America, Inc. (collectively, “Porsche”).¹ The United States’ complaint alleges numerous violations of the CAA arising out of Volkswagen’s use of “defeat devices” in their diesel vehicles. The United States seeks a permanent injunction against further CAA violations and civil penalties to redress those violations.

On October 9, 2015, and November 5, 2015, Proposed Plaintiff-Intervenors sent notice letters to Volkswagen regarding similar claims to those brought by the United States, as well as for violations of the motor vehicle emissions laws, regulations, and orders of California, Connecticut, Maine, Maryland, Massachusetts, New Jersey, New York, Oregon, Pennsylvania, Rhode Island, Vermont, and Washington. *See* Exhibits 1 and 2. Proposed Plaintiff-Intervenors are individuals and one organization who have been harmed by Volkswagen’s violations of the CAA. Accordingly, Proposed Plaintiff-Intervenors are entitled to “intervene as a matter of right” in this action to jointly prosecute their claims against Volkswagen. *See* CAA § 304(b)(1)(B), 42 U.S.C. § 7604(b)(1)(B); Fed. R. Civ. P. 24.

III. ARGUMENT

Proposed Plaintiff-Intervenors are entitled to intervene in this action because CAA section 304(b)(1)(B) grants them an unconditional right to intervene, their motion to intervene is timely, and they have a substantial interest in the subject

¹ Unless otherwise indicated herein, all of these defendants will be referred to collectively as “Volkswagen.”

matter of this litigation.

Section 304(b)(1)(B) of the CAA states that in any case in which “the Administrator . . . has commenced and is diligently prosecuting a civil action in a court of the United States . . . to require compliance with [a CAA emission] standard, limitation, or order, . . . any person may intervene as a matter of right. *See* CAA § 304(b)(1)(B), 42 U.S.C. § 7604(b)(1)(B). Furthermore, Rule 24(a)(1) of the Federal Rules of Civil Procedure permits “intervention of right” when a party “is given an unconditional right to intervene by a federal statute.” Therefore, based on the right bestowed upon Proposed Plaintiff-Intervenors by CAA § 304(b)(1)(B), Proposed Plaintiff-Intervenors have a right to intervene under Rule 24(a)(1).

Additionally, Proposed Plaintiff-Intervenors’ request to intervene is clearly timely, given that it is being filed the same day that the United States filed its complaint against Volkswagen. Given the proximity in time within which Volkswagen will receive the government’s complaint and Proposed Plaintiff-Intervenors’ complaint in intervention, there could hardly be any argument that Volkswagen would be prejudiced by Proposed Plaintiff-Intervenors joining this action. Proposed Plaintiff-Intervenors also sent notice to Volkswagen by letters dated October 9, 2015, and November 5, 2015, so Volkswagen had prior notice of Proposed Plaintiff-Intervenors’ intent to sue Volkswagen for its violations of the CAA.

Lastly, Proposed Plaintiff-Intervenors all have an interest in the prosecution of CAA claims against Volkswagen. Proposed Plaintiff-Intervenors Maria Bourn and David Watson are residents of South San Francisco, California. Bourn is a

lawyer in San Francisco. Watson is a teacher. In 2015, Bourn and Watson, who are married, purchased a certified, pre-owned 2010 Model Year Jetta SportsWagen from Stevens Creek Volkswagen in San Jose, California. Stevens Creek Volkswagen is a Volkswagen Authorized Dealer. Bourn and Watson purchased the SportsWagen in reliance on Volkswagen's representations that the car was an environmentally-friendly "clean diesel" vehicle. They suffer injuries to their aesthetic, recreational, environmental, and/or economic interests as a result of Volkswagen's unlawful emissions of pollutants.

Proposed Plaintiff-Intervenor Mark Schumacher resides in Gainesville, Virginia. In 2012, he purchased a 2012 Model Year Volkswagen Passat SE TDI. Schumacher purchased the Passat from Lindsay Volkswagen in Sterling, Virginia. That company is a Volkswagen Authorized Dealer. Proposed Plaintiff-Intervenor Schumacher purchased the Passat in reliance on Volkswagen's representations that the car was an environmentally-friendly "clean diesel" vehicle. Schumacher suffers injuries to his aesthetic, recreational, environmental, and/or economic interests as a result of Volkswagen's unlawful emissions of pollutants.

Proposed Plaintiff-Intervenor Stephen Verner is an architect and resident of Oakland, California. In 2013, he purchased a TDI Golf four door from Royal Motor Sales in San Francisco, California. Royal Motor Sales is an Authorized Volkswagen Dealer. Verner purchased the Golf in reliance on Volkswagen's representations that the car was an environmentally friendly "clean diesel" vehicle. Verner suffers injuries to his aesthetic, recreational, environmental, and/or economic interests as a result of Volkswagen's unlawful emissions of pollutants.

Proposed Plaintiff-Intervenor CAS is a non-profit, Section 501(c)(3) public interest organization headquartered in Washington, DC. It was founded by consumer advocate Ralph Nader and Consumers Union in 1970 to provide consumers with a voice for auto safety and to provide information to consumers on how to purchase the best motor vehicle for their needs. CAS has over 15,000 members nationwide. CAS is dedicated to promoting automobile and highway safety, ensuring that defective and unsafe automobiles and automobile equipment are removed from the road, helping make roads safer for motor vehicles through safer designs and traffic, and working for improved fuel efficiency and lower emissions from motor vehicles.

As part of its commitment to improved fuel efficiency, in 2008, CAS integrated into its programs the Safe Climate Campaign which aims to fight global warming by promoting laws and regulations that require strict emission standards. The Safe Climate Campaign also pushes automakers to make clean, energy efficient vehicles, and urges consumers to make energy-efficient choices in transportation.

Within the meaning of section 302(e) of the CAA, 42 U.S.C. § 7602(e), CAS is a “person” that may commence a civil action under section 304(a)(1) of the Clean Air Act, 42 U.S.C. § 7604(a)(1). CAS sues on behalf of itself and its individual members who were harmed by Volkswagen’s conduct. The organization and its members are adversely affected by the Volkswagen’s vehicles’ excess emissions—in violation of the CAA—that have deleterious impacts on the areas where they live, work, and recreate.

CAS has individual standing as an organization because it has been harmed by Volkswagen’s wrongful conduct as alleged herein. CAS had devoted

considerable time and resources encouraging automakers to sell energy-efficient vehicles and encouraging members to purchase clean, energy-efficient vehicles. As a result of Defendants' unlawful conduct, CAS has had to redirect staff time and financial resources away from its planned activities. CAS also has associational standing on behalf of its members who have claims against Volkswagen for its violations of the CAA.

Based on the effects that Volkswagen's CAA violations have had on Proposed Plaintiff-Intervenors, Proposed Plaintiff-Intervenors have Article III standing to file suit against Volkswagen. Likewise, the adverse effects that Volkswagen's violations have on Proposed Plaintiff-Intervenors justify allowing them to intervene in this action through Fed. R. Civ. P. 24(a)(1) and CAA § 304(b)(1)(B), 42 U.S.C. § 7604(b)(1)(B).

IV. CONCLUSION

For the reasons set forth herein, Proposed Plaintiff-Intervenors respectfully request that the Court grant this motion and allow Proposed Plaintiff-Intervenors to file the attached Proposed Complaint in Intervention and fully participate in jointly prosecuting their CAA claims against Volkswagen.

DATED: January 4, 2016

Respectfully submitted,

By: /s/Jaye Quadrozzi
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*Counsel for Proposed Plaintiff-
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CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2016, I electronically filed the foregoing Motion to Intervene and the attached Exhibits and Proposed Complaint in Intervention with the Clerk of the Court using the ECF system. Additionally, I hereby certify that I have sent by United States Postal Service and electronic mail the foregoing Notice to the following attorneys for Defendants:

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INDEX OF EXHIBITS

- Exhibit 1: Proposed Complaint in Intervention
- Exhibit 2: Proposed Complaint Ex. 1
- Exhibit 3: Proposed Complaint Ex. 2