

THE HONORABLE MARSHA J. PECHMAN

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

AMAZON.COM, LLC,
Plaintiff,

v.

KENNETH R. LAY, in his official capacity as
Secretary of the North Carolina Department of
Revenue,
Defendant.

JANE DOE 1, JANE DOE 2, JANE DOE 3,
JANE DOE 4, JANE DOE 5, JANE DOE 6,
AND CECIL BOTHWELL,
Plaintiffs-Intervenors,

v.

KENNETH R. LAY, in his official capacity as
Secretary of the North Carolina Department of
Revenue, and AMAZON.COM, LLC,
Defendants in Intervention.

No. 2:10-cv-00664-MJP

MOTION TO INTERVENE

**NOTE ON MOTION CALENDAR:
JULY 9, 2010**

Oral Argument Requested

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1 Pursuant to Federal Rules of Civil Procedure 24(a), Jane Does 1-6 and Cecil Bothwell
2 (“Movants”) move for leave to intervene as of right as plaintiffs in this action in order to protect
3 their constitutional rights to free speech and privacy. In the alternative, Movants request
4 permission to intervene under Fed. R. Civ. P. 24(b).

5 Movants are individuals whose personal information and constitutional rights to privacy
6 and freedom of expression are directly at issue in this lawsuit. Because this motion is timely,
7 Movants’ fundamental rights are at stake, disposition of this lawsuit will impair their ability to
8 protect those rights, and Movants have unique, personal interests in the information that is the
9 subject of this lawsuit which are different from the parties’ interests, intervention is appropriate
10 to ensure that Movants’ constitutional rights will not be compromised in the ongoing tax dispute
11 between Defendant and Amazon.¹

12 **FACTUAL BACKGROUND**

13 In December 2009, as part of a tax audit of Amazon, the North Carolina Department of
14 Revenue (“DOR”) sent an information document request to Amazon asking that it provide “all
15 information for all sales to customers with a North Carolina shipping address by month in an
16 electronic format,” for all dates between August 1, 2003 and February 28, 2010. Intervenors’
17 Compl., attached as Exh. A, ¶¶ 39-40. In response, Amazon provided DOR with detailed
18 purchase records for the relevant time period, including Amazon’s standard product code for
19 each item, which reveals detailed information such as the name, title and brand of the item
20 purchased. *Id.* ¶¶ 41-42. Amazon did not, however, disclose the customer name or address that
21 corresponds to each purchase record. *Id.* ¶ 44.

22 DOR sought to force Amazon to provide that information. *Id.* ¶ 45. In March 2010,
23 DOR sent Amazon an information request stating that Amazon had failed to provide “Bill to
24 Name; Bill to Address (Street, City, State, and Zip); Ship to Name; Ship to Address (street);
25

26
27 ¹ Amazon does not consent to this motion. Movants have contacted Defendant Lay, but he has not indicated his position on this motion.

1 Product/item code or description,” and that if it did not provide that information, DOR would
2 issue a summons against Amazon, which would allow DOR to initiate a summary proceeding
3 against Amazon to force it to turn over the information. *Id.* ¶¶ 45-46.

4 The information demanded by DOR implicates the fundamental rights of Amazon’s
5 customers, including Movants. If DOR were to receive this information from Amazon, DOR
6 would be able to combine that information with the detailed product codes that it already has to
7 learn which North Carolina customers, including Movants, purchased which specific books,
8 movies, music, and other expressive and private items. *Id.* ¶¶ 60-61. That prospect is especially
9 distressing to Movants, whose customer records reveal profoundly personal and private details
10 about their intimate family problems, their religious and political beliefs, and their medical and
11 mental health issues. *Id.* ¶¶ 68–122. For example:

- 12 ▪ Jane Doe 1,² an engineer, has purchased numerous self-help books from Amazon
13 in order to file for divorce and to obtain a restraining order for herself and her
14 child against her abusive spouse. *Id.* ¶¶ 68-70. Her experience was traumatizing
15 and life-changing for her, and she does not want the State or anyone else to know
16 about her private family struggles. *Id.* ¶ 71.
- 17 ▪ Jane Doe 2, General Counsel of a global firm, has purchased books with overt
18 political leanings, like Michael Moore’s “Dude, Where’s My Country?” and Al
19 Franken’s “Lies and the Lying Liars Who Tell Them: A Fair and Balanced Look
20 at the Right.” *Id.* ¶ 78. She does not want the State to know about her political
21 leanings or the other private details of her life that can be pieced together from the
22 over 200 items that she has purchased from Amazon since 2003. *Id.* ¶¶ 78-79.
- 23 ▪ Jane Doe 3, a writer for a software company, has purchased books about atheism,
24 as well as books on saving her marriage and on mental health conditions afflicting
25

26 ² Use of the pseudonym “Jane Doe” or gender pronouns does not signify that Jane Does 1-6 are male or
27 female.

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5 ▪ Jane Doe 4, a student at the University of North Carolina Law School, has
6 received books from Jane Doe 5, her parent (and a Florida resident), which may
7 be viewed as controversial, such as “Lies the Government Told You: Myth,
8 Power, and Deception in American History” and “Obama Zombies: How the
9 Liberal Machine Brainwashed My Generation.” *Id.* ¶ 93. She aspires to work in
10 a legislative or public policy capacity in the future, and she does not want the
11 State or anyone else to judge her based on what she has been reading. *Id.* ¶ 94.
12 Jane Doe 5, an accountant, does not want the subject of her conversations with her
13 child or the potentially controversial books she purchased revealed to the State or
14 to anyone else. *Id.* ¶¶ 102-103.
- 15 ▪ Jane Doe 6, a retired lawyer, has purchased books on potentially sensitive and
16 revealing matters, such as “The Stages of Meditation,” by the Dalai Lama. *Id.* ¶
17 107. She does not want the private details of her reading history revealed to the
18 State or to anyone else. *Id.* ¶ 108.
- 19 ▪ Cecil Bothwell, an elected member of the Asheville City Council, has purchased
20 expressive items from Amazon and sold books he has written and published
21 through Amazon. *Id.* ¶ 111. As a public official who knows that anything he
22 purchases can become political fodder, he does not want the State or anyone else
23 to learn which items he has purchased. *Id.* ¶¶ 113-116. He also does not want the
24 State to know who purchases his books, which concern potentially controversial
25 and sensitive subjects. *Id.* ¶ 116.

26 Given their purchases and the adverse effect that disclosure of those purchases could
27 have on their personal relationships, family lives, reputations and careers, Movants are

1 understandably anxious about the State obtaining records of which items they have been reading,
2 viewing, or purchasing. Despite issuing a new request that does not now seek customer
3 information, DOR has refused to acknowledge that it is not entitled to this information and has
4 expressly reserved the right to demand such information. It has also refused to destroy or to
5 return the detailed purchasing information that it still has in its possession.

6 If DOR were to obtain information about which specific items Movants have purchased
7 or received from Amazon, it would chill Movants from purchasing items on Amazon, especially
8 controversial, personal and sensitive items. *Id.* ¶¶ 63, 76, 80, 90, 95, 105, 109, 121. DOR has
9 issued similar information requests to other websites and out-of-state businesses. *Id.* ¶¶ 52-53.
10 DOR's policy and practice of issuing broad information requests that encompass private and
11 expressive information, if permitted to be continued, would also make Movants seriously
12 consider whether they can purchase such items over the Internet at all. *Id.* ¶ 65. Movants seek to
13 intervene in this lawsuit to protect their rights to keep this information private and to ensure that
14 their rights will not be compromised in the future.

15 ARGUMENT

16 **I. MOVANTS ARE ENTITLED TO INTERVENE AS OF RIGHT.**

17 Rule 24(a), governing intervention as of right, is construed "liberally in favor of potential
18 intervenors." *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 818 (9th Cir. 2001). The
19 decision whether to allow intervention is "guided primarily by practical considerations, not
20 technical distinctions." *Id.* (internal quotation marks omitted). In considering this motion to
21 intervene, the Court must accept all well-pleaded allegations in Movants' proposed pleadings.
22 *Id.* at 819-20.

23 The Ninth Circuit has adopted a four-part test to resolve applications for intervention as
24 of right:

- 25 (1) [T]he application for intervention must be timely; (2) the applicant must have 'a
26 significantly protectable' interest relating to the property or transaction that is the
27 subject of the action; (3) the applicant must be situated such that the disposition of
the action may, as a practical matter, impair or impede the applicant's ability to
protect that interest; and (4) the applicant's interest must not be adequately

1 represented by the existing parties in the lawsuit.

2 *Id.* at 817 (quoting *Nw. Forest Res. Council v. Glickman*, 82 F.3d 825, 836 (9th Cir. 1996)).

3 Movants meet each of these requirements.

4 **A. The Motion To Intervene Is Timely.**

5 This Motion is timely because the litigation is still in its infancy, no party will be
6 prejudiced by intervention at this time, and Movants have deferred intervening only long enough
7 to ascertain whether their intervention would be necessary to protect their rights. *See United*
8 *States v. Alisal Water Corp.*, 370 F.3d 915, 921 (9th Cir. 2004) (weighing three factors in
9 determining timeliness: the stage of the proceeding, the prejudice to other parties, and the reason
10 for and length of the delay). Defendant has yet to answer the Complaint, and no substantive
11 motions have been filed. Permitting Movants to intervene to protect their interests at this stage
12 will, thus, neither delay adjudication of the action nor prejudice Amazon or Defendant. *See*
13 *Sierra Club v. EPA*, 995 F.2d 1478, 1481 (9th Cir. 1993) (affirming district court's determination
14 that application filed at outset of litigation is timely).³

15 **B. Movants Have Significant First and Fourteenth Amendment Interests in**
16 **Ensuring That Their Amazon Purchasing Records Are Not Disclosed.**

17 Movants have a "significant protectable interest" at stake in this action. To satisfy this
18 factor, "[i]t is generally enough that the interest [asserted] is protectable under some law, and
19 that there is a relationship between the legally protected interest and the claims at issue." *Sierra*
20 *Club*, 995 F.2d at 1484. The interest test is, therefore, "a threshold one, rather than the
21 determinative criterion for intervention." *County of Fresno v. Andrus*, 622 F.2d 436, 438 (9th
22 Cir. 1980).

23 At the heart of this lawsuit are the customer records of Movants and other individual
24 Amazon customers. Movants have clear First and Fourteenth Amendment rights to prevent that

25 _____
26 ³ Movants notified Amazon and Defendant of their intent to intervene right after the lawsuit was filed. Movants
27 have waited to file this request for intervention until now in order to attempt to negotiate a resolution with the parties
that would eliminate the need for intervention. Those efforts have now proven unsuccessful.

1 information from being obtained by the State.⁴ Courts have uniformly held that similar
2 government requests for expressive information about its citizens, such as which books people
3 are reading or which movies they are watching, implicate individuals' constitutional rights to
4 anonymity and free expression. *See, e.g., In re Grand Jury Investigation of Possible Violation of*
5 *18 U.S.C. § 1461 et seq.*, Misc. No. 09-118, 2009 WL 3495997 (RCL), at *5-9 (D.D.C. Oct. 26,
6 2009) (denying motion to compel subpoena for the identities of customers who obtained specific
7 movies through a website); *In re Grand Jury Subpoena to Amazon.com Dated August 7, 2006*,
8 246 F.R.D. 570, 572-73 (W.D. Wis. 2007) (holding that a grand jury subpoena seeking
9 information about the identities of book buyers raises First Amendment concerns); *In re Grand*
10 *Jury Subpoena to Kramerbooks & Afterwords Inc.*, 26 Med. L. Rptr. 1599, 1600 (D.D.C. 1998)
11 (holding that a subpoena seeking titles of books purchased by Monica Lewinsky implicates the
12 First Amendment);⁵ *Tattered Cover, Inc. v. City of Thornton*, 44 P.3d 1044, 1053 (Colo. 2002)
13 (holding that search of bookseller's customer purchase records necessarily intrudes into areas
14 protected by the First Amendment). Those decisions are grounded in the Supreme Court's
15 recognition that the First Amendment protects the right of individuals to receive information and
16 ideas. *See, e.g., Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*,
17 425 U.S. 748, 757 (1976) (recognizing the First Amendment right to receive information and
18 ideas); *Stanley v. Georgia*, 394 U.S. 557, 564 (1969) (“[The] right to receive information and
19 ideas, regardless of their social worth ... is fundamental to our free society.”).

20 Movants' allegations illustrate why the First Amendment prohibits government requests
21 for information about expressive choices. Movants' purchase records reveal intimate
22 information about their private family struggles, political and religious beliefs, and medical and
23 mental health issues. Intervenor's Compl. ¶¶ 69-71, 73, 78, 84-89, 93, 101, 107, 116. Movants
24 would be chilled from making similar purchases in the future from Amazon and from other

25 ⁴ Movants also have rights under the Video Privacy Protection Act, 18 U.S.C. § 2710, which protects against the
26 disclosure of customer records relating to video or audiovisual materials.

27 ⁵ A copy of this decision is attached as Exhibit B.

1 websites if they knew that their purchase records would be handed over to the government, and
2 many would simply choose not to purchase those items from Amazon or from anyone. *Id.* ¶¶ 76-
3 77, 80-81, 90-91, 95-96, 105-06, 109-110, 121-22. *See, e.g., Lamont v. Postmaster General*, 381
4 U.S. 301, 307 (1965) (invalidating requirement that addressees must file written request with
5 postal service to receive “communist political propaganda” through the mail, because such a
6 requirement is “almost certain to have a deterrent effect”); *United States v. Rumely*, 345 U.S. 41,
7 57 (1953) (Douglas, J., concurring) (“Once the government can demand of a publisher the names
8 of the purchasers of his publications, the free press as we know it disappears. . . . Some will fear
9 to read what is unpopular, what the powers-that-be dislike . . .”). Movants, therefore, have
10 significant protectable rights at stake, and they are entitled to intervene to defend those rights.

11 **C. The Disposition of This Lawsuit May Irreparably Impair Movants’ Ability to**
12 **Protect Their Interests.**

13 Movants are also entitled to intervene because they are individuals who would be most
14 directly and adversely affected by the outcome of this lawsuit. *Sw. Ctr. for Biological Diversity*,
15 268 F.3d at 822. If the Court rules that DOR can obtain and retain this information, it is
16 Movants’ personally identifiable information regarding their reading, viewing, and other
17 expressive and private habits that will be subject to disclosure. If that information is turned over
18 by Amazon, Movants’ constitutional rights to privacy and free expression will be irreparably
19 injured. Movants would not just suffer harm to their constitutional rights. The disclosure of
20 such private and intimate information would likely also gravely affect Movants’ reputations,
21 their careers, and their family and personal relationships. Because disclosure is the very harm
22 Movants seek to prevent, Movants should be permitted to intervene now before that issue is
23 permanently resolved.

24 **D. The Existing Parties May Not Adequately Represent Movants’ Interests in**
25 **This Litigation.**

26 Intervention should also be granted because Movants have unique, personal interests that
27 may not be adequately represented unless they are able to intervene. Movants’ burden on this

1 requirement “should be treated as minimal,” and is satisfied by showing that representation of
2 their interests by the existing parties “may be” inadequate. *Trbovich v. United Mine Workers of*
3 *America*, 404 U.S. 528, 538 n.10 (1972); *see also Conserv. Law Found. of New England, Inc. v.*
4 *Mosbacher*, 966 F.2d 39, 44 (1st Cir. 1992) (“An intervenor need only show that the
5 representation may be inadequate, not that it is inadequate”). In analyzing this factor, courts
6 consider: (1) whether the interest of a present party is such that it will undoubtedly make all the
7 intervenor’s arguments; (2) whether the present party is capable and willing to make such
8 arguments; and (3) whether a proposed intervenor would offer any necessary elements to the
9 proceedings that other parties would not provide. *Sw. Ctr. for Biological Diversity*, 268 F.3d at
10 822.

11 Movants’ interests in this action are sufficiently different from Amazon’s interest that
12 Movants may not be adequately represented if they are unable to intervene. Although a
13 presumption of adequacy arises when the proposed intervenor shares the same ultimate objective
14 in the case as a party, that presumption is rebutted where the two do not share “sufficiently
15 congruent interests.” *Sw. Ctr. for Biological Diversity*, 268 F.3d at 823. That is the case here.
16 Movants are motivated solely by their personal interests in ensuring that records of their private
17 and expressive activities are not revealed to DOR or to anyone else. As a public company,
18 Amazon’s ultimate responsibility is to its shareholders; although Amazon may also want to
19 protect its customers’ rights, that is, in part, because doing so is good for business. Like any
20 seller and buyer, Amazon and Movants both want the same thing – to consummate the sale – but
21 both are driven by different, and potentially conflicting, interests. *See, e.g., Trbovich*, 404 U.S.
22 at 538-39 (holding that intervention was justified where the existing party had a duty to serve
23 two distinct interests, which were related but not identical); *Sw. Ctr. for Biological Diversity*, 268
24 F.3d at 823 (finding inadequate representation where proposed intervenors were, unlike the
25 existing party, driven by profit motive); *Cal. Hosp. Ass’n v. Maxwell-Jolly*, No. CV 09-3694
26 CAS, 2009 WL 4120725, at *3 (C.D. Cal. Nov. 23, 2009) (holding that the state cannot be
27 expected to adequately represent proposed intervenor’s economic interests).

1 There are several additional differences between Amazon and Movants which make
2 intervention appropriate. First, although Amazon can legitimately state that its customers'
3 activities will be chilled by Defendant's actions, only Movants can personally provide that
4 evidence and explain why their First Amendment activity would be chilled should DOR receive
5 these records, what the impact on their and their families' lives would be, and why it is important
6 that the Court protect their interests. Intervenor's Compl. ¶¶ 68-126. Movants' participation,
7 and the unique, personal perspectives that they would provide, are critical to establishing why
8 DOR should not be able to obtain their constitutionally protected information, and would
9 otherwise be absent from this action. *See, e.g., Sw. Ctr. for Biological Diversity*, 268 F.3d at 822
10 (offering necessary elements to the proceedings that other parties cannot provide is factor
11 favoring intervention); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983)
12 (reversing denial of intervention where the proposed intervenor offered expertise and perspective
13 materially different from the present parties); *Coal. for a Sustainable Delta v. Carlson*, No. 1:08-
14 CV-00397 OWW, 2008 WL 2237038, at *5 (E.D. Cal. May 29, 2008) (holding that interests are
15 not adequately represented where proposed intervenors have a "unique perspective" that is
16 distinguishable from the existing parties).

17 Second, because Movants have a privacy interest in their Internet purchases beyond those
18 purchases made on Amazon, they seek to bring broader claims and request broader relief than
19 Amazon does. Specifically, in addition to invalidating the requests to Amazon, Movants also
20 seek to challenge DOR's policy and practice of issuing information document requests
21 encompassing customers' private and expressive information to other websites, and to enjoin
22 DOR from issuing such similar requests in the future. Amazon has not expressly included such a
23 claim in its Complaint or requested such relief; its priority is the information requests issued to
24 Amazon itself. Intervention is appropriate where, as here, the existing parties and the proposed
25 intervenors do not represent the same scope of interests and the proposed intervenors will present
26 additional arguments that the existing parties will not make. *See Sw. Ctr. for Biological*
27 *Diversity*, 268 F.3d at 822; *Cent. Valley Chrysler-Jeep Inc. v. Witherspoon*, No. CV-F-04-6663

1 REC/JLO, 2005 U.S. Dist. LEXIS 26536, at *20-21 (E.D. Cal. Oct. 20, 2005) (granting
2 intervention in action challenging the constitutionality of state regulations because intervenors
3 intended to raise different arguments than the parties); *cf., e.g., Forest Conservation Council v.*
4 *U.S. Forest Service*, 66 F.3d 1489, 1499 (9th Cir. 1999) (“Inadequate representation is most
5 likely to be found when the applicant asserts a personal interest that does not belong to the
6 general public.” (internal quotation marks omitted)); *Smuck v. Hobson*, 408 F.2d 175, 181 (D.C.
7 Cir. 1969) (permitting intervention where “[t]he intervening appellants may have more parochial
8 interests” than the existing party).

9 Finally, Amazon and DOR have a larger, ongoing dispute about whether Amazon is
10 obligated to collect sales taxes on behalf of the State of North Carolina—a dispute that creates a
11 potential conflict between Movants’ privacy interests and Amazon’s broader economic interests.
12 Movants take no position in this larger tax dispute; Movants seek to intervene solely to ensure
13 that their expressive and private information is not caught up in that dispute. Because other
14 issues are at play in the dispute between Amazon and DOR, however, issues unrelated to the
15 privacy interests of Movants will likely be taken into consideration by the parties as this action
16 unfolds, which very well may conflict with Movants’ interests.

17 Any remaining doubt that Amazon may not fully represent the interests of Movants
18 should be dispelled by the fact that Movants’ Proposed Complaint names Amazon as a defendant
19 in their claim under the Video Privacy Protection Act. Amazon and Movants will have divergent
20 interests with respect to that claim. As a result, it cannot be said that Amazon and Movants share
21 sufficiently congruent interests and that Amazon would fully represent all of Movants’ interests.
22 Indeed, Amazon has indicated that it will not consent to this motion.

23 Like the intervenors in *Southwest Center*, Movants will “offer important elements to the
24 proceedings that the existing parties would likely neglect,” including “their own unique private
25 perspectives.” 268 F.3d at 823. Where, as here, the Movants “would be substantially affected in
26 a practical sense by the determination made in an action, [they] should, as a general rule, be
27 entitled to intervene.” *Id.* at 822 (quoting Fed. R. Civ. P. 24 advisory committee’s notes).

1 **II. MOVANTS ARE ENTITLED TO PERMISSIVE INTERVENTION.**

2 Even if Movants were not entitled to intervene as a matter of right, the Court should
3 nonetheless allow them to intervene permissively pursuant to Rule 24(b). Rule 24(b) provides,
4 in relevant part:

5 On timely motion, the court may permit anyone to intervene who . . . has a claim or
6 defense that shares with the main action a common question of law or fact. . . . In
7 exercising its discretion, the court must consider whether the intervention will
8 unduly delay or prejudice the adjudication of the original parties' rights. Fed. R.
9 Civ. P. 24(b).

9 Movants satisfy the three conditions for permissive intervention under this rule: (1) the
10 motion is timely; (2) Movants have their own independent ground for subject matter jurisdiction;
11 and (3) their claims and the main action have a question of law or a question of fact in common.
12 *United States v. City of Los Angeles*, 288 F.3d 391, 403 (9th Cir. 2002). First, for the reasons
13 already set out above, *see* Part I(A), *supra*, the motion is timely. Second, there is an independent
14 basis for subject matter jurisdiction over Movants' claims because their claims raise federal
15 questions under the First and Fourteenth Amendments and the Video Privacy Protection Act, 18
16 U.S.C. § 2710. *See* 28 U.S.C. §1331. Third, the legal and factual issues raised by Movants'
17 claims are similar to those in the existing action, although, as described above, *see* Part I(D),
18 *supra*, Movants present a unique factual perspective on those questions, will make different
19 arguments, and seek broader relief.

20 Movants should be permitted to intervene in this lawsuit at this stage because their
21 personal information and their constitutional rights are most directly affected by this lawsuit.
22 *See City of Los Angeles*, 288 F.3d at 405 (“[S]tremlining’ the litigation . . .should not be
23 accomplished at the risk of marginalizing those . . . who have some of the strongest interests in
24 the outcome.”); *Spangler v. Pasadena City Bd. of Educ.*, 552 F.2d 1326, 1329 (9th Cir. 1977)
25 (holding that “the nature and extent of the intervenors’ interest” is a relevant factor for
26 permissive intervention). As explained earlier, *see* Parts I(A) & (D), *supra*, Movants’
27

1 intervention would cause no delay or prejudice, and would “contribute to the full development of
2 the underlying factual issues in the suit and to the just and equitable adjudication of the legal
3 questions presented.” *Spangler*, 552 F.2d at 1329; *Venegas v. Skaggs*, 867 F.2d 527, 530-31 (9th
4 Cir. 1989), *aff’d*, 495 U.S. 82 (1990) (considering factors of undue delay, prejudice, judicial
5 economy, and adequate representation before reversing district court’s denial of permissive
6 intervention).

7 **CONCLUSION**

8 For the foregoing reasons, Movants respectfully request that the Court grant their motion
9 for intervention as of right pursuant to Rule 24(a) of the Federal Rules of Civil Procedure, or, in
10 the alternative, their motion for permissive intervention pursuant to Rule 24(b).

11 Respectfully submitted this 23rd day of June, 2010.

12
13 ATTORNEYS FOR PLAINTIFFS-
14 INTERVENORS

15
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