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8
 9 IN THE UNITED STATES DISTRICT COURT
 10 FOR THE EASTERN DISTRICT OF CALIFORNIA

11
 12 THE UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 THE STATE OF CALIFORNIA; GAVIN C.
 16 NEWSOM, in his official capacity as Governor
 of the State of California; THE CALIFORNIA
 17 AIR RESOURCES BOARD; MARY D.
 NICHOLS, in her official capacity as Chair of
 18 the California Air Resources Board and as
 Vice Chair and a board member of the Western
 19 Climate Initiative, Inc.; WESTERN CLIMATE
 INITIATIVE, INC.; JARED BLUMENFELD,
 20 in his official capacity as Secretary for
 Environmental Protection and as a board
 21 member of the Western Climate Initiative, Inc.;
 KIP LIPPER, in his official capacity as a board
 22 member of the Western Climate Initiative, Inc.,
 and RICHARD BLOOM, in his official
 23 capacity as a board member of the Western
 Climate Initiative, Inc.,

24 Defendants.
 25

2:19-cv-02142-WBS-EFB

**STATE DEFENDANTS'
 SUPPLEMENTAL BRIEF IN RESPONSE
 TO COURT ORDER RE: CROSS-
 MOTIONS FOR SUMMARY
 JUDGMENT**

Date: March 9, 2020
 Time: 1:30
 Courtroom: 5
 Judge: Honorable William B. Shubb
 Trial Date: Not Set
 Action Filed: October 23, 2019

26
 27 ¹ The State Defendants are State of California; Gavin C. Newsom, in his official capacity
 as Governor of the State of California; the California Air Resources Board; Mary D. Nichols, in
 28 her official capacity as Chair of the California Air Resources Board; and Jared Blumenfeld, in his
 official capacity as Secretary for Environmental Protection.

1 State Defendants file this Supplemental Brief in response to the Court's February 26, 2020
2 Order (ECF 80):

3 State Defendants have not moved for summary judgment on the Foreign Affairs Doctrine
4 and Foreign Commerce Clause claims because those claims raise complex and unusual issues of
5 constitutional law. Indeed, State Defendants sought additional time to respond to Plaintiff's
6 amended complaint and initially opposed Plaintiff's filing of an early summary judgment motion
7 on the Article I Treaty Clause and Compact Clause claims (filed weeks before even the stipulated
8 deadline for the filing of Defendants' responsive pleadings) for similar reasons. State Defendants
9 also opposed Plaintiff's filing of the early motion because those claims and purported injury were
10 not clearly articulated and, given that California and Quebec's respective programs have been
11 linked through regulations for several years, Plaintiff has not and cannot demonstrate an urgent
12 need for accelerating the litigation. After evaluating Plaintiff's summary judgment motion, State
13 Defendants determined that they could easily establish that they are entitled to judgment as a
14 matter of law as to Plaintiff's claims under the Article I Treaty Clause and the Compact Clause.
15 Therefore, State Defendants elected to file a cross-motion on those same two claims with its
16 opposition because it was an efficient way to dispose of these two claims and doing so would
17 narrow the scope of the litigation.

18 Thus, State Defendants have not filed a motion that went beyond the scope of Plaintiff's
19 motion for the same reasons they initially sought additional time to respond to Plaintiff's
20 amended complaint and motion for summary judgment: Plaintiff is raising novel constitutional
21 issues and State Defendants need additional time to develop responses to claims that are not
22 clearly articulated. In particular, a motion for summary judgment on Plaintiff's Foreign Affairs
23 Doctrine claim would have been premature at this early stage of the litigation. The initial
24 complaint did not set forth a precise theory for this claim, and it seemed unlikely that Plaintiff
25 would rely on the sweeping and somewhat implausible rationale expressed there. Indeed, while
26 Plaintiff's summary judgment motion invoked several Foreign Affairs Doctrine decisions, it
27 expressed an entirely different theory of interference with foreign relations, which the reply
28 appears to have dropped in favor of yet another theory. As it is difficult to move for summary

1 judgment against a moving target, this claim does not lend itself to an early summary judgment
2 motion.

3 If the Court elects to continue the hearing on the parties' cross-motions for summary
4 judgment, State Defendants respectfully submit that the hearing and the filing of any subsequent
5 motions addressing Plaintiff's remaining claims not occur until after the Status Conference
6 scheduled for April 27, 2020, and after the exchange of Rule 26(a) disclosures.

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8 Dated: March 2, 2020

Respectfully submitted,

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11 MICHAEL P. CAYABAN
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12
13 /s/ Michael S. Dorsi
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