

1 DELFINO MADDEN O’MALLEY COYLE  
& KOEWLER LLP  
2 MONICA HANS FOLSOM (SBN 227379)  
KRISTIN N. IVANCO (SBN 294993)  
3 500 Capitol Mall, Suite 1550  
Sacramento, CA 95814  
4 Telephone: (916) 661-5700  
Facsimile: (916) 661-5701  
5 mfolsom@delfinomadden.com  
kivanco@delfinomadden.com

6 *Attorneys for the WCI, Inc. Defendants<sup>1</sup>*

7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

10  
11 THE UNITED STATES OF AMERICA,  
12 Plaintiff,

13 v.

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

24 Defendants.  
25

CASE NO. 2:19-cv-02142-WBS-EFB

**WCI, INC. DEFENDANTS’  
SUPPLEMENTAL BRIEF PURSUANT TO  
ORDER TO PROVIDE REASONS FOR  
NOT MOVING FOR SUMMARY  
JUDGMENT ON THE FOREIGN AFFAIRS  
DOCTRINE AND FOREIGN COMMERCE  
CLAUSE CLAIMS [DKT NO. 80]**

Complaint Filed: October 23, 2019  
Trial Date: Not Yet Scheduled

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**Date:** March 9, 2020  
**Time:** 1:30 PM  
**Courtroom:** 5  
**Judge:** William B. Shubb

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27 <sup>1</sup> The WCI, Inc. Defendants are Western Climate Initiative, Inc. (“WCI, Inc.”); Mary D. Nichols, in her  
28 official capacity as Vice Chair and a board member of WCI, Inc.; and Jared Blumenfeld, in his official capacity as a  
board member of WCI, Inc.

1 Defendants Western Climate Initiative, Inc. (“WCI, Inc.”), Mary D. Nichols, in her official  
2 capacity as Vice Chair and a board member of WCI, Inc., and Jared Blumenfeld, in his official  
3 capacity as a board member of WCI, Inc. (collectively, the “WCI, Inc. Defendants”), hereby submit  
4 this Supplemental Brief pursuant to the Court’s Order of February 26, 2020, ECF No. 80.

5 Despite Defendants’ requests to postpone Plaintiff’s Motion for Summary Judgment due to  
6 counsel’s caseload and scheduling constraints and to allow the parties to agree upon a joint briefing  
7 schedule for cross-motions for summary judgment following a decision on the recent Motion to  
8 Dismiss filed by several defendants, Plaintiff chose instead to file an immediate and piecemeal  
9 motion for summary judgment as to only two of the four causes of action. As a result, the WCI,  
10 Inc. Defendants were forced to respond to that Motion for Summary Judgment to avoid a potential  
11 adverse judgment and a waiver of the right to file any cross-motion as to such claims despite the  
12 obligations it had previously communicated to counsel. The WCI, Inc. Defendants did not cross-  
13 move for summary judgment on all of Plaintiff’s claims because Plaintiff’s accelerated briefing and  
14 hearing schedule made such a comprehensive motion impracticable based on the constraints  
15 previously identified.

16 Plaintiff’s Motion for Summary Judgment addresses only the first two causes of action for  
17 violation of the Treaty and Compact Clauses. Plaintiff specifically limits its Motion for Summary  
18 Judgment, stating: “The United States does not abandon its remaining two causes of action. It  
19 simply presents these two causes of action today to promote expeditious resolution of the case.”  
20 (*See* ECF No. 12 at 2:1-5, 11:17-19, fn.1.) Further, Plaintiff explicitly “opted to focus at this time  
21 on its Article I Treaty Clause and Compact Clause causes of action.” (*See* ECF Doc. 78 at 8, fn.  
22 14.) As a result, the WCI, Inc. Defendants’ Opposition and Cross-Motion for Summary Judgment  
23 addresses only those causes of action at issue in Plaintiff’s Motion for Summary Judgment as they  
24 were compelled to do so at the time. *See* E.D. Cal. Local Rule 230(e) (requiring any counter-motion  
25 that a party may desire to make that is related to the general subject matter of the original motion  
26 to be filed in the manner and on the date prescribed for the filing of the opposition).

27 If the Court declines to determine this case on a piecemeal basis and elects to continue the  
28 hearing on the parties’ cross-motions for summary judgment to allow the parties to address the third

1 and fourth causes of action, then the WCI, Inc. Defendants respectfully request that a further  
2 briefing schedule be discussed at the Status Conference scheduled for April 27, 2020 or thereafter.

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4 DATED: March 2, 2020

DELFINO MADDEN O'MALLEY COYLE &  
KOEHLER LLP

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6  
7 By: /s/ Monica Hans Folsom

MONICA HANS FOLSOM  
KRISTIN N. IVANCO  
Attorneys for WCI Inc. Defendants