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12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA

14 THE UNITED STATES OF AMERICA,  
15 Plaintiff,  
16 v.

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

Defendants.

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

**WCI, INC. DEFENDANTS' NOTICE OF  
CROSS-MOTION AND CROSS-MOTION  
FOR SUMMARY JUDGMENT**

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

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

<sup>1</sup> The WCI, Inc. Defendants are Western Climate Initiative, Inc. ("WCI, Inc."); Mary D. Nichols, in her official capacity as Vice Chair and a board member of WCI, Inc.; Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc.

1 TO ALL PARTIES AND THEIR ATTORNEY(S) OF RECORD:

2 PLEASE TAKE NOTICE that on March 9, 2020, at 1:30 p.m., or as soon thereafter as this  
3 matter may be heard in Department 5 of the above-entitled court located at 501 I Street, Sacramento,  
4 California 95814, Defendants Western Climate Initiative, Inc. (“WCI, Inc.”), Mary D. Nichols, in  
5 her official capacity as Vice Chair and a board member of WCI, Inc., and Jared Blumenfeld, Kip  
6 Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc. (collectively,  
7 “WCI, Inc. Defendants”) will, and hereby do, move this Court for an order granting summary  
8 judgment in their favor and against Plaintiff United States of America (“Plaintiff”) as to the First  
9 and Second Claims in Plaintiff’s Complaint (“Cross-Motion”).

10 The WCI, Inc. Defendants make this Cross-Motion pursuant to Federal Rule of Civil  
11 Procedure 56 and Local Rule 260 on the grounds that there are no triable issues of material fact as  
12 to Plaintiff’s first and second claims for violations of the Treaty and Compact Clauses as to the  
13 WCI, Inc. Defendants and such Defendants are entitled to judgment as a matter of law.

14 This Cross-Motion is based upon this Notice of Cross-Motion and Cross-Motion for  
15 Summary Judgment, the Memorandum of Points and Authorities in support thereof, the Separate  
16 Statement of Material Facts, the Declaration of Greg Tamblyn and all attachments thereto, and the  
17 Opposition to Plaintiff’s Motion for Summary Judgment, including all documents submitted in  
18 support thereof and joinders related thereto, all filed concurrently herewith, any and all pleadings,  
19 papers and records on file in this action, all matters of which this Court has taken judicial notice,  
20 and upon any additional documents, evidence and arguments of counsel as may be presented at the  
21 hearing on the Motion and this Cross-Motion.

22  
23 DATED: February 10, 2020

DELFINO MADDEN O’MALLEY COYLE &  
KOEHLER LLP

24  
25  
26 By: /s/ Monica Hans Folsom

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

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22 BLOOM, in his official capacity as a board  
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23 Inc.,

24 Defendants.  
25  
26

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

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF THE  
WCI, INC. DEFENDANTS' OPPOSITION  
TO PLAINTIFF'S MOTION FOR  
SUMMARY JUDGMENT, JOINDER IN  
THE STATE DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT AND  
CROSS-MOTIONS FOR SUMMARY  
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28 official capacity as Vice Chair and a board member of WCI, Inc.; Jared Blumenfeld, Kip Lipper, and Richard Bloom,  
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## I. INTRODUCTION

Plaintiff United States of America (“Plaintiff”) moves for summary judgment as to its first and second claims against all defendants,<sup>2</sup> asking this Court to hold that California’s Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions of 2017 with the Canadian province of Quebec (“Agreement”) is barred by the Treaty and Compact Clauses of the U.S. Constitution. However, Plaintiff makes no attempt to show how the WCI, Inc. Defendants, including the four individuals sued in their capacities as an officer and board members of WCI, Inc., could have violated, much less did violate, the Treaty Clause or the Compact Clause. Plaintiff proffers no facts or legal authority to adjudicate these claims against the WCI, Inc. Defendants. Indeed, the Motion is based entirely on the State of California’s Agreement with Quebec – of which the WCI, Inc. Defendants are not parties – and California’s supporting regulations (as to the Compact Clause claim) that the WCI, Inc. Defendants do not implement or enforce.

Plaintiff asserts that its first two claims “can be expeditiously and summarily adjudicated based on the Constitution, California’s Agreement, and the undisputed record regarding other statements and admissions by California and its officers.” (Plaintiff’s Motion for Summary Judgment (“Plf.’s MSJ”) at 12:21-23.) Notably absent from this statement is any mention of the WCI, Inc. Defendants. Indeed, Plaintiff’s Motion does not address the elements of its claims as to the WCI, Inc. Defendants. In a thirty-six-page motion, aside from a general albeit incorrect summary of WCI, Inc.’s creation in the facts section of its moving brief (Plf.’s MSJ at 6:24-26), Plaintiff references WCI, Inc. on only two occasions, which can be described as a tangential afterthought at best. Not even in its summary of argument section does Plaintiff mention the WCI, Inc. Defendants. (Plf.’s MSJ at 12:25-13:22.) Two passing references to WCI, Inc., and none to the WCI, Inc. board members, are insufficient to meet the moving party’s burden to prevail on summary judgment.

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<sup>2</sup> In addition to the WCI, Inc. Defendants, Plaintiff also sues the 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 her official capacity as Chair of the California Air Resources Board; and Jared Blumenfeld, in his official capacity as Secretary for Environmental Protection (collectively referred to herein as the “State Defendants”).

1 Plaintiff also fails to establish that the U.S. Constitution confers liability for violations of  
 2 the Treaty Clause and the Compact Clause on private parties – much less how the WCI, Inc.  
 3 Defendants engaged in any conduct that would constitute state action for purpose of Article III,  
 4 Section 10, Clauses 1 and 3. Thus, Plaintiff’s Motion for Summary Judgment as to the WCI, Inc.  
 5 Defendants is fatally flawed for this additional reason and must be denied.

6 Plaintiff’s wholly unsupported attempt to apply Article I’s restrictions to the WCI, Inc.  
 7 Defendants should be rejected; its summary judgment motion should be denied; and summary  
 8 judgment should be entered for the WCI, Inc. Defendants on both the Treaty Clause and the  
 9 Compact Clause claims.

## 10 **II. STATEMENT OF FACTS**

11 The WCI, Inc. Defendants—namely, WCI, Inc. and the WCI, Inc. board members (Mary  
 12 Nichols, Jared Blumenfeld, Kip Lipper, and Richard Bloom)—do not implement or enforce  
 13 California’s cap-and-trade regulations and are not parties to the challenged agreement between  
 14 California and Quebec. (WCI, Inc. Defendants’ Disputed and/or Material Facts (“DMF”) 1-9, 11-  
 15 13; Plaintiff’s Statement of Undisputed Facts (“Plf.’s SUF”) 48.)

16 WCI, Inc. is a private, non-profit corporation organized under the laws of Delaware to  
 17 provide administrative support and technical services to jurisdictions with cap-and-trade programs.  
 18 (*See* DMFs 1-2.) WCI, Inc. provides administrative and technical services to support  
 19 implementation of participating jurisdictions’ cap-and-trade programs, including through a  
 20 technical platform for joint allowance auctions and a system for California Air Resources Board  
 21 (“CARB”) to track compliance instruments in entity accounts. (*See* DMFs 7-8, ECF No. 7 at ¶¶  
 22 136, 142; Plf.’s MSJ at 24:10.) WCI, Inc. developed and maintains a computer system that keeps  
 23 track of allowances and other compliance instruments—recording who holds which instruments  
 24 and transactions among parties. (DMF 8.) WCI, Inc. performs these services under contract and for  
 25 remuneration, and CARB had begun using WCI, Inc.’s services in 2012, before it linked its program  
 26 to Quebec’s. (DMFs 9-10; Plf.’s SUF 48.)

27 WCI, Inc. has no policymaking, regulatory, or enforcement authority, and plays no role in  
 28



1 deciding whether California or Quebec will accept each other's compliance instruments.<sup>3</sup> (DMFs  
 2 11-12; *see* ECF No. 7-3 at 1, 3, 5 (describing services WCI, Inc. provides to CARB); *see also* Cal.  
 3 Code of Regs., tit. 17, §§ 95940, 95943(a). It has no policymaking, regulatory, or enforcement  
 4 authority. (DMFs 11-12.) WCI, Inc. and the WCI, Inc. board members do not control whether  
 5 California and Quebec's cap-and-trade programs are linked. (DMFs 11-12.)

6 The four WCI, Inc. board members—two voting members and two non-voting members—  
 7 are sued in their capacities as directors of WCI, Inc.<sup>4</sup> (DMF 6.) WCI, Inc.'s Board is comprised of  
 8 an equal number of directors from each of the jurisdictions to which it provides services – currently  
 9 California, Quebec, and Nova Scotia. (DMF 3.) As a result, WCI, Inc.'s Board currently has six  
 10 voting members. (DMF 3.)

### 11 **III. PROCEDURAL HISTORY**

12 Plaintiff filed its Complaint against Defendants on October 29, 2019 and its Amended  
 13 Complaint on November 19, 2019. (ECF Nos. 1, 7.) The Amended Complaint asserts four causes  
 14 of action and seeks declaratory and injunctive relief. (ECF No. 7.) On November 19, 2019, the  
 15 parties filed, and the Court subsequently granted for good cause, a joint stipulation extending the  
 16 deadline for all Defendants to file responsive pleadings to January 6, 2020. (ECF Nos. 8, 11.)

17 On December 11, 2019, Plaintiff filed the instant Motion for Summary Judgment as to two  
 18 of its four claims—under the Treaty and Compact Clauses—and set a hearing date for January 13,  
 19 2020. (ECF No. 12.) On December 16, 2019, at Defendants' request, the Court changed  
 20 Defendants' deadline to respond to Plaintiffs' summary judgment motion to February 10, 2020 and  
 21 set the hearing on that Motion for February 24, 2020. (ECF No. 19.)

22  
 23  


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 24 <sup>3</sup> For purposes of clarification, WCI, Inc. is distinct from the Western Climate Initiative ("WCI"), a somewhat  
 25 informal "collaboration of independent jurisdictions working together to identify, evaluate, and implement emissions  
 26 trading policies to tackle climate change at a regional level" that began in 2007. (*See*  
<http://westernclimateinitiative.org/>, last visited Feb. 10, 2020.) Plaintiff proffers no evidence to establish that WCI has  
 ever been a legal entity with the ability to act to form WCI, Inc. or that it is the "parent" of WCI, Inc. in any manner  
 that has legal significance.

27 <sup>4</sup> While Ms. Nichols is referred to herein as a WCI, Inc. board member, she is sued in her capacity as Vice  
 28 Chair of WCI, Inc., an officer position under WCI, Inc.'s Bylaws, as well as in her capacity as a board member. (DMF  
 6.) As such, for purposes of this Opposition and Cross-Motion, all references to the WCI, Inc. board members include  
 Ms. Nichols in her capacity as Vice Chair and an officer of WCI, Inc.

1 On January 6, 2020, the WCI, Inc. Defendants and Defendant Jared Blumenfeld, in his  
 2 official capacity as Secretary for Environmental Protection, moved to dismiss themselves as  
 3 defendants. (ECF No. 25.) On that same day, the remaining State Defendants answered the  
 4 Amended Complaint. (ECF No. 24.)

5 On February 6, 2020, in response to competing schedule proposals from the parties, the  
 6 Court set deadlines for briefing and argument on the parties' cross-motions for summary judgment,  
 7 with amici briefs supporting Defendants due February 18, 2020, Plaintiff's opposition and reply  
 8 due February 24, 2020, and Defendants' reply on its cross-motions due March 2, 2020. (ECF No.  
 9 43.) The Court scheduled the hearing on the cross-motions for summary judgment for March 9,  
 10 2020. (*Id.*)

11 On February 7, 2010, the Court *sua sponte* reset the hearing on the pending Motion to  
 12 Dismiss from February 10, 2020 to February 24, 2020. (ECF No. 44.) The initial Scheduling  
 13 Conference is set to occur on April 27, 2020. (ECF No. 41.)

#### 14 **IV. SUMMARY JUDGMENT STANDARD**

15 To prevail on summary judgment, the moving party must show "that there is no genuine  
 16 dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R.  
 17 Civ. P. 56(a); *Mutual Fund Investors v. Putnam Management Co.*, 553 F.2d 620, 624 (9th Cir.  
 18 1977); *Doff v. Brunswick Corp.*, 372 F.2d 801, 805 (9th Cir. 1966). Material facts are those that  
 19 might affect the outcome of the case, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986),  
 20 as "determined by the substantive law governing the claim or defense." *T.W. Elec. Serv., Inc. v.*  
 21 *Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630 (9th Cir. 1987).

22 Where a plaintiff seeks summary judgment, the burden is to demonstrate affirmatively that  
 23 there is no genuine dispute of material fact as to each element of the claims for relief, entitling  
 24 plaintiff to judgment as a matter of law, and to demonstrate the lack of any dispute of material fact  
 25 as to the affirmative defenses asserted by the defendant. *Fontenot v. Upjohn Co.*, 780 F.2d 1190,  
 26 1195 (5th Cir. 1986); *Zands v. Nelson*, 797 F. Supp. 805, 808 (S.D. Cal. 1992); *Grimmway*  
 27 *Enterprises, Inc. v. PIC Fresh Global, Inc.*, 548 F. Supp. 2d 840, 845 (E.D. Cal. 2008). If the  
 28 moving party meets its initial burden, the nonmoving party "must set forth specific facts showing

1 that there is a genuine issue for trial” in order to defeat the motion. *See Anderson*, 477 U.S. at 250;  
 2 *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). In particular, where the  
 3 nonmoving party bears the burden of proof at trial, it must produce “evidence on which the jury  
 4 could reasonably find for the” nonmoving party. *Anderson*, 477 U.S. at 252.

5 The court must “view[ ] the evidence in the light most favorable to the nonmoving party[.]”  
 6 *Fontana v. Haskin*, 262 F.3d 871, 876 (9th Cir. 2001). However, “[c]onclusory, speculative  
 7 testimony in affidavits and moving papers is insufficient to raise genuine issues of fact and defeat  
 8 summary judgment.” *Soremekun*, 509 F.3d at 984.

9 Where, as here, the “parties submit cross-motions for summary judgment, each motion must  
 10 be considered on its own merits.” *Fair Hous. Council of Riverside Cty., Inc. v. Riverside Two*, 249  
 11 F.3d 1132, 1136 (9th Cir. 2001) (internal quotation marks omitted). Thus, “[t]he court must rule on  
 12 each party’s motion on an individual and separate basis, determining, for each side, whether a  
 13 judgment may be entered in accordance with the Rule 56 standard.” *Id.* “[W]hen simultaneous  
 14 cross-motions for summary judgment on the same claim are before the court, the court must  
 15 consider the appropriate evidentiary material identified and submitted in support of both motions,  
 16 and in opposition to both motions, before ruling on each of them.” *Tulalip Tribes of Wash. v. Wash.*,  
 17 783 F.3d 1151, 1156 (9th Cir. 2015).

## 18 V. LEGAL ARGUMENTS

### 19 A. Summary Judgment Against the WCI, Inc. Defendants Is Not Proper Because Plaintiff 20 Did Not, and Cannot, Meet Its Burden as the Moving Party to Show the WCI, Inc. Defendants Violated the Treaty Clause or Compact Clause.

21 Plaintiff is required to establish all elements of each of its claims for relief as to the WCI,  
 22 Inc. Defendants in order to obtain summary judgment as to them. *Fontenot*, 780 F.2d at 1195;  
 23 *Zands*, 797 F. Supp. At 808; *Grimmway Enters, Inc.*, 548 F.Supp.2d at 845. Plaintiff has not met  
 24 this burden. Plaintiff’s Motion for Summary Judgment notably fails to set forth any material facts  
 25 to support each element of the claims at issue against the WCI, Inc. Defendants.

26 The purported undisputed material facts Plaintiff asserts relate primarily to the State of  
 27 California and CARB and, specifically, the Agreement between California and Quebec. Plaintiff  
 28 did not, and cannot, establish that the WCI, Inc. Defendants committed any of the alleged

1 constitutional violations that purportedly injure Plaintiff. Moreover, Plaintiff proffers no evidence  
 2 or legal authority to show that the WCI, Inc. Defendants, which consist of a non-profit entity and  
 3 its board members, could even violate the Treaty or Compact Clauses of the Constitution as a matter  
 4 of law.

5 The basis of Plaintiff's first and second claims is the 2017 Agreement between California  
 6 and Quebec. (ECF No. 7 at ¶¶ 3, 5, 92, 93, 131-133, 135, 176-177, 183-187; Plf.'s MSJ at 1.)  
 7 However, the WCI, Inc. Defendants did not enter into this Agreement, and they are neither  
 8 signatories nor parties to it. (*Id.*, Attach. B at 14-17 (signatures); 18 (listing parties); Plf.'s SUF 48;  
 9 DMFs 2-5, 13.)<sup>5</sup> Plaintiff does not, and cannot, show otherwise. In fact, Plaintiff claims the  
 10 opposite—namely, that “[t]he Agreement is one of political cooperation *between California and*  
 11 *Quebec*” and that “[t]he Agreement binds *California and Quebec* and memorializes a series of  
 12 undertakings *between the two jurisdictions*.” (ECF No. 7 at ¶¶ 68, 83 (emphasis added, internal  
 13 quotation marks omitted); *see also id.* ¶¶ 69-70, 79, 82, 90, 95-96, 98-99, 119, 124, 127-130.)  
 14 Indeed, the evidence shows that the WCI, Inc. Defendants did not adopt the regulatory provisions  
 15 to which Plaintiff objects and do not assess a regulated party's compliance with California's cap-  
 16 and-trade program, enforce the requirements of that program, or accept Quebec-issued instruments.

17 Plaintiff's Treaty and Compact Clause claims against the WCI, Inc. Defendants fail as a  
 18 matter of law because Plaintiff has not shown how any actions by these defendants resulted in the  
 19 deprivation of any constitutional right.

20 **B. Summary Judgment Against the WCI, Inc. Defendants Is Not Proper Because Plaintiff**  
 21 **Fails to Establish that the WCI, Inc. Defendants Are State Actors.**

22 A cause of action for violation of the Treaty and Compact Clauses of the United States  
 23 Constitution are based in state actions – not the actions of private citizens. Both the Treaty and the  
 24 Compact Clauses are directed against States, not private actors, and apply only to agreements  
 25 *entered into by States*. *See* U.S. Const., art. I, § 10, cl. 1 (“No *State* shall enter into any Treaty,  
 26

27 <sup>5</sup> Ms. Nichols did not sign the Agreement in her capacity as an officer or board member of WCI, Inc. Indeed,  
 28 the Agreement clearly shows that Ms. Nichols did so in her official capacity as Chair of CARB: directly underneath  
 her signature, the Agreement describes her as “Chair of the California Air Resources Board” and the signature block  
 states that she is signing “FOR THE CALIFORNIA AIR RESOURCES BOARD.” (DMF 14.)

Alliance or Confederation...” (emphasis added); *id.*, art. I, § 10, cl. 3 (“No *State* shall, without the Consent of Congress...enter into any Agreement or Compact...with a foreign Power...” (emphasis added)). The instant Motion provides no basis for liability here because it does not even specify the services WCI, Inc. provides, let alone connect those services to a violation of the Treaty or Compact Clause. Providing “administrative and technical support services” to a state agency cannot make a private actor liable under constitutional provisions that prohibit *States* from entering into certain kinds of agreements. Thus, Plaintiff cannot state a valid claim under either the Treaty Clause or the Compact Clause against the WCI, Inc. Defendants—a non-profit entity and its board members.

In assessing claims that private actors are really “state actors,” courts “start with the presumption that private conduct does not constitute governmental action.” *Sutton v. Providence St. Joseph Med. Ctr.*, 192 F.3d 826, 835 (9th Cir. 1999). Here, Plaintiff presents no evidence to overcome this presumption. Indeed, Plaintiff has no cognizable legal theory under which the WCI, Inc. Defendants could be “state actors” with respect to conduct in which, as shown above, they are not actors at all. *See Lee v. Katz*, 276 F.3d 550, 555 n.5 (9th Cir. 2002) (noting the importance of identifying the allegedly unconstitutional conduct for which the “state action” claim is made).<sup>6</sup> Nor is it clear how a private actor may become a “state actor” with respect to the Treaty or Compact Clauses, which apply only apply to agreements *entered into by States*, U.S. Const. Art. I, § 10, cl. 1, 3, and generally prohibit certain kinds of *state laws*. In any event, Plaintiff presented no evidence sufficient to support a “state actor” claim. *See Lee*, 276 F.3d at 553–54 (9th Cir. 2002) (recognizing “plaintiffs bear the burden of establishing [these facts] by a preponderance of the evidence”); *Roberts v. AT&T Mobility LLC*, 877 F.3d 833, 8329 (9th Cir. 2017) (recognizing plaintiffs must “show the private defendants were ‘state actors’”). Plaintiff’s Motion for Summary Judgment as to its first and second claims should be denied as to the WCI, Inc. Defendants because Plaintiff failed to establish they are state actors for purposes of the constitutional violations at issue.

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<sup>6</sup> Further, where, as here, the operative complaint names actual state officials and agencies and alleges that they are the actors engaged in the offending conduct, it is not clear that the “state actor” inquiry even applies. *See, e.g., Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 993 (9th Cir. 2013) (describing the inquiry’s role as determining whether the offending conduct should be attributed to the State).

**C. Summary Judgment Should Be Denied as to Plaintiff's Claims Against the WCI, Inc. Board Members Because Plaintiff Presents No Evidence to Establish Claims Against Them Under the Treaty or Compact Clauses.**

Each board member owes WCI, Inc. duties and obligations separate and apart from any outside employment or political interests.<sup>7</sup> Del. Code tit. 8, § 141 (2020); *Skeen v. Jo-Ann Stores, Inc.*, 750 A.2d 1170 (Del. 2000). Plaintiff has not proffered any facts that would subject the WCI, Inc. board members to personal liability for any corporate wrongdoing. Plaintiff provides *no facts* in the Motion for Summary Judgment that describe specific wrongful acts of the WCI, Inc. board members in their capacities as such. Indeed, the Motion is devoid of any facts regarding the role of the WCI, Inc. board members in the linkage between the respective cap-and-trade programs of California and Quebec. There is no evidence that any of these individuals participated in any of the challenged activities or even had the ability to do so. Nor does Plaintiff offer any legal authority to establish the WCI, Inc. board members' liability for violations of the Treaty or Compact Clauses.

Public policy demands of corporate directors an undivided loyalty to the corporation to the end that there shall be no conflict between duty and self-interest. *Italo-Petroleum Corp. of Am. v. Hannigan*, 40 Del. 534 (1940); *Guth v. Loft, Inc.*, 5 A.2d 503 (Del. 1939). These principles are deeply rooted in corporate law and the duties owed regardless of how the director comes to serve in his or her position:

Corporate officers and directors are not permitted to use their position of trust and confidence to further their private interests. While technically not trustees, they stand in a fiduciary relation to the corporation and its stockholders. A public policy, existing through the years, and derived from a profound knowledge of human characteristics and motives, has established a rule that demands of a corporate officer or director, peremptorily and inexorably, the most scrupulous observance of his duty, not only affirmatively to protect the interest of the corporation committed to his charge, but also to refrain from doing anything that would work injury to the corporation, or to deprive it of profit or advantage which his skill and ability might properly bring to it, or to enable it to make in the reasonable and lawful exercise of its powers.

<sup>7</sup> The Delaware General Corporation Code applies to non-profits incorporated under Delaware law, with limited exceptions not applicable here. Del. Code tit. 8, § 114. A corporation's capacity to be sued is determined by the law under which it was organized, Fed. R. Civ. P. 17(b)(2), and under Delaware law, a corporation has the capacity to be sued in its corporate name. Del. Code tit. 8, § 122(2).



1 *Guth*, 5 A.2d at 510. Indeed, directors are not permitted to vote on matters in which they are  
2 interested. Del. Code tit. 8, § 144; *Aronson v. Lewis*, 473 A.2d 805, 816 (Del. 1984).

3 The Motion for Summary Judgment contains no evidence that could support Plaintiff's  
4 standing to bring claims against the WCI, Inc. board members. *See Sacks v. Office of Foreign Assets*  
5 *Control*, 466 F.3d 764, 774 (9th Cir. 2006). Plaintiff's Motion does not connect WCI, Inc.'s board  
6 members in their capacities as such to any allegedly wrongful acts, or, indeed, offer any clue why  
7 it seeks relief against non-voting board members. Because there is no legal basis to assert the First  
8 and Second Causes of Action against these defendants, summary judgment should be denied as to  
9 them.

10 **D. The WCI, Inc. Defendants Also Join the State Defendants' Opposition to Plaintiff's**  
11 **Summary Judgment Motion.**

12 The WCI, Inc. Defendants also join in the arguments made and opposition filed by the State  
13 Defendants to Plaintiff's Motion for Summary Judgment. Although the WCI, Inc. Defendants'  
14 analysis may differ in some respects, joinder in the arguments asserted and opposition filed by the  
15 State Defendants is appropriate to the extent that the Court does not deny summary judgment as to  
16 the WCI, Inc. Defendants on the grounds set forth above. As such, the WCI, Inc. Defendants adopt  
17 the State Defendants' arguments and evidence in support thereof by reference.

18 **E. The WCI, Inc. Defendants Are Entitled to Summary Judgment Because Plaintiff**  
19 **Lacks Standing to Assert Claims Against Them Under the Treaty or the Compact**  
20 **Clauses.**

21 The WCI, Inc. Defendants—the entity WCI, Inc. and the four named WCI, Inc. board  
22 members—are entitled to summary judgment because Plaintiff lacks standing to name them as  
23 defendants. To establish Article III standing, a plaintiff must satisfy three requirements. *Lujan v.*  
24 *Defenders of Wildlife*, 504 U.S. 555, 560 (1992). First, the plaintiff must show “an invasion of a  
25 legally protected interest” constituting an “injury in fact.” *Id.* “Second, there must be a causal  
26 connection between the injury and the conduct complained of.” *Id.* “Third, it must be ‘likely,’ as  
27 opposed to merely ‘speculative,’ that the injury will be ‘redressed by a favorable decision.’” *Id.* at  
28 561 (internal quotation marks omitted). A plaintiff must satisfy these requirements for each named  
defendant. *Easter v. Am. W. Fin.*, 381 F.3d 948, 961 (9th Cir. 2004). Plaintiff cannot establish the

1 second and third requirements of standing as to the WCI, Inc. Defendants.

2 Plaintiff repeatedly asserts throughout its Motion for Summary Judgment that the 2017  
3 Agreement between California and Quebec is the cause of its alleged injuries. However, as  
4 explained above, the WCI, Inc. Defendants were not the cause of any injuries Plaintiff alleges as a  
5 result of the 2017 Agreement. The WCI, Inc. Defendants did not enter into this agreement, and they  
6 are neither signatories nor parties to it.

7 CARB's decision to accept Quebec-issued instruments as a means of compliance with  
8 California's cap-and-trade program was and is California's to make, and the WCI, Inc. Defendants  
9 had, and have, no control over it. In addition, CARB, not the WCI, Inc. Defendants, adopted the  
10 regulatory provisions to which Plaintiff objects. Further, it is CARB, not the WCI, Inc. Defendants,  
11 that assesses a regulated party's compliance with California's cap-and-trade program, enforces the  
12 requirements of that program, and accepts Quebec-issued instruments. *See* Cal. Code Regs., tit. 17,  
13 §§ 95856(f), (g), 96014, 95943(a). The WCI, Inc. Defendants had no control over those activities,  
14 or the authorizing regulations or statutes; thus, the WCI, Inc. Defendants did not cause the injuries  
15 Plaintiff alleges result from these activities or these regulations. Moreover, there is no evidence that  
16 the services WCI, Inc. provides cause Plaintiff's alleged injuries, much less that these services are  
17 unique and could not be provided by another organization or performed by CARB itself.

18 Plaintiff similarly cannot establish redressability, the third requirement for standing. The  
19 WCI, Inc. Defendants have no control over CARB's decisions regarding whether to accept  
20 compliance instruments issued by another jurisdiction or whether to sign or withdraw from  
21 agreements. Thus, no order directed at the WCI, Inc. Defendants would require CARB to withdraw  
22 from the agreement to which Plaintiff objects or prevent CARB from accepting Quebec-issued  
23 allowances. Consequently, no order against the WCI, Inc. Defendants would redress the injuries  
24 Plaintiff asserts flow from this conduct. This is only underscored by the fact that any order against  
25 the WCI, Inc. Defendants would not prevent CARB from replacing WCI, Inc. with another vendor.

26 Plaintiff, thus, lacks standing to sue the WCI, Inc. Defendants. *See Easter*, 381 F.3d at 961  
27 (where "plaintiffs have failed to link their causes of action with specific actions of [particular]  
28 defendants," the plaintiffs "lack standing to sue" those defendants); *see also Simon v. E. Kentucky*



1 *Welfare Rights Org.*, 426 U.S. 26, 41 (1976) (“[Article III] requires that a federal court act only to  
 2 redress injury that fairly can be traced to the challenged action of the defendant.”); *Hall v. Norton*,  
 3 266 F.3d 969, 976–77 (9th Cir. 2001) (“The purpose of the standing doctrine is to ensure that the  
 4 plaintiff has a concrete dispute with the defendant.”). Accordingly, the Court should summarily  
 5 adjudicate Plaintiff’s claims against the WCI, Inc. Defendants in favor of such Defendants. *Golden*  
 6 *Gate Transactional Indep. Serv., Inc. v. California*, 2019 WL 4222452, at \*6 (C.D. Cal. May 1,  
 7 2019) (“[T]here must exist at least one named plaintiff with Article III standing as to each defendant  
 8 and each claim.”); *In re Carrier IQ, Inc.*, 78 F. Supp. 3d 1051, 1069 (N.D. Cal. 2015) (“to hold  
 9 each defendant in the case, there must be at least one named plaintiff with standing to sue said  
 10 defendant”).

11 **F. The WCI, Inc. Defendants Are Also Entitled to Summary Judgment Because Plaintiff**  
 12 **Cannot Maintain a Valid Claim Against Them Under the Treaty or the Compact**  
 13 **Clauses.**

14 For the reasons set forth above in Parts V. A-D, *supra*, Plaintiff cannot maintain a valid  
 15 claim against the WCI, Inc. Defendants for violation of the Treaty Clause or the Compact Clause  
 16 as a matter of law. As such, summary judgment in their favor is appropriate.

17 **VI. CONCLUSION**

18 Plaintiff makes no attempt to show how the administrative and technical services provided  
 19 by WCI, Inc., or any other conduct by the WCI, Inc. Defendants, caused any injury to Plaintiff. Nor  
 20 does Plaintiff attempt to show how an order directed against the WCI, Inc. Defendants could redress  
 21 any injury allegedly suffered from the 2017 Agreement between California and Quebec or the  
 22 linkage between their cap-and-trade programs. As a consequence, Plaintiff has failed to satisfy its  
 23 burden to show either the causation or redressability required to establish standing to sue the WCI,  
 24 Inc. Defendants. Similarly, Plaintiff’s discussion of its constitutional claims against the WCI, Inc.  
 25 Defendants, which spans only a page and does not even address the elements of such claims,  
 26 likewise fails to show that any valid claims can be brought against the WCI, Inc. Defendants.

27 ///

28 ///

///

1 As detailed herein, Plaintiff has failed to meet its burden of proof on summary judgment.  
2 Accordingly, Plaintiff's Motion must be denied in its entirety. Defendants Cross-Motion for  
3 Summary Judgment should be granted on both causes of action.

4  
5 DATED: February 10, 2020

DELFINO MADDEN O'MALLEY COYLE &  
KOEHLER LLP

7  
8 By: /s/ Monica Hans Folsom

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KRISTIN N. IVANCO  
Attorneys for WCI Inc. Defendants

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

8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA

11 THE UNITED STATES OF AMERICA,  
12 Plaintiff,

13 v.

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

Defendants.

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

**DECLARATION OF GREG TAMBLYN IN  
SUPPORT OF WCI DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT AND  
CROSS-MOTION FOR SUMMARY  
JUDGMENT**

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

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

<sup>1</sup> The WCI, Inc. Defendants are Western Climate Initiative, Inc. ("WCI, Inc."); Mary D. Nichols, in her official capacity as Vice Chair and a board member of WCI, Inc.; Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc.

1 I, Greg Tamblyn, declare as follows:

2 1. I am the Executive Director for Defendant Western Climate Initiative, Inc. ("WCI,  
3 Inc."). I have served in this position since December 2014. As Executive Director, I am responsible  
4 for managing the day-to-day operations and maintaining the business records of WCI, Inc. This  
5 Declaration is submitted in support of the WCI, Inc. Defendants' Opposition to Plaintiff United  
6 States of America's ("Plaintiff") Motion for Summary Judgment and Cross-Motion for Summary  
7 Judgment ("Motion"). I have personal knowledge of the matters contained herein and if called upon  
8 to do so, I could and would competently testify as to the following facts.

9 2. WCI, Inc. is a private, non-profit corporation organized under the laws of Delaware  
10 to provide administrative support and technical services to jurisdictions with cap-and-trade  
11 programs. It was incorporated on or about October 28, 2011. A true and correct copy of the  
12 Certificate of Incorporation filed with the Delaware Secretary of State is attached hereto as **Exhibit**  
13 **A**.

14 3. WCI, Inc. most recently amended its By-Laws on October 11, 2018. A true and  
15 correct copy of WCI, Inc.'s current By-Laws is attached hereto as **Exhibit B**.

16 4. WCI, Inc.'s Board of Directors ("Board") is made up of two Class A members and  
17 up to two Class B members from each of its three participating jurisdictions – the State of California  
18 and the provinces of Quebec and Nova Scotia. The Class A directors are voting member of the  
19 Board and possess all the authority granted to directors of non-profit corporations under applicable  
20 law. The Class B directors are non-voting members of the Board and have no power to act on behalf  
21 of WCI, Inc. or the Board. The individual defendants named in this lawsuit in their capacities as an  
22 officer and/or board member of WCI, Inc. are from California. Defendant Mary Nichols is both an  
23 officer (Vice Chair) and Class A director. Defendant Jared Blumenfeld is also a Class A director.  
24 Defendants Richard Bloom and Kip Lipper are Class B directors.

25 5. WCI, Inc. developed and administers a technical platform that CARB and Quebec  
26 use to jointly auction allowances. WCI, Inc. also developed and maintains a computer system that  
27 keeps track of allowances and other compliance instruments—recording who holds which  
28 instruments and transactions among parties. WCI, Inc. provides these services under contract and



1 for remuneration, and CARB had begun using WCI, Inc.'s services in 2012.

2 6. WCI, Inc. plays no role in the enforcement of the cap-and-trade programs of any  
3 participating jurisdictions, and, indeed, exercises no regulatory powers at all. WCI, Inc. has no  
4 policymaking, regulatory, or enforcement authority, and plays no role in deciding whether  
5 California or Quebec will accept each other's compliance instruments. Similarly, WCI, Inc.'s  
6 officers and board members in their capacities as such do not exercise any policymaking,  
7 regulatory, or enforcement authority and do not participate in deciding whether participating  
8 jurisdictions will accept each other's compliance instruments or link their cap-and-trade programs.

9 7. WCI, Inc. is not a party to the Agreement on the Harmonization and Integration of  
10 Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions between California and  
11 Quebec, including the Agreement as renegotiated in 2017.

12 I declare under penalty of perjury under the laws of the United States of America that the  
13 foregoing statements are true and correct. Executed this 10<sup>th</sup> day of February, 2020, in Sacramento,  
14 California.

15  
16 By:   
17 Greg Tamblyn

# **EXHIBIT A**

# Delaware

PAGE 1

## The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF INCORPORATION OF "WESTERN CLIMATE INITIATIVE, INC.", FILED IN THIS OFFICE ON THE TWENTY-EIGHTH DAY OF OCTOBER, A.D. 2011, AT 8:48 O'CLOCK A.M.


A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



5058136 8100

111144317

You may verify this certificate online  
at [corp.delaware.gov/authver.shtml](http://corp.delaware.gov/authver.shtml)

  
Jeffrey W. Bullock, Secretary of State  
AUTHENTICATION: 9122084

DATE: 10-28-11

**CERTIFICATE OF INCORPORATION**  
**OF**  
**WESTERN CLIMATE INITIATIVE, INC.**

**Section 1. Name.** The name of the corporation is Western Climate Initiative, Inc. The corporation is hereinafter referred to as "the Corporation".

**Section 2. Registered Office and Agent.** The address of the Corporation's registered office in the State of Delaware is 2711 Centerville Road, Suite 400, City of Wilmington, County of New Castle, Delaware 19808. The name of its registered agent at such address is Corporation Service Company.

**Section 3. Purpose.** The exclusive purposes for which the Corporation is formed are: (1) to provide technical and scientific advisory services to States of the United States and Provinces and Territories of Canada in the development and collaborative implementation of their respective greenhouse gas emissions trading programs; (2) to perform any other charitable or scientific function related to the reduction of greenhouse gas emissions or the increase in carbon sequestration; and (3) to perform any other charitable or scientific function related to emissions trading programs or other programs with the purpose of improving environmental quality.

The Corporation is a non-stock, non-profit corporation. The purposes for which this organization is organized are exclusively religious, charitable, scientific, literary and/or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended (the "Code"), or the corresponding provision of any future United States Internal Revenue law.

**Section 4. Powers.** In order to facilitate the attainment of its goals, the Corporation shall have the general and specific powers enumerated in Sections 121 and 122 of the Delaware General Corporation Law, together with, but not in any way limited to, the following other powers:

(a) To solicit, collect, accept, hold, invest and administer contributions, gifts, bequests, devises, benefits of trusts (but not to act within the State of Delaware as trustee of any trust) and property of any and every kind whatsoever without limitation as to amount or value, and to use the income or principal thereof in the furtherance of the purposes of the Corporation;

(b) To sell, transfer, exchange, or otherwise deal with its property, and to hold, invest and reinvest its property and to apply the income and principal thereof in furtherance of its purposes and objects;



(c) To enter into, make, perform and carry out contracts for any corporate purpose, without limitation as to amount, with any person, firm, association, corporation or body politic;

(d) To do any and all acts and exercise any and all powers herein set forth, either as principal, agent, contractor or otherwise and either alone or in conjunction with any other person, firm or corporation, including any governmental agency;

(e) To the extent permitted by law, to exercise its rights, powers and privileges, to hold meetings of its directors and any committees appointed by the Board of Directors, to have one or more officers and to keep its books in any part of the world;

(f) Alone, or in cooperation with or through other organizations or persons, to do any and all lawful acts and things that may be necessary, useful, suitable or proper, for the furtherance, accomplishment or attainment of the purposes of the Corporation;

(g) Nothing herein contained shall be deemed to authorize or permit the Corporation to carry on any activity, exercise any power or do any act that a corporation formed under the General Corporation Law, as the same now exists or may hereafter be amended, may not at the time lawfully carry on or do;

(h) Notwithstanding any other provisions of these articles, the Corporation shall not carry on any activities not permitted to be carried on by an organization exempt from Federal income tax under Section 501(c)(3) of the Code or the corresponding provision of any future United States Internal Revenue law.

**Section 5. Conduct.** The Corporation shall not be conducted or operated for profit, and no part of the net earnings of the Corporation shall inure to the benefit of any member or private individual, nor shall any of such net earnings or any of the profits or assets of the Corporation be used other than for the purposes of the Corporation; provided that the Corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in Section 3 hereof.

No substantial part of the activities of the Corporation shall be the carrying on of propaganda or otherwise attempting to influence legislation (except to the extent otherwise permitted under Section 501(h) of the Code), nor shall the Corporation participate in, or intervene in (including by the publication or distribution of statements), any political campaign on behalf of or in opposition to any candidate for public office, and the Corporation shall not exercise any powers or engage in any activities or do any act that might impair its status as a corporation exempt from Federal income taxation under Section 501(c)(3) of the Code.

**Section 6. Liquidation.** In the event of the liquidation, dissolution or winding up of the Corporation, whether voluntary or involuntary or by operation of law, the property or other net assets of the Corporation, or any net proceeds thereof, shall be distributed to such non-profit organizations, which shall have received notice of recognition of exemption from Federal

income taxation under Section 501(c)(3) of the Code, as the Board of Directors shall determine; and no member, director, or officer of the Corporation or any private individual shall be entitled to share in the distribution of any of the corporate assets on dissolution of the Corporation. Any such assets not so disposed of shall be disposed of by the Court of Common Pleas of the State of Delaware for the county in which the principal office of the Corporation is then located, exclusively for such purposes, or to such organization or organizations, as such Court shall determine, which are organized and operated exclusively for such purposes.

**Section 7. Private Foundation Rules.** In any taxable year in which the Corporation is a private foundation as described in Section 509(a) of the Code, the Corporation shall distribute such amounts for such period at such time and in such manner as not to subject the Corporation to tax on undistributed income under Section 4942 of the Code; and the Corporation shall not (i) engage in any act of self-dealing which is subject to tax under Section 4941 of the Code; (ii) retain any excess business holdings which are subject to tax under Section 4943 of the Code; (iii) make any investments in such manner as to subject the Corporation to tax under Section 4944 of the Code; or (iv) make any taxable expenditures which are subject to tax under Section 4945 of the Code or corresponding provisions of any subsequent federal tax laws.

**Section 8. Stock and Membership.** The Corporation shall not have authority to issue any capital stock. The conditions of membership in the Corporation, the rights and obligations of its members and the classification of members, if any, shall be as provided in the By-Laws.

**Section 9. Incorporator.** The name and mailing address of the incorporator is as follows:

<u>Name</u>	<u>Address</u>
Clifford P. Case, III	Carter Ledyard & Milburn LLP 2 Wall Street New York, New York 10005

**Section 10. Management of Corporation and Initial Directors.** The Corporation shall be managed by its Board of Directors as provided in its By-Laws. The names and addresses of the persons who are to serve as the initial directors of the Corporation, until their successors are elected and qualify, are as follows:

<u>Name</u>	<u>Address</u>
James Mack	395 Waterfront Crescent Victoria BC V8W 9M2
Tim Lesiuk	395 Waterfront Crescent Victoria BC V8W 9M2

Michael Gibbs

1001 I Street  
Sacramento, CA 95814

James Goldstene

1001 I Street  
Sacramento, CA 95814

Robert Noel de Tilly

Édifice Marie-Guyart, 29th Floor  
675, boulevard René-Lévesque Est  
Québec (Québec) G1R 5V7

Jean-Yves Benoit

Édifice Marie-Guyart, 29th Floor  
675, boulevard René-Lévesque Est  
Québec (Québec) G1R 5V7

**Section 11. By-Laws.** The Board of Directors may make, alter or repeal the By-Laws of the Corporation, subject only to such limitations, if any, as may from time to time be imposed by the By-Laws.

**Section 12. Exoneration of Directors.** To the fullest extent permitted by the General Corporation Law of the State of Delaware, no director of the Corporation shall be personally liable to the Corporation for monetary damages for breach of fiduciary duty as a director.

**Section 13. Indemnification of Directors and Officers.** To the fullest extent permitted by the General Corporation Law of the State of Delaware, the Corporation may from time to time indemnify any person who is or was a director, officer, employee or agent of the Corporation or is or was serving at the request of the Corporation, and any other person whom it shall have power to indemnify, from and against any and all expenses, liabilities or other matters, all as more fully provided in the By-Laws.

**Section 14. Amendments.** The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation in the manner provided by law, and all rights conferred herein on members, directors, and officers are subject to this reserved power; except that any amendment, alteration, change, or repeal which reduces or limits the exculpation or indemnification of the persons referred to herein, or which adversely affects (from the point of view of the director) any limitation on the personal liability of a director, shall apply prospectively only and shall not be given retroactive effect.

**Section 15. General.** As used herein, references to the General Corporation Law refer to such law as in effect as of the date hereof and as amended from time to time, or corresponding provisions of subsequent laws, and references to "law" or "laws" refer to such laws as in effect as of the date hereof and as hereafter amended.

**THE UNDERSIGNED**, being the incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the General Corporation Law of the State of Delaware, makes this certificate, hereby declaring and certifying that this is the act and deed of the undersigned and that the facts herein stated are true, and accordingly has hereunto set such person's hand on October 28, 2011.

A handwritten signature in dark ink, appearing to read 'Clifford P. Case, III', is written over a horizontal line.

Name: Clifford P. Case, III  
Title: Incorporator  
Address: Carter Ledyard & Milburn LLP  
2 Wall Street  
New York, New York 10005

# **EXHIBIT B**



**BY-LAWS**  
**OF**  
**WESTERN CLIMATE INITIATIVE, INC.**

**(A Delaware Non-Profit Corporation)**

**REVISED: October 11, 2018**

I certify that the attached is a full, true and correct copy of the By-Laws of Western Climate Initiative, Inc. adopted by all of the members of the Board of Directors as of the date hereof.

Signature on file

\_\_\_\_\_  
Secretary

\_\_\_\_\_  
Date

**REVISION HISTORY**

Date	Revised By	Description
11/3/2011	Board of Directors	By-laws adopted
12/11/2012	Board of Directors	Amendments to the text to modify the naming of directors from the State of California, and to provide each Participating Jurisdiction with the opportunity to appoint two non-voting, "Class B" Directors to the Board (in addition to their two "Class A" (voting) Directors). Deleted Section 4.12 (Action without a Meeting).
5/8/2013	Board of Directors	Amendments to the text to clarify the purpose of WCI, Inc., and emphasize the intent to conduct the activities of the Corporation in a transparent and open manner.
10/12/17	Board of Directors	Amendments to the text to clarify: how quorum of the Board is determined, when a 2/3 supermajority vote of the Board is required, what measures require "no dissenting votes" be cast by the Board for passage of the measure and the composition of the Executive Committee.
5/11/18	Board of Directors	Amendment to the text to include Nova Scotia as a Participating Jurisdiction and define the methodology for how Nova Scotia will name their Directors.
10/11/18	Board of Directors	Amendment to the text to remove Ontario as a Participating Jurisdiction.

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**BY-LAWS**  
**OF**  
**WESTERN CLIMATE INITIATIVE, INC.**

(the "Corporation")

**ARTICLE I.**

**PURPOSES**

The exclusive purposes for which the Corporation is formed are: (1) to provide technical and scientific advisory services to States of the United States and Provinces and Territories of Canada in the development and collaborative implementation of their respective greenhouse gas emissions trading programs; (2) to perform any other charitable or scientific function related to the reduction of greenhouse gas emissions or the increase in carbon sequestration; and (3) to perform any other charitable or scientific function related to emissions trading programs or other programs with the purpose of improving environmental quality.

The activities of the Corporation in performing these purposes may include the following:

- (a) developing, implementing, and maintaining a system for tracking compliance instruments for emissions trading programs, including allowances and offset certificates, that conforms to the requirements of State and Provincial programs;
- (b) developing, implementing, and maintaining capability to execute auctions of allowances that conforms to the requirements of State and Provincial programs;
- (c) developing, implementing, and maintaining capability to conduct market monitoring of allowance auctions and allowance and offset certificate trading that conforms to the requirements of State and Provincial programs;
- (d) developing, implementing, and maintaining capability to provide technical reviews and administrative processing of offset project documentation that conforms to the requirements of State and Provincial programs;
- (e) conducting technical analyses to evaluate existing programs or possible modifications to programs; and
- (f) developing, implementing, and maintaining the capability to conduct the business operations necessary to perform the above activities (a) through (e).

The activities of the Corporation shall be conducted in a transparent and open manner, commensurate with the prudent stewardship of its funds. Policies to ensure transparent and open operations shall be adopted from time to time by the Board.

The Corporation is a non-stock, non-profit corporation. The purposes for which the Corporation is organized are exclusively religious, charitable, scientific, literary and/or educational within the meaning of Section 501(c)(3) of the Internal Revenue Code of 1986, as the same may be amended (the "Code"), or the corresponding provision of any future United States Internal Revenue law.

## **ARTICLE II.**

### **MEMBERS**

The Corporation shall have no members. To the extent members are required by law, the Class A directors holding office at any time shall be the Corporation's members at that time and shall be deemed to have done such acts as are necessary to elect the directors and otherwise fulfill responsibilities as members.

## **ARTICLE III.**

### **PARTICIPATING JURISDICTIONS**

The State of California and the Provinces of British Columbia, Nova Scotia and Quebec shall each be deemed to be a "Participating Jurisdiction" for the purposes of these By-Laws so long as at least one Class A director from such state or province has been named or designated a Class A director of the Corporation in accordance with these By-Laws, has given notice of his or her acceptance of the position of director and continues to serve as such. The Board shall have the power, to be exercised through amendment of the By-Laws in the manner set forth in the By-Laws, to name additional Participating Jurisdictions and to remove Participating Jurisdictions previously named.

## **ARTICLE IV.**

### **BOARD OF DIRECTORS**

**Section 4.1. Class A and Class B Directors.** As used in these By-Laws, the term Class A director shall mean and refer to a director possessing all of the authority granted to directors of non-profit, non-stock corporations under applicable law. As used in these By-Laws, the term Class B director shall mean and refer to an individual designated as set forth in these By-Laws who is entitled to notice of and to attend and be heard at meetings of the Board of Directors (the "Board"), but who is not counted in determining if a quorum is present, is not entitled to vote on any matter and shall not act on behalf of the Corporation or the Board.

**Section 4.2. Powers and Number.** The Corporation shall be managed by the Board. The initial Board shall be as set forth in the Certificate of Incorporation and shall hold office until the Class A directors of each Participating Jurisdiction shall have qualified as provided in this Section 4.2. The Board shall consist of two Class A directors from each Participating Jurisdiction, as follows:

- (a) From the State of California, the Class A directors shall be two individuals, each of whom is an employee or officer of the state, named in accordance with the state's requirements. The Secretary for Environmental Protection shall notify the Chair in writing of the individuals so named.
- (b) From the Province of British Columbia, the Class A directors shall be (1) the Head, Climate Action Secretariat and (2) the Executive Director, Business Development and Chief Negotiator, Climate Action Secretariat, each of whom shall serve as an *ex officio* director of the Corporation.
- (c) From the Province of Quebec, the Class A directors shall be two employees of the province named by the Deputy Minister for Environment, who shall notify the Chair in writing of the individuals so named.
- (d) From the Province of Nova Scotia, the Class A directors shall be two employees of the province named in accordance with the province's internal appointment procedure. The appointing authority of the province shall notify the Chair in writing of the individuals so named.

Each Class A director shall provide written notice to the Chair of his or her acceptance of the position of Class A director of the Corporation.

In addition to the Class A directors set forth above, each Participating Jurisdiction shall have the right to name up to two individuals, each of whom is an employee, officer or elected officer of the jurisdiction as Class B directors to serve in accordance with these By-Laws. The appointing authority of the jurisdiction shall notify the Chair in writing of the individuals so named. Each Class B director shall provide written notice to the Chair of his or her acceptance of the position of Class B director of the Corporation.

The Board shall have the power, to be exercised through amendment of the By-Laws in the manner set forth in the By-Laws, to authorize additional directorships or to remove directorships previously authorized.

**Section 4.3. Board.** As used in these By-Laws, the term "Board" refers to the Class A directors of the Corporation then in office.

**Section 4.4. Alternates.** A director may at any time and from time to time designate an alternate who is an employee of the designating director's jurisdiction to act in his or her stead, by a writing signed by the director and delivered to the Chair of the Corporation. The director may revoke the designation at any time by a writing signed by the director and delivered to the Chair of the Corporation. An alternate director while acting as director is vested with all the rights and obligations of the director for whom the alternate is substituting as provided by law, the Certificate of Incorporation and these By-Laws, provided that he or she may not designate an alternate director for herself or himself.

**Section 4.5. Term of Office.** Each director shall hold office as provided herein or until his or her death, resignation or removal. The term of office of each director shall begin when the Chair of the Corporation receives written notice of such director's acceptance of the office and shall conclude when such director's successor has qualified as provided herein.

**Section 4.6. Resignations.** Any director may resign from office at any time by delivering a letter of resignation to the Chair of the Corporation, and the acceptance of such resignation, unless required by the terms thereof, shall not be necessary to make such resignation effective.

**Section 4.7. Replacement of Named Directors.** A director named by a Participating Jurisdiction may be removed by that jurisdiction at any time and for any reason, and another director named in his or her place, upon written notice to the Chair of the Corporation and otherwise in accordance with Section 4.2 of this Article.

**Section 4.8. Vacancies.** In the event that a directorship becomes vacant for any reason and a successor is not otherwise provided for herein, the Participating Jurisdiction from which the director was named may name another employee of the Participating Jurisdiction as its director, as provided in Section 4.2 of this Article, by written notice to the Chair of the Corporation.

**Section 4.9. Meetings.** Meetings of the Board may be held at any place within or without the State of Delaware as the Board may from time to time fix, or as shall be specified in the notice or waivers of notice thereof. The annual meeting of the Board shall be held at such time as determined by the Board. Special meetings of the Board shall be held whenever called by a member of the Executive Committee or by any Class A director upon written demand of not less than one third of the Board. In each case, the person or persons calling the special meeting shall fix the time and place of the meeting.

**Section 4.10. Quorum and Voting.** Unless a greater proportion is required by law, a majority of the Board that includes at least one Class A director from each Participating Jurisdiction shall constitute a quorum for the transaction of business. However, if at any meeting a quorum cannot be achieved because of the absence of Class A directors from a Participating Jurisdiction, then such meeting may be adjourned to a later date (the "adjourned meeting"). The time, date and location of the adjourned meeting shall be as set forth on notice to all directors, such notice to conform to the requirements for a special meeting set forth in Section 4.14. If no Class A director from the Participating Jurisdiction unrepresented at the initial meeting attends the adjourned meeting, then no Class A director from that Participating Jurisdiction shall be necessary to constitute a quorum at the adjourned meeting. Except as otherwise provided by law or by these By-Laws, the vote of a majority of the Board, if a quorum is present at such time, shall be an act of the Board.

**Section 4.11. Budget; Certain Contracts.** The vote of at least two-thirds of the Board, if a quorum is present, with no dissenting votes shall be required to approve or substantially modify the Corporation's budget. To approve a contract to be entered into by the Corporation in an amount in excess of \$250,000, the vote of at least two-thirds of the Board shall be required.



**Location of Principal Office.** The vote of at least two-thirds of the Class A directors present at the time of the vote, if a quorum is present, shall be required to establish or to change the location of the Corporation's principal office.

**Section 4.12. Meeting by Use of Telecommunications.** Any Class A or Class B director or one or more members of any committee of the Board may participate in a meeting of the Board or committee by means of a conference telephone or similar telecommunications equipment allowing all persons participating in the meeting to hear each other at the same time. Participation by such means shall constitute presence in person at a meeting.

**Section 4.13. Notice of Meetings; Waiver.** To the extent the Board has not predetermined meeting dates, notice of the time and place of each regular or special meeting of the Board shall be sent to each director, by mail, postage prepaid, or by confirmed telefax or e-mail, addressed to him or her at the address provided to the Secretary of the Corporation, or in default thereof, at his or her residence or usual place of business, not fewer than ten days, or in the case of a special meeting, not fewer than three days, in advance of the day on which the meeting is to be held. The notice of any special meeting shall state the purpose or purposes for which the meeting is called. Notice of a meeting need not be given to any director who submits a signed waiver of notice before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to him or her.

**Section 4.14. Compensation of Directors.** Directors shall not receive any compensation for their services as directors. As authorized by the Board, a director may be reimbursed for his or her actual expenses incurred in furtherance of the Corporation's purposes.

**Section 4.15. Electronic Transmissions.** For all purposes in this Article IV, a writing includes an electronic transmission.

## ARTICLE V.

### OFFICERS, EMPLOYEES AND AGENTS

**Section 5.1. Officers: Number and Qualification.** The officers of the Corporation shall be a Chair, a Vice Chair, a Secretary, and a Treasurer and such other officers as the Board shall determine. Said officers shall be chosen from among the Class A directors. Any person may hold two offices except that (1) one person may not be both Chair and Secretary and (2) one person may not be both Chair and Vice Chair.

**Section 5.2. Compensation of Officers.** Officers shall not receive any compensation for their services as officers. As authorized by the Board, an officer may be reimbursed for his or her actual expenses incurred in furtherance of the Corporation's purposes.

**Section 5.3. Election, Vacancies and Removal.** The officers shall be elected by the vote of a majority of the Board at its annual meeting, and any vacancy may be filled at any regular or special meeting and each officer shall serve until the next annual meeting, and until their successors are duly elected and qualified. No person shall hold one office for more than three consecutive terms, but such disqualification, and any subsequent such disqualification,

shall expire after the passage of a year, and such individual may once again hold such office for three consecutive terms. Any officer elected by the Board may be removed, with or without cause, at any time, by a vote of a majority of the Board.

**Section 5.4. Chair: Powers and Duties.** The Chair shall preside at meetings of the Board, shall have general supervision of the affairs of the Corporation and shall keep the Board fully informed about the activities of the Corporation.

**Section 5.5. Vice Chair.** The Vice Chair shall, in the absence or disability of the Chair, perform the duties and exercise the powers of the Chair, and shall have such titles and powers and perform such duties as may from time to time be prescribed by the Board of Directors, the Chair, or by the Executive Committee, which duties may include powers elsewhere assigned or delegated to other officers. The Board may by resolution create such additional Vice Chairs for such purposes as it determines to be appropriate.

**Section 5.6. Secretary: Powers and Duties.** The Secretary shall act as secretary of all meetings of the Board. He or she shall keep or cause to be kept minutes of Board meetings in appropriate record books and shall be responsible for giving and serving all notices of the Corporation. He or she shall be custodian of the corporate records and of the corporate seal and affix the latter when required. All corporate records and documents shall be located in the office of the Executive Director. The Secretary shall perform all the duties customarily incident to the office of secretary, subject to the control of the Board, and shall perform such other duties as shall from time to time be assigned by the Board.

**Section 5.7. Treasurer: Powers and Duties.** The Treasurer shall keep or cause to be kept full and accurate accounts of receipts and disbursements of the Corporation, and shall deposit or cause to be deposited all moneys and other valuable effects of the Corporation in the name and to the credit of the Corporation in such depositories as the Board may designate. At the annual meeting of the Board and whenever else required by the Board, he or she shall render a statement of the Corporation's accounts. He or she shall at all reasonable times exhibit the Corporation's books and accounts to any officer or director of the Corporation and shall perform all duties incident to the office of treasurer subject to the control of the Board.

**Section 5.8. Officers: Miscellaneous Powers and Duties.** Subject always to the specific directions of the Board, the Chair, Vice Chair, Secretary or Treasurer shall have power to execute all needed receipts for monies due and payable to the Corporation from any source, including bequests, and to execute and deliver, and to affix the seal of the Corporation to, any and all other contracts, agreements or instruments to which the Corporation shall be a party, including all releases and waivers of issuance and service of citation or other process in any Court. The Board may from time to time impose or confer upon any officer such additional duties and responsibilities as it sees fit.

**Section 5.9. Executive Director.** The Board shall appoint an Executive Director, by vote of at least two-thirds of the Board if a quorum is present, to serve at the pleasure of the Board as the Chief Executive Officer of the Corporation, to manage the day-to-day operations of the Corporation and to perform such other duties as the Board may from time to time direct.

The Executive Director shall receive such reasonable compensation as the Board may from time to time determine.

**Section 5.10. Employees and Other Agents.** The Board may appoint from time to time such employees and other agents as it shall deem necessary, each of whom shall hold office at the pleasure of the Board, and shall have such authority, including that of any officer, and perform such duties and shall receive such reasonable compensation as the Board may from time to time determine. The Board may by resolution delegate these appointment powers to the Chair or other officers of the Corporation or to the Executive Director.

## ARTICLE VI.

### COMMITTEES OF THE BOARD

**Section 6.1. Committees in General.** There shall be the following standing committees of the Board: an Executive Committee, a Finance Committee, and an Audit Committee. In addition, the Board may create or eliminate such other standing committees as it determines to be appropriate, each of which shall include two or more Class A directors and may include persons who are not Class A directors, and each of which shall have authority as determined by the Board. All standing committee members shall be appointed by the Board at the annual meeting to serve until the next annual meeting and until their successors are duly elected and qualified. The Board by resolution may create such special committees, which may include or be comprised of persons who are not Class A directors as the Board determines, which shall have and may exercise such powers as shall be conferred or authorized by the resolution creating them. The Board shall have power to change the membership of any special committee, to fill vacancies and to discharge or eliminate any such committee.

**Section 6.2. Executive Committee.** The Executive Committee shall consist of at least four directors: the Chair, who shall also serve as chairperson of the Executive Committee, all Vice Chairs, the Treasurer, and the Secretary. The Board may appoint additional Class A directors to the Executive Committee. A majority of the Officers shall constitute a quorum for the transaction of business. The vote of a majority of the members of the Executive Committee present at a meeting, if a quorum is present at such time, shall be an act of the Executive Committee. The Executive Committee shall have the authority to act for the Board between meetings of the Board except as to the following matters:

- (a) the filling of vacancies on the Board or on any standing committee or the creation or elimination of any standing committee;
- (b) the amendment or repeal of the By-Laws or the adoption of new By-Laws;
- (c) the amendment or repeal of any resolution of the Board; and
- (d) the fixing of compensation, if any, of the directors for serving on the Board or any committee.



**Section 6.3. Finance Committee.** The Finance Committee shall consist of at least two Class A directors, one of whom shall be the Treasurer, who shall serve as chairperson of such Committee. The Finance Committee shall advise the Treasurer and the Board as to the investments, budget, and general fiscal policy of the Corporation.

**Section 6.4. Audit Committee.** The Audit Committee shall consist of no fewer than two and no more than six independent non-compensated Class A directors. This Committee shall oversee the quality and integrity of the Corporation's accounting, auditing and reporting practices. The specific powers and responsibilities of the Audit Committee shall be specified in an Audit Committee Charter, which shall be adopted from time to time by the Board.

**Section 6.5. Committee Meetings.** Meetings of committees may be called at any time by the respective chairperson of each committee, or by the Chair. Reports of committee meetings shall be presented to the Board at its next regular meeting and each committee shall furnish copies thereof to the Secretary to be maintained with the records of the Corporation. Unless the Board shall otherwise provide, the Standing Committees shall have the power to establish their own rules of procedure and to determine the time and place of their meetings.

## **ARTICLE VII.**

### **CHECKS, NOTES AND CONTRACTS**

The Board is authorized to select such depositories as it shall deem proper for the funds of the Corporation and shall determine who shall be authorized on behalf of the Corporation to sign bills, notes, receipts, acceptances, endorsements, checks, releases, contracts and documents.

## **ARTICLE VIII.**

### **BOOKS**

Correct books of account of the activities and transactions of the Corporation, including a minute book, which shall contain a copy of the Certificate of Incorporation, a copy of these By-Laws, minutes of all meetings of the Board and reports of the meetings of any committee thereof, shall be kept at the office of the Corporation.

## **ARTICLE IX.**

### **FISCAL YEAR**

The fiscal year of the Corporation shall be the calendar year.

## **ARTICLE X.**

### **INDEMNIFICATION AND INSURANCE**

**Section 10.1. Indemnification.** The Corporation shall, to the fullest extent now or hereafter permitted by law, indemnify any person made, or threatened to be made, a party to any

action or proceeding by reason of the fact that he or she was a director, officer, employee or agent of the Corporation, and any other person whom it shall have the power to indemnify, against judgments, fines, amounts paid in settlement and reasonable expenses, including attorneys' fees. However, the Corporation shall not indemnify a person if doing so would constitute an act giving rise to any tax or sanction under the Internal Revenue Code of 1986, as the same may be amended, or the regulations thereunder.

**Section 10.2. Insurance.** The Corporation shall have the power to purchase and maintain insurance to indemnify the Corporation for any obligation which it incurs as a result of its indemnification of directors, officers, employees or agents pursuant to Section 1 above, or to indemnify such persons in instances in which they may be indemnified pursuant to Section 1 above.

## **ARTICLE XI.**

### **AMENDMENTS**

Except as prohibited by the Certificate of Incorporation, these By-Laws may be amended by the affirmative vote of two-thirds of the Board, or by the affirmative vote of the Board if it consists of fewer than three (3) Class A directors, at any meeting of the Board at which a quorum is present, provided that notice of the proposed amendment has been included in the notice of meeting.

## **ARTICLE XII.**

### **LIMITATION**

The Corporation shall have no policy making, regulatory, or enforcement authority with respect to any existing or future program of any Participating Jurisdiction, and all such sovereign authority is reserved to each Participating Jurisdiction.

## **ARTICLE XIII.**

### **REFERENCE TO CERTIFICATE OF INCORPORATION**

Reference in these By-Laws to the Certificate of Incorporation shall include all amendments thereto or changes thereof unless specifically excepted.

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12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA

14 THE UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

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

Defendants.

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

**WCI, INC. DEFENDANTS' RESPONSE TO  
PLAINTIFF'S SEPARATE STATEMENT  
OF UNDISPUTED FACTS IN SUPPORT  
OF OPPOSITION TO PLAINTIFF'S  
MOTION FOR SUMMARY JUDGMENT,  
JOINDER IN THE STATE DEFENDANTS'  
OPPOSITION TO PLAINTIFF'S MOTION  
FOR SUMMARY JUDGMENT AND  
CROSS-MOTIONS FOR SUMMARY  
JUDGMENT**

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

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

<sup>1</sup> The WCI, Inc. Defendants are Western Climate Initiative, Inc. ("WCI, Inc."); Mary D. Nichols, in her official capacity as Vice Chair and a board member of WCI, Inc.; Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc.

Defendants Western Climate Initiative, Inc. (“WCI, Inc.”), Mary D. Nichols, in her official capacity as Vice Chair and a board member of WCI, Inc., and Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc. (collectively, “WCI, Inc. Defendants”) hereby submit the following Response to Plaintiff United States of America’s (“Plaintiff”) Separate Statement of Undisputed Facts in support of their opposition to Plaintiff’s Motion for Summary Judgment, Joinder in the State Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment and Cross-Motions for Summary Judgment, pursuant to Local Rule 260(b).

**PLAINTIFF’S UNDISPUTED FACTS AND WCI, INC. DEFENDANTS’ RESPONSE**

<b><u>PLAINTIFF’S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS’ RESPONSE</u></b>
<p>1. The United States is a party to the United Nations Framework Convention on Climate Change of 1992 (“UNFCCC”).</p> <p><b><u>Supporting Evidence:</u></b> Declaration of Rachel E. Iacangelo, Exh. 1—United Nations Framework Convention on Climate Change.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>2. The UNFCCC was ratified by the President with the advice and consent of the Senate.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 2—Senate Daily Digest Regarding Treaty Doc. 102-38: “United Nations Framework Convention on Climate Change” at D1316.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>3. The “ultimate objective [of the UNFCCC is]. . . stabilization of greenhouse gas concentrations in the atmosphere at a level that would prevent dangerous anthropogenic interference with the climate system.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 1—United Nations Framework Convention on Climate Change at 4 (Art. 2).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>4. Under the UNFCCC, “[a]ll Parties,” including the United States, are obliged to “(b) [f]ormulate, implement, publish and regularly update national and, where appropriate, regional programmes containing measures to mitigate climate change by addressing anthropogenic emissions by sources and removals by sinks of all greenhouse gases not controlled by the Montreal Protocol, and measures to facilitate adequate adaptation to climate change [and] (c) [p]romote and cooperate in the development, application and diffusion, including transfer, of technologies, practices and processes that control, reduce or prevent anthropogenic emissions of greenhouse gases not controlled by the Montreal Protocol in all relevant sectors . . . .”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 5 (Art. 4).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>5. In 2015, various Parties to the UNFCCC agreement entered into the Paris Agreement of 2015 (“Paris Accord”).</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 3—Paris Agreement of 2015 at 3.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>6. Under the Paris Accord, signatories are to announce “nationally determined contributions” of emissions associated with climate change and periodically report on progress.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 4-5 (Art. 4).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>7. On March 28, 2017, in Executive Order 13,783, President Trump announced that, “[e]ffective immediately, when monetizing the value of changes in greenhouse gas emissions resulting from regulations, including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates, agencies shall ensure, to the</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>extent permitted by law, that any such estimates are consistent with the guidance contained in OMB Circular A-4 of September 17, 2003 (Regulatory Analysis), which was issued after peer review and public comment and has been widely accepted for more than a decade as embodying the best practices for conducting regulatory cost-benefit analysis.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 4—Executive Order 13,783: Promoting Energy Independence and Economic Growth (Section 5(c)).</p>	
<p>8. On June 1, 2017, President Trump concluded that the Paris Accord relating to the emission of greenhouse gases (“GHG”) “disadvantages the United States to the exclusive benefit of other countries, leaving American workers — who I love — and taxpayers to absorb the cost in terms of lost jobs, lower wages, shuttered factories, and vastly diminished economic production.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 5—Statement by President Trump on the Paris Climate Accord on June 1, 2017 at 2.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>9. In the same statement, President Trump explained that the Paris Accord “could cost America as much as 2.7 million lost jobs by 2025, . . . punishes the United States . . . while imposing no meaningful obligations on the world’s leading polluters, . . . [allows] China . . . to increase these emissions by a staggering number of years — 13, . . . [and] makes [India’s] participation contingent on receiving billions and billions and billions of dollars in foreign aid from developed countries[.]”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 2-3.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>10. President Trump stated that his Administration would “begin negotiations to reenter either the Paris Accord or a really entirely new transaction on terms that are fair to the United States, its businesses, its workers, its people, its taxpayers. . . . to negotiate a new deal that protects our country and its taxpayers.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i></p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>11. On November 4, 2019, the United States submitted formal notification of its withdrawal from the Paris Accord.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 6—Notice of United States’ Notification of Withdrawal from the Paris Agreement of 2015.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>12. On November 4, 2019, Secretary of State Pompeo stated that “The U.S. approach incorporates the reality of the global energy mix and uses all energy sources and technologies cleanly and efficiently . . . . In international climate discussions, we will continue to offer a realistic and pragmatic model – backed by a record of real world results – showing innovation and open markets lead to greater prosperity, fewer emissions, and more secure sources of energy. We will continue to work with our global partners to enhance resilience to the impacts of climate change and prepare for and respond to natural disasters. Just as we have in the past, the United States will continue to research, innovate, and grow our economy while reducing emissions and extending a helping hand to our friends and partners around the globe.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 7—Statement by Secretary of State Michael Pompeo on the U.S. Withdrawal from the Paris Agreement.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>



<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>13. On June 1, 2017—the same day as President Trump’s announcement of the United States’ intent to withdraw from the Paris Accord—in what California and other signatory states called a direct response to the United States’ intent to withdraw from the Paris Accord, California entered into the United States Climate Alliance, committing to reducing GHG emissions in a manner consistent with the goals of the Paris Accord.</p> <p><b><u>Supporting Evidence:</u></b></p> <p>Iacangelo Decl., Exh. 8—Combined California Bilateral and Multilateral Climate Agreements at 12.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>14. Just days later, on June 6, 2017, Edmund Brown Jr., then-Governor of California, met in Beijing with China’s President Xi Jinping to discuss environmental issues and climate change.</p> <p><b><u>Supporting Evidence:</u></b></p> <p>Iacangelo Decl., Exh. 9—Xi Jinping and Jerry Brown of California Meet to Discuss Climate Change at 1.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>15. The current Governor of California, Gavin Newsom, described then-Governor Brown’s discussion with President Xi Jinping before the World Economic Forum in September 2019 with the following words: “Just a few years ago, Governor Brown, just five days after President Trump announced his intention to pull out of the Paris Accord, Governor Brown pulled out of his driveway, made his way to the airport, flew to Beijing, sat down in the presidential palace with President Xi — not as a head of state, but a head of a state, the State of California — and doubled down on the Paris Accord. That’s California’s leadership. The fifth largest economy in the world, a state that’s not just sitting back pointing fingers. We’re not bystanders, we have agency and we can shape this debate, like all of us, we can shape the future.”</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 10—Governor Gavin Newsom Delivers Opening Remarks at Climate Week NYC at 2.</p>	
<p>16. California is a party to at least seventy-two active bilateral and multilateral “agreements” with national and subnational foreign and domestic governments relating “to strengthen the global response to the threat of climate change and to promote a healthy and prosperous future for all citizens.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 8—Combined California Bilateral and Multilateral Climate Agreements at 1-15.</p>	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.
<p>17. In 1956, the Department of State testified against including Ontario and Quebec in a proposed Great Lakes Basin Compact: “As a matter of principle, the Department would oppose any interstate compact which affects foreign relations unless there is a showing of a specific local situation appropriate for handling by the local authorities. Here there is no such local situation. The matter is of national interest, and clearly involves foreign relations . . . . The proposal is for an international compact, not for an interstate compact. This is not the sort of activity which was intended to be covered by the compact provision of the Constitution. Matters of international negotiation and agreement should be under national control as the Constitution contemplates and requires.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 11—Testimony of Willard B. Cowles, Deputy Legal Adviser, Department of State at 14, 17.</p>	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.
<p>18. In his 2017 State-of-the-State address, then-Governor Brown, said “[w]e can do much on our own and we can join with others – other states and provinces and even countries, to stop the dangerous rise in climate pollution. And we will.”</p>	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.

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<p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 12—Governor Brown Delivers 2017 State of the State Address at 3.</p>	
<p>19. In 2006, with British Prime Minister Tony Blair at his side, then-Governor Arnold Schwarzenegger declared that California was a “nation-state” with its own foreign policy.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 13—Like a Nation State at 1622.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>20. In 2007, then-Governor Schwarzenegger stated that California is “the modern equivalent of the ancient city-states of Athens and Sparta. California has the ideas of Athens and the power of Sparta . . . . Not only can we lead California into the future . . . we can show the nation and the world how to get there. We can do this because we have the economic strength, the population, the technological force of a nation-state.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 14—Schwarzenegger: California is ‘Nation State’ Leading World at 1.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>21. Similarly, on July 25, 2017, during the signing ceremony for AB 398, a bill extending and modifying the California “cap-and-trade” program, then-Governor Brown stated that “[w]e are a nation-state in a globalizing world and we’re having an impact and you’re here witnessing one of the key milestones in turning around this carbonized world into a decarbonized, sustainable future.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 15—Governor Brown Signs Landmark Climate Bill to Extend California’s Cap-and-Trade Program at 1.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>22. In response, Kevin De León, the California Senate President pro Tempore, said “the world is looking to California. . . . Today’s extension of our landmark cap-and-trade program, coupled with our effective clean energy policies, will move us forward into the future and we plan to take the rest of the world with us[.].”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 2.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>23. The California “cap-and-trade” program is authorized under the 2006 California Global Warming Solutions Act (AB 32), which requires the California Air Resources Board (“CARB”) to “facilitate the development of integrated . . . regional, national, and international greenhouse gas reduction programs.”</p> <p><b><u>Supporting Evidence:</u></b> CAL. HEALTH &amp; SAFETY CODE § 38564.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>24. In the most recent AB 32 Scoping Plan, CARB stated that “[c]limate change is a global problem. GHGs are global pollutants, unlike criteria air pollutants and toxic air contaminants, which are pollutants of regional and local concern.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 16—Final Environmental Analysis for the Strategy for Achieving California’s 2030 Greenhouse Gas Target, Attachment A: Environmental and Regulatory Setting at 24.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>25. In this same document, CARB stated that “GHGs have long atmospheric lifetimes (one to several thousand years). GHGs persist in the atmosphere for long enough time periods to be dispersed around the globe. . . .”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i></p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>26. In this same document, CARB stated that “[t]he quantity of GHGs in the atmosphere that ultimately result in climate change is not precisely known, but is enormous; no single project alone would measurably contribute to an incremental change in the global average temperature, or to global, local, or micro climates.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 25.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>27. Similarly, on October 23, 2019, Governor Newsom, stated that “[c]arbon pollution knows no borders[.]”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 17—Governor Newsom Statement on Trump Administration’s Attack on California’s Landmark Cap-and-Trade Program at 1.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>28. After the passage of AB 32, beginning in February 2007, the governors of several states, including California, along with the premiers of several provinces, including Quebec, formed or joined the Western Climate Initiative, the parent of Defendant Western Climate Initiative, Inc., to establish a North American market to regulate GHGs.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 18—Design Recommendations for the WCI Regional Cap-and-Trade Program at 3 (introductory letter from “The WCI Partners”).</p>	<p>Undisputed, except as to Western Climate Initiative being the parent of Defendant Western Climate Initiative, Inc. (“WCI, Inc.”) which is a statement not supported by the cited evidence.</p> <p>Exhibit 18 at 3, a letter dated September 23, 2008, makes no mention of WCI, Inc., a private, non-profit Delaware corporation incorporated on or about October 28, 2011.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 18—Design Recommendations for the WCI Regional Cap-and-Trade Program at 3 (introductory letter from “The WCI Partners”); Tamblyn Decl. ¶ 2, Ex. A.</p>
<p>29. In 2008, Western Climate Initiative released its design recommendations, and, in 2010, an actual design for a regional program.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 19—Design for the WCI Regional Program at 2.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>30. The 2010 design promoted a “cap-and-trade” framework that would impose an aggregate cap on the emission of GHGs.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 5-6.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p> <p>Exhibit 18 at 3, a letter dated September 23, 2008, refers to the 2010 design of Western Climate Initiative, a group of governors working with others separate and apart from WCI, Inc., a private, non-profit Delaware corporation incorporated on or about October 28, 2011.</p> <p><b>Supporting Evidence:</b> Iacangelo Decl., Exh. 18—Design Recommendations for the WCI Regional Cap-and-Trade Program at 3 (introductory letter from “The WCI Partners”); Tamblyn Decl. ¶ 2, Ex. A.</p>
<p>31. The 2010 design called for linkage of markets across jurisdictions to, among other things, increase liquidity and create economies of scale.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 22, DD-44.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p> <p>Exhibit 18 at 3, a letter dated September 23, 2008, refers to the 2010 design of Western Climate Initiative, a group of governors working with others separate and apart from WCI, Inc., a private, non-profit Delaware corporation incorporated on or about October 28, 2011.</p> <p><b>Supporting Evidence:</b> Iacangelo Decl., Exh. 18—Design Recommendations for the WCI Regional Cap-and-Trade Program at 3 (introductory letter from “The WCI Partners”); Tamblyn Decl. ¶ 2, Ex. A.</p>
<p>32. The 2010 design contemplated that smaller jurisdictions, like Quebec, would be able to link to larger ones, like California, in order to stabilize the smaller states’ own systems and, in some cases, make them viable.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i></p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p> <p>Exhibit 18 at 3, a letter dated September 23, 2008, refers to the 2010 design of Western Climate Initiative, a group of governors working with others separate and apart from WCI, Inc., a private, non-profit Delaware corporation incorporated on or about October 28, 2011.</p> <p><b>Supporting Evidence:</b> Iacangelo Decl., Exh. 18—Design Recommendations for the WCI Regional Cap-and-Trade Program at 3 (introductory letter from “The WCI Partners”); Tamblyn Decl. ¶ 2, Ex. A.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>33. In October 2011, pursuant to AB 32, CARB adopted regulations to establish a cap-and-trade program based on the 2010 design that imposes an aggregate cap on the emission of GHGs in the State of California.</p> <p><b><u>Supporting Evidence:</u></b> 17 Cal. Code Regs. ("CCR") §§ 95801-96022</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>34. Through the cap-and-trade program, California sells or grants "allowances," which are regulatory compliance instruments that entitle holders thereof to emit a specified quantity of GHGs in the State of California.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> § 95820(c)</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>35. For each metric ton of CO<sub>2</sub> or CO<sub>2</sub> equivalent that a covered entity emits into the air, it must "surrender" a "compliance instrument," <i>e.g.</i>, an allowance.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i></p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>36. There are two types of compliance instruments: allowances and "offset credits."</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> § 95820.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>37. Covered entities may obtain additional allowances by buying them at periodic auctions or from other authorized parties.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> §§ 95910-95915.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>38. As of September 2019, California reported that it had received almost twelve billion dollars in proceeds from the sale of allowances since 2012. (The specific figure was \$11,796,013,586.66.).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>



<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 20—California Cap-and-Trade Program: Summary of Proceeds to California and Consigning Entities at 1.</p>	
<p>39. Covered entities can obtain offset credits by undertaking projects (such as forestry projects) designed to remove CO2 from the atmosphere.</p> <p><b><u>Supporting Evidence:</u></b> 17 CCR § 95970(a)(1)</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>40. Covered entities are permitted to “bank” instruments, although California restricts the total number an entity may hold at one time.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> § 95922; <i>see also</i> Iacangelo Decl., Exh. 21—Facts About Holding Limit for Linked Cap-and-Trade Programs at 1.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>41. Covered entities may bank compliance instruments through 2030.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 21—Facts About Holding Limit for Linked Cap-and-Trade Programs at 1.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>42. The California cap-and-trade program allows holders of allowances to buy, sell, and make other financial commitments related to allowances in a secondary market.</p> <p><b><u>Supporting Evidence:</u></b> 17 CCR §§ 95920-95923.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>43. CARB regulations provide for linkage with other cap-and-trade programs: “compliance instrument[s] issued by an external greenhouse gas emissions trading system . . . may be used to meet” the state’s regulatory requirements, provided the external system satisfies certain criteria.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<b><u>Supporting Evidence:</u></b> <i>Id.</i> § 95940.	
<p>44. CARB also contemplates links between California's program and initiatives in developing countries to protect tropical forests.</p> <p><b><u>Supporting Evidence:</u></b>  <i>Id.</i> § 95993; Iacangelo Decl., Exh. 22— California Tropical Forest Standard: Criteria for Assessing Jurisdiction-Scale Programs that Reduce Emissions from Tropical Deforestation at 3-4.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>45. In December 2011, Quebec also adopted regulations to establish its own cap-and-trade program that imposes an aggregate cap on the emission of GHGs in the Province of Quebec based on the 2010 design.</p> <p><b><u>Supporting Evidence:</u></b>  Iacangelo Decl., Exh. 23— Regulation respecting a cap-and-trade system for greenhouse gas emission allowances.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p> <p><i>See</i> WCI, Inc. Defendants' Resp. to Plf.'s SUFs 28-32.</p>
<p>46. In November 2011, between these events, Western Climate Initiative formed Defendant Western Climate Initiative, Inc. ("WCI") to facilitate linkage of the California and Quebec cap-and-trade programs.</p> <p><b><u>Supporting Evidence:</u></b>  Iacangelo Decl., Exh. 24— Western Climate Initiative Jurisdictions Establish Non-Profit Corporation to Support Greenhouse Gas Emissions Trading Programs at 1.</p>	<p>Undisputed that Western Climate Initiative, Inc. ("WCI, Inc.") was incorporated in Delaware on or about October 28, 2011. The remaining facts as stated are unsupported by the evidence cited and are also improper legal conclusions. Fed. R. Evid. 701.</p> <p>WCI, Inc. developed and administers a technical platform that CARB and Quebec use to jointly auction allowances. WCI, Inc. also developed and maintains a computer system that keeps track of allowances and other compliance instruments—recording who holds which instruments and transactions among parties. WCI, Inc. provides these services under contract and for remuneration, and CARB had begun using WCI, Inc.'s services in 2012. WCI, Inc. plays no role in the enforcement of the cap-and-trade programs of any participating jurisdictions, and, indeed, exercises no regulatory powers at all. WCI, Inc. has no policymaking, regulatory, or enforcement</p>

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	<p>authority, and plays no role in deciding whether California or Quebec will accept each other's compliance instruments. Similarly, WCI, Inc.'s officers and board members in their capacities as such do not exercise any policymaking, regulatory, or enforcement authority and do not participate in deciding whether participating jurisdictions will accept each other's compliance instruments or link their cap-and-trade programs.</p> <p><b>Supporting Evidence:</b> Tamblyn Decl. ¶¶ 2, 5-6, Ex. A.</p>
<p>47. On March 16, 2017, Robert W. Byrne, Senior Assistant Attorney General of California, sent a letter to Peter Krause, Legal Affairs Secretary, stating that "[a]ny jurisdiction that wishes to link with the California Program . . . will need to be a member of WCI, Inc. and will use the California-developed infrastructure for the combined Programs."</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 25—Letter from Robert W. Byrne, Senior Assistant Attorney General, to Peter Krause, Legal Affairs Secretary at 9.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p> <p>WCI, Inc. developed and administers a technical platform that CARB and Quebec use to jointly auction allowances. WCI, Inc. also developed and maintains a computer system that keeps track of allowances and other compliance instruments—recording who holds which instruments and transactions among parties. WCI, Inc. provides these services under contract and for remuneration, and CARB had begun using WCI, Inc.'s services in 2012. WCI, Inc. plays no role in the enforcement of the cap-and-trade programs of any participating jurisdictions, and, indeed, exercises no regulatory powers at all. WCI, Inc. has no policymaking, regulatory, or enforcement authority, and plays no role in deciding whether California or Quebec will accept each other's compliance instruments. Similarly, WCI, Inc.'s officers and board members in their capacities as such do not exercise any policymaking, regulatory, or enforcement authority and do not participate in deciding whether participating jurisdictions will accept each other's compliance instruments or link their cap-and-trade programs.</p> <p>WCI, Inc. is not a party to the Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions between California and Quebec, including the Agreement as renegotiated in 2017. That</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
	<p>Agreement also allows the parties to agree to use a vendor other than WCI, Inc.</p> <p><b>Supporting Evidence:</b> Tamblyn Decl. ¶¶ 5-7; <i>see also</i> Plf.'s Ex. 26 at 9, Art. 12.</p>
<p>48. In September 2013, California and Quebec signed an "Agreement between the Gouvernement du Québec and the California Air Resources Board concerning the harmonization of cap-and-trade programs for reducing greenhouse gas emissions," as renegotiated in 2017 and renamed an "Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions" (the "Agreement").</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 26—Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions at 2-3.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>49. The Agreement's purpose is to "harmonize" and "integrate" the California and Quebec cap-and-trade programs in order to reduce GHGs in the "fight against climate change."</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 1 (Art. 1).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>50. The word "harmonize," or one of its cognates, appears thirty-seven times in the Agreement.</p> <p><b><u>Supporting Evidence:</u></b> <i>See id.</i> at 2-13.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>51. The Agreement requires the parties to evaluate their programs on a continuous basis to "promote continued harmonization and integration."</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 4 (Art. 4).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>52. The Agreement allows a party to "consider making changes to its . . . program," but</p>	<p>Undisputed for purposes of this Motion, but</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>provides that “any proposed changes or additions shall be discussed between the Parties.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 5 (Art. 4).</p>	<p>not material as to WCI, Inc. Defendants.</p>
<p>53. The Agreement provides that, where differences arise between “elements” of the parties’ programs, “the Parties shall determine if such elements need to be harmonized for the proper functioning and integration of the programs.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 4 (Art. 4).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>54. The Agreement states that the parties agree to consult with each other before making changes to the “offset components” of their programs.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 5 (Art. 5).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>55. The Agreement establishes a mechanism for the resolution of differences: “[i]f approaches for resolving differences . . . cannot be developed in a timely manner through staff workgroups, the Parties shall constructively engage through the Consultation Committee, and if needed with additional officials of the Parties, or their designees.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 9, 12 (Arts. 13, 20).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>56. On technical issues, the parties agree to rely on Defendant Western Climate Initiative because it “was created to perform such services.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 9 (Art. 12).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p> <p>WCI, Inc. developed and administers a technical platform that CARB and Quebec use to jointly auction allowances. WCI, Inc. also developed and maintains a computer system that keeps track of allowances and other compliance instruments—recording who holds which instruments and transactions among parties. WCI, Inc.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
	<p>provides these services under contract and for remuneration, and CARB had begun using WCI, Inc.'s services in 2012. WCI, Inc. plays no role in the enforcement of the cap-and-trade programs of any participating jurisdictions, and, indeed, exercises no regulatory powers at all. WCI, Inc. has no policymaking, regulatory, or enforcement authority, and plays no role in deciding whether California or Quebec will accept each other's compliance instruments. Similarly, WCI, Inc.'s officers and board members in their capacities as such do not exercise any policymaking, regulatory, or enforcement authority and do not participate in deciding whether participating jurisdictions will accept each other's compliance instruments or link their cap-and-trade programs.</p> <p>WCI, Inc. is not a party to the Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions between California and Quebec, including the Agreement as renegotiated in 2017. That Agreement also allows the parties to agree to use a vendor other than WCI, Inc.</p> <p><b>Supporting Evidence:</b> Tamblyn Decl. ¶¶ 5-7; <i>see also</i> Plf.'s Ex. 26 at 9, Art. 12.</p>
<p>57. The Agreement provides that "auctioning of compliance instruments by the Parties' respective programs shall occur jointly."</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 8 (Art. 9).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>58. As of August 20, 2019, twenty such auctions had taken place under the Agreement and its predecessor.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 27—Auction Notices and Reports at 1-6.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>59. In joint auctions, allowances are sold in lots of 1000, divided to reflect California's and Quebec's relative contribution.</p> <p><b><u>Supporting Evidence:</u></b></p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>



<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
Iacangelo Decl., Exh. 28—Detailed Auction Requirements and Instructions at pt. IX, p. 43 (see Table of Contents).	
<p>60. In its guidance titled “Detailed Auction Requirements and Instructions,” CARB states that, if a joint auction “included 60 percent California 2019 vintage allowances and 40 percent Québec 2019 vintage allowances, each bid lot . . . would include 600 California 2019 vintage allowances and 400 Québec 2019 vintage allowances.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i></p>	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.
<p>61. Allowance buyers do not know the exact mix of the allowances that they purchase because “serial numbers are not available to account holders.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 29—Chapter 5: How Do I Buy, Sell, and Trade Compliance Instruments? at 28.</p>	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.
<p>62. Trades between allowance holders are facilitated through the Compliance Instrument Tracking System Service, which is operated by CARB and monitors accounts and compliance.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 30—Welcome to WCI CITSS at 1.</p>	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.
<p>63. Purchases in the joint auction are currently settled through Deutsche Bank.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 31—California Cap-and-Trade Program, Cap-and-Trade Auctions and Reserve Sales Financial Services Administration at 1.</p>	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.
64. Under the Agreement, covered entities in California are authorized to trade compliance instruments with covered entities in Quebec, and vice-versa, “as	Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.



<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>provided for under [the parties'] respective cap-and-trade program regulations.”</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 26—Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions at 7 (Art. 7).</p>	
<p>65. Under the Agreement, California agrees to accept compliance instruments issued by Quebec to satisfy its regulatory requirements, and Quebec agrees to reciprocate.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 6 (Art. 6).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>66. The word “shall” appears over fifty times in the Agreement; the phrase “the parties shall” appears twenty times in the Agreement.</p> <p><b><u>Supporting Evidence:</u></b> <i>See id.</i> at 2-13.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>67. Termination of the Agreement requires unanimous consent of the parties and is not legally effective until “12 months after the last of the Parties has provided is consent to the other Parties.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 13 (Art. 22).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>68. In the event of either withdrawal or termination, a party’s “obligations under article regarding confidentiality of information . . . continue to remain in effect.”</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 11 (Art. 17).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>69. The Agreement provides that other jurisdictions that wish to reduce GHG emissions “may be added as a Party to the Agreement if the candidate Party has adopted a program that is harmonized and can be integrated with each of the Parties’ programs,” and all parties agree to the</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

<b><u>PLAINTIFF'S UNDISPUTED FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>WCI, INC. DEFENDANTS' RESPONSE</u></b>
<p>accession to the Agreement.</p> <p><b><u>Supporting Evidence:</u></b> <i>Id.</i> at 11 (Art. 19).</p>	
<p>70. Ontario was briefly a party to the Agreement but withdrew in July 2018.</p> <p><b><u>Supporting Evidence:</u></b> Iacangelo Decl., Exh. 32—Linkage California Cap-and-Trade Program: Facts About the Linked Cap-and-Trade Programs at 1-2; Iacangelo Decl., Exh. 33—“Linkage” at 1; Iacangelo Decl., Exh. 34—Archived – Cap and trade.</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>
<p>71. Notwithstanding Ontario's departure from the Agreement, California determined that Ontario allowances “held in California covered entity, opt-in covered entity, and general market participant accounts . . . remain valid for compliance and trading purposes.”</p> <p><b><u>Supporting Evidence:</u></b> 17 CCR § 95943(a)(2).</p>	<p>Undisputed for purposes of this Motion, but not material as to WCI, Inc. Defendants.</p>

DATED: February 10, 2020

DELFINO MADDEN O'MALLEY COYLE &  
KOEHLER LLP

By: /s/ Monica Hans Folsom

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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE 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 her  
official capacity as Chair of the California  
Air Resources Board and as Vice Chair and  
a board member of the Western Climate  
Initiative, Inc.; WESTERN CLIMATE  
INITIATIVE, INC.; JARED  
BLUMENFELD, in his official capacity as  
Secretary for Environmental Protection and  
as a board member of the Western Climate  
Initiative, Inc.; KIP LIPPER, in his official  
capacity as a board member of the Western  
Climate Initiative, Inc.; and RICHARD  
BLOOM, in his official capacity as a board  
member of the Western Climate Initiative,  
Inc.,

Defendants.

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

**WCI, INC. DEFENDANTS' SEPARATE  
STATEMENT OF MATERIAL FACTS IN  
SUPPORT OF OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT, JOINDER IN THE STATE  
DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR SUMMARY  
JUDGMENT AND CROSS-MOTIONS FOR  
SUMMARY JUDGMENT**

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

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

<sup>1</sup> The WCI, Inc. Defendants are Western Climate Initiative, Inc. ("WCI, Inc."); Mary D. Nichols, in her official capacity as Vice Chair and a board member of WCI, Inc.; Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc.

Defendants Western Climate Initiative, Inc. (“WCI, Inc.”), Mary D. Nichols, in her official capacity as Vice Chair and a board member of WCI, Inc., and Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc. (collectively, “WCI, Inc. Defendants”) hereby submit the following Separate Statement of Disputed Material Facts in support of their Opposition to Plaintiff United States of America’s (“Plaintiff”) Motion for Summary Judgment, Joinder in the State Defendants’ Opposition to Plaintiff’s Motion for Summary Judgment and Cross-Motions for Summary Judgment pursuant to Local Rule 260(b).

**WCI INC. DEFENDANTS’ STATEMENT OF DISPUTED AND/OR MATERIAL FACTS**

<b><u>WCI, INC. DEFENDANTS’ DISPUTED AND/OR MATERIAL FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>PLAINTIFF’S RESPONSE AND SUPPORTING EVIDENCE</u></b>
<p>1. WCI, Inc. is a private, non-profit corporation organized under the laws of Delaware to provide administrative support and technical services to jurisdictions with cap-and-trade programs. It was incorporated on or about October 28, 2011.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 2, Ex. A.</p>	
<p>2. WCI, Inc. most recently amended its By-Laws on October 11, 2018.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 3, Ex. B.</p>	
<p>3. WCI, Inc.’s Board of Directors (“Board”) is made up of two Class A members and up to two Class B members from each of its three participating jurisdictions – the State of California and the provinces of Quebec and Nova Scotia.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶¶ 3-4, Ex. B at 5-6.</p>	

<b><u>WCI, INC. DEFENDANTS' DISPUTED AND/OR MATERIAL FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>PLAINTIFF'S RESPONSE AND SUPPORTING EVIDENCE</u></b>
<p>4. The Class A directors are voting member of the Board and possess all the authority granted to directors of non-profit corporations under applicable law.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 3, Ex. B at 5.</p>	
<p>5. The Class B directors are non-voting members of the Board and have no power to act on behalf of WCI, Inc. or the Board.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 3, Ex. B at 5.</p>	
<p>6. The individual defendants named in this lawsuit in their capacities as an officer and/or board member of WCI, Inc. are from California. Defendant Mary Nichols is both an officer (Vice Chair) and Class A director. Defendant Jared Blumenfeld is also a Class A director. Defendants Richard Bloom and Kip Lipper are Class B directors.</p> <p><b><u>Supporting Evidence:</u></b> ECF No. 7 at 1, 3-4; Tamblyn Decl. ¶¶ 3-4, Ex. B at 5-6, 9.</p>	
<p>7. WCI, Inc. developed and administers a technical platform that CARB and Quebec use to jointly auction allowances.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 5.</p>	

<b><u>WCI, INC. DEFENDANTS' DISPUTED AND/OR MATERIAL FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>PLAINTIFF'S RESPONSE AND SUPPORTING EVIDENCE</u></b>
<p>8. WCI, Inc. also developed and maintains a computer system that keeps track of allowances and other compliance instruments—recording who holds which instruments and transactions among parties.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 5.</p>	
<p>9. WCI, Inc. provides these services under contract and for remuneration.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 5.</p>	
<p>10. CARB began using WCI, Inc.'s services in 2012.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 5.</p>	
<p>11. WCI, Inc. plays no role in the enforcement of the cap-and-trade programs of any participating jurisdictions, and, indeed, exercises no regulatory powers at all. WCI, Inc. has no policymaking, regulatory, or enforcement authority, and plays no role in deciding whether California or Quebec will accept each other's compliance instruments.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 6.</p>	
<p>12. WCI, Inc.'s officers and board members in their capacities as such do not exercise any policymaking, regulatory, or enforcement authority and do not participate in deciding whether participating jurisdictions will</p>	



<b><u>WCI, INC. DEFENDANTS' DISPUTED AND/OR MATERIAL FACTS AND SUPPORTING EVIDENCE</u></b>	<b><u>PLAINTIFF'S RESPONSE AND SUPPORTING EVIDENCE</u></b>
<p>accept each other's compliance instruments or link their cap-and-trade programs.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 6.</p>	
<p>13. WCI, Inc. is not a party to the Agreement on the Harmonization and Integration of Cap-and-Trade Programs for Reducing Greenhouse Gas Emissions between California and Quebec ("Agreement"), including the Agreement as renegotiated in 2017.</p> <p><b><u>Supporting Evidence:</u></b> Tamblyn Decl. ¶ 6.</p>	
<p>14. Ms. Nichols signed the Agreement in her official capacity as Chair of CARB: directly underneath her signature, the Agreement describes her as "Chair of the California Air Resources Board" and the signature block states that she is signing "FOR THE CALIFORNIA AIR RESOURCES BOARD."</p> <p><b><u>Supporting Evidence:</u></b> ECF No. 7-2, at 15.</p>	

DATED: February 10, 2020

DELFINO MADDEN O'MALLEY COYLE &  
KOEHLER LLP

By: /s/ Monica Hans Folsom

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12 UNITED STATES DISTRICT COURT  
13 EASTERN DISTRICT OF CALIFORNIA

14 THE UNITED STATES OF AMERICA,  
15 Plaintiff,  
16 v.

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

Defendants.

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

**[PROPOSED] ORDER GRANTING THE  
WCI, INC. DEFENDANTS' CROSS-  
MOTION FOR SUMMARY JUDGMENT**

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

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

<sup>1</sup> The WCI, Inc. Defendants are Western Climate Initiative, Inc. ("WCI, Inc."); Mary D. Nichols, in her official capacity as Vice Chair and a board member of WCI, Inc.; Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as board members of WCI, Inc.

1 The Cross-Motion for Summary Judgment filed by Defendants Western Climate Initiative,  
2 Inc. (“WCI, Inc.”), Mary D. Nichols, in her official capacity as Vice Chair and a board member of  
3 WCI, Inc., and Jared Blumenfeld, Kip Lipper, and Richard Bloom, in their official capacities as  
4 board members of WCI, Inc. (collectively, “WCI, Inc. Defendants”) came for a regularly-scheduled  
5 hearing on March 9, 2020 at 1:30 p.m. in Department 5 of the United States District Court, Eastern  
6 District of California.

7 After full consideration of all the papers, evidence and arguments of counsel, and being  
8 fully advised, the Court has found that WCI, Inc. Defendants have shown by admissible evidence  
9 and reasonable inferences that WCI, Inc. Defendants are entitled to judgment as a matter of law as  
10 to Plaintiff’s first and second claims for violations of the Treaty Clause and the Compact Clause.

11 Accordingly, IT IS HEREBY ADJUDGED AND DECREED that the WCI, Inc.  
12 Defendants’ Cross-Motion for Summary Judgment is GRANTED.

13 IT IS SO ORDERED.

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16 DATED: \_\_\_\_\_, 2020

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18 JUDGE OF THE SUPERIOR COURT  
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