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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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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.

No. 2:19-cv-02142 WBS EFB

ORDER RE: MOTION TO DISMISS

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2 Plaintiff United States of America ("United States")  
3 brings this action against the State of California and other  
4 related individuals and entities alleging California's cap-and-  
5 trade program violates, inter alia, the Treaty Clause and the  
6 Compact Clause of the United States Constitution. (See First Am.  
7 Compl. ("FAC") (Docket No. 7).)

8 Specifically, the United States seeks a declaration  
9 that the Agreement between the Government of California, the  
10 California Air Resources Board, and the Governments of Quebec and  
11 Ontario, Canada relating to cap-and-trade programs for reducing  
12 greenhouse gas emissions ("the Agreement") is unconstitutional.  
13 The United States also seeks a declaration that Agreement 11-415,  
14 between the California Air Resources Board and Western Climate  
15 Initiative, Inc. ("WCI, Inc.") providing for administrative and  
16 technical support to the programs, is unconstitutional, and asks  
17 the court to permanently enjoin all defendants from operating or  
18 implementing both agreements and the supporting California law as  
19 applied.

20 Presently before the court is a motion to dismiss for  
21 lack of jurisdiction and failure to state a claim, brought on  
22 behalf of WCI, Inc., WCI, Inc. board members Mary Nichols, Jared  
23 Blumenfeld, Kip Lipper, and Richard Bloom in their capacities as  
24 board members, and Jared Blumenfeld in his capacity as Secretary  
25 of California's Environmental Protection Agency ("CalEPA").  
26 (Docket No. 25.) None of the other defendants contest  
27 jurisdiction or the sufficiency of the allegations of the  
28 complaint as against them.

1           The basis of moving defendants' motion to dismiss for  
2 lack of subject matter jurisdiction under Federal Rule of Civil  
3 Procedure 12(b)(1) is that the United States lacks Article III  
4 standing to bring this action against them because the complaint  
5 does not show any causal relationship between the injury which  
6 plaintiff claims it will suffer and any conduct of the moving  
7 defendants. Because the same issue of causation forms the basis  
8 for moving defendants' motion to dismiss for failure to state a  
9 claim under Federal Rule of Civil Procedure 12(b)(6), the court  
10 will address both the Rule 12(b)(1) and Rule 12(b)(6) motions  
11 together with regard to each of the moving defendants.

12           1.    WCI, Inc.

13           In causes of action one through four of the FAC, the  
14 United States alleges California's cap-and-trade program violates  
15 the Treaty and Compact Clauses of the United States Constitution,  
16 the Foreign Affairs Doctrine, and the Foreign Commerce Clause of  
17 the Constitution. (FAC ¶¶ 156-187.) While WCI, Inc. was not a  
18 signatory to the Agreement, it was a signatory to Agreement 11-  
19 415, which acknowledged that WCI, Inc. was established "to  
20 provide coordinated administrative and technical support to  
21 linked emissions trading programs implemented by the  
22 [participating] jurisdictions." (FAC ¶ 142.)

23           The FAC goes on to allege that in Agreement 11-415 the  
24 California Air Resources Board and WCI, Inc. acknowledged that  
25 WCI, Inc. "enables cap-and-trade programs to be administered at a  
26 lower cost than would be possible with independent administration  
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1 by each of the WCI Partner jurisdictions.” (Id., ¶ 146.)<sup>1</sup>

2 The foregoing allegations are sufficient at the  
3 pleading stage to present a plausible theory that WCI, Inc.’s  
4 conduct in the administration and implementation of the Agreement  
5 will have a role in causing or contributing to the injury which  
6 the United States seeks to enjoin in this action and that in  
7 order for complete relief to be afforded to the United States  
8 WCI, Inc. must be subject to any orders for injunctive relief  
9 that may be issue in this case against the other defendants.  
10 Accordingly, the court will deny WCI, Inc.’s motion to dismiss.

11 2. WCI, Inc. Board Members

12 California statutorily provides for two voting members  
13 to WCI, Inc.’s board of directors. See Cal. Gov. Code §  
14 12894(b)(1)(C)-(D). They are “[t]he Chairperson of the State Air  
15 Resources Board,” defendant Mary Nichols, and “[t]he Secretary  
16 for Environmental Protection,” defendant Jared Blumenfeld.<sup>2</sup>  
17 Additionally, the law requires an appointee from each chamber of  
18 California’s legislature to serve on WCI, Inc.’s board as a non-  
19 voting member. See Cal. Health & Safety Code § 12894(b)(1)(A)-  
20 (B). Kip Lipper was appointed to WCI, Inc.’s board by the

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22 <sup>1</sup> The Complaint appears to confuse WCI, which is the  
23 Initiative itself, and WCI, Inc., which is the non-profit  
24 corporation named as a defendant in this action. The court has  
25 reviewed the text of Agreement 11-415 and confirmed that the  
26 references in the Complaint to “WCI” in Agreement 11-415 are in  
27 fact references to WCI, Inc.

28 <sup>2</sup> Both Nichols and Blumenfeld are also sued in their  
official capacities as Chair of the Air Resources Board and  
Secretary of CalEPA. (See FAC ¶¶ 13, 16.) Nichols does not move  
to dismiss the claim against her as Chair of the Air Resources  
Board. Blumenfeld’s motion to dismiss the claims against him as  
the Secretary of CalEPA is discussed below.

1 California Senate Rules Committee, and Richard Bloom was  
2 appointed to the board by the Speaker of the California Assembly.  
3 (FAC ¶¶ 17-18.) All are sued in their official capacities as  
4 board members of WCI, Inc. (Id. ¶¶ 13, 16-18.)

5 Defendants Nichols and Blumenfeld are statutorily  
6 obligated to serve on WCI, Inc.'s board as an extension of their  
7 official duties as members of California's government. Cal. Gov.  
8 Code § 12894(b)(1)(C)-(D). Suits for prospective injunctive  
9 relief are properly brought against individual state agents  
10 operating within their official capacities. See Ex parte Young,  
11 209 U.S. 123, 155-56 (1908). Accordingly, the movants' motion to  
12 dismiss will be denied as to Nichols and Blumenfeld in their  
13 capacity as WCI, Inc. board members.

14 Lipper and Bloom, however, are non-voting members, and  
15 as such cannot act on behalf of WCI, Inc. or its board. It is  
16 not alleged that Lipper and Bloom are in "active concert or  
17 participation" with the other defendants as non-voting members of  
18 WCI, Inc.'s board. Indeed, at the hearing, plaintiff's counsel  
19 struggled to describe what an injunction against Lipper and Bloom  
20 would actually provide, let alone achieve. (Docket No. 77.)  
21 While Nichols and Blumenfeld could influence WCI, Inc. through  
22 their votes, neither Lipper nor Bloom are empowered to do  
23 anything other than attend meetings and voice their opinions at  
24 them. Accordingly, the United States has failed to present a  
25 plausible claim for injunctive relief against Lipper and Bloom,  
26 and the court will grant movants' motion to dismiss as to them.

27 3. Secretary for Environmental Protection Blumenfeld

28 Finally, Jared Blumenfeld, in his official capacity as

1 the Secretary of the CalEPA, argues the adoption and  
2 implementation of California's cap-and-trade program was  
3 expressly delegated to the Air Resources Board. See Cal. Health  
4 & Safety Code § 38560; see also Cal. Health & Safety Code §  
5 38562(c)(2). But CalEPA is the parent agency of the Air  
6 Resources Board. See Cal. Gov. Code § 12812. Blumenfeld is  
7 "directly responsible to the Governor for, the operations of each  
8 department, office, and unit within the agency." Cal. Gov. Code  
9 § 12850. While the Air Resources Board may retain a certain  
10 degree of independence, Secretary Blumenfeld is statutorily  
11 charged with "coordinat[ing] greenhouse gas emission reductions  
12 and climate-change activities in state government." Cal. Gov.  
13 Code § 12812.6. Indeed, he "hold[s] the head of each department  
14 [including the Air Resources Board] responsible for management  
15 control over the administrative, fiscal, and program performance  
16 of his or her department, office, or other unit." Cal. Gov. Code  
17 § 12800(b).

18           Again, suits for prospective injunctive relief are  
19 properly brought against individual state agents. See Ex parte  
20 Young, 209 U.S. at 155-56. The United States has plausibly  
21 alleged its claimed injury -- the usurpation of federal authority  
22 to conduct foreign affairs -- is directly attributable to  
23 agreements the Air Resources Board signed on behalf of  
24 California. (See FAC ¶ 57, 92-96, 128-133.) Secretary  
25 Blumenfeld's supervisory authority makes him a proper party in  
26 this suit. Accordingly, the court will deny his motion to  
27 dismiss in his official capacity as Secretary of CalEPA.

28           IT IS THEREFORE ORDERED that the motion to dismiss for

1 lack of subject matter jurisdiction and failure to state a claim  
2 (Docket No. 25) be, and the same thereby is, GRANTED with respect  
3 to defendants Kip Lipper and Richard Bloom, and DENIED with  
4 respect to all other parties.

5 Dated: February 26, 2020



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6 WILLIAM B. SHUBB  
7 UNITED STATES DISTRICT JUDGE  
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