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10 IN THE UNITED STATES DISTRICT COURT  
 11 FOR THE EASTERN DISTRICT OF CALIFORNIA

13 THE UNITED STATES OF AMERICA,  
 14 Plaintiff,  
 15 v.  
 16 THE STATE OF CALIFORNIA; GAVIN C.  
 NEWSOM, in his official capacity as  
 17 Governor of the State of California; THE  
 CALIFORNIA AIR RESOURCES BOARD;  
 18 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  
 19 Western Climate Initiative, Inc.; WESTERN  
 CLIMATE INITIATIVE, INC.; JARED  
 20 BLUMENFELD, in his official capacity as  
 Secretary for Environmental Protection and as  
 21 a board member of the Western Climate  
 Initiative, Inc.,  
 22 Defendants.

2:19-cv-02142-WBS-EFB

**DEFENDANTS' RESPONSE IN  
 SUPPORT OF PLAINTIFF'S  
 WITHDRAWAL OF FOURTH CAUSE  
 OF ACTION**

Date: June 29, 2020  
 Time: 1:30 p.m.  
 Courtroom: 5  
 Judge: Hon. William B. Shubb  
 Trial Date: Not Set  
 Action Filed: 10/23/2019

26 \_\_\_\_\_  
 27 <sup>1</sup> The State Defendants are State of California; Gavin C. Newsom, in his official capacity  
 28 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.

**RESPONSE**

1  
2 Plaintiff seeks dismissal of its Fourth Cause of Action, arising under the dormant Foreign  
3 Commerce Clause. See ECF No. 102, p. ii, ln. 9-15. Pursuant to Eastern District of California  
4 Local Rule 230(c), all Defendants state that they support the Court allowing Plaintiff to abandon  
5 this claim.

6 However, Plaintiff’s request to abandon just one of its two remaining causes of action states  
7 it is pursuant to Federal Rule of Civil Procedure 41(a)(2).<sup>2</sup> Rule 41(a) “governs dismissals of  
8 *entire actions*, not of individual claims.” *Hells Canyon Pres. Council v. U.S. Forest Serv.*, 403  
9 F.3d 683, 687 (9th Cir. 2005). In contrast, “withdrawals of individual claims against a given  
10 defendant are governed by [Rule] 15, which addresses amendments to pleadings.” *Id.* (citing  
11 *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389 (9th Cir.1988)).

12 Defendants submit that the Court should construe Plaintiff’s Motion brought under Rule  
13 41(a)(2) as a motion brought under Rule 15, and grant Plaintiff leave to amend its Amended  
14 Complaint to strike the Fourth Cause of Action (Amended Complaint (ECF No. 7), ¶¶179-187).  
15 Leave to amend is routinely granted, particularly when unopposed. See *Foman v. Davis*, 371 U.S.  
16 178, 182 (1962). And when a motion is brought under the incorrect Rule of Civil Procedure, a  
17 district court has the power to construe the motion as if it were brought under the correct Rule.  
18 See *Metcalf v. Countrywide Fin. Corp.*, No. 09-cv-2707-EDL, 2009 WL 2485750, at \*1 (N.D.  
19 Cal. Aug. 11, 2009) (citing *Hells Canyon*, 403 F.3d at 687-88) (construing motion to dismiss  
20 under Rule 41(a)(1) as motion to amend under Rule 15(a)).

21 Defendants’ Proposed Order, filed with this Response, adopts this construction.

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28 <sup>2</sup> This Court already granted summary judgment to Defendants on Plaintiffs First and  
Second Causes of Action. ECF No. 91.

1 Dated: May 18, 2020

Respectfully submitted,

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6 /s/ Michael S. Dorsi  
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12 /s/ Monica Hans Folsom (as authorized on  
13 May 18, 2020)  
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17 /s/ Matthew D. Zinn (as authorized on May  
18 17, 2020)  
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25 /s/ Nicholas W. van Aelstyn (as authorized on  
26 May 17, 2020)  
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<sup>3</sup> The WCI, Inc. Defendants are the 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, in his official capacity as a board member of WCI, Inc.