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

12 UNITED STATES OF AMERICA,)	No. 2:19-cv-02142-WBS-EFB
)	
13 Plaintiff,)	
)	PLAINTIFF UNITED STATES OF
14 v.)	AMERICA’S OPPOSITION TO EX PARTE
)	APPLICATION FOR ORDER CONTINUING
15 THE STATE OF CALIFORNIA; GAVIN)	THE HEARING DATE FOR CROSS-
C. NEWSOM, in his official capacity as)	MOTIONS FOR SUMMARY JUDGMENT
16 Governor of the State of California; THE)	
CALIFORNIA AIR RESOURCES BOARD;)	
17 MARY D. NICHOLS, in her official)	
capacities as Chair of the California Air)	
18 Resources Board and as Vice Chair and a board)	Time: 1:30 p.m.
member of the Western Climate Initiative,)	Courtroom: 5 (14th Floor)
19 Inc.; WESTERN)	Judge: Hon. William B. Shubb
CLIMATE INITIATIVE, INC.; JARED)	
20 BLUMENFELD, in his official capacities as)	
Secretary for Environmental Protection and as a)	
21 board member of the Western Climate)	
Initiative, Inc.; KIP LIPPER, in his official)	
22 capacity as a board member of the Western)	
Climate Initiative, Inc., and RICHARD)	
23 BLOOM, in his official capacity as a board)	
member of the Western Climate Initiative, Inc.,)	
)	
24 Defendants. ¹)	
)	

25 _____
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 27 ¹ The United States recognizes that this Court, in its order of February 26, 2020, granted a
 28 motion to dismiss by Defendants Lipper and Bloom. See ECF No. 79 at 6-7. The United
 States includes them in the caption only to preserve its options on appeal.

1 The United States would be greatly prejudiced by delay in this case. This is an
2 important matter, involving both the Constitution and the foreign relations of this country.
3 It is also a matter that turns solely on legal issues, as Defendants confirm by their pending
4 cross-motions for summary judgment. The legal system was not designed to make
5 important, purely legal cases suffer through repeated—and now even predictable—*ex parte*
6 applications for enlargement of the schedule. Further, California’s proposed extension
7 conflicts with Mr. Brightbill’s long-planned family vacation in July, for which he made
8 numerous confirmed reservations and gave a monetary deposit long before California made
9 its most recent (and third) *ex parte* application for enlargement. See 2d. Brightbill Decl. at
10 ¶ 3. This point was made in the United States’ opposition to Defendants’ second *ex parte*
11 motion² and again when they requested this extension. Exh. 1 to Salamanca Decl.
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13
14 As of April 20, 2020, when the United States filed its second motion for summary
15 judgment, it had already proposed what is now the briefing schedule in this matter, under
16 which California’s reply is due on June 22 and the hearing is set for June 29. See Exh. 2 to
17 Salamanca Decl. As of the same date (April 20), California’s brief in *Union of Concerned*
18 *Scientists* was due on June 12, as per a joint stipulation that California had submitted to the
19 D.C. Circuit along with the United States. See Exh. 3 to 2d. Brightbill Decl. Thus, as of
20 April 20, there was absolutely no coincidence between the schedules in the two matters.
21 Then, over the United States’ objection, California asked for an extension to file its brief in
22 *Union of Concerned Scientists*, which resulted in its new deadline of June 26, 2020. See
23 Exhs. 1, 4, 5 to 2d. Brightbill Decl. California’s request for and receipt of more time in the
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27 ² Declaration of Jonathan D. Brightbill in Support of Plaintiff United States of America’s
28 Response to Defendants’ *Ex Parte* Application for Scheduling Order Re: Cross-Motions for
Summary Judgment (Feb. 4, 2020) (ECF 42-1).

1 matter pending in the D.C. Circuit is thus **the entire explanation** for the coincidence that
2 California now cites as support for its third application. The United States respectfully asks
3 this Court not to indulge such strategic behavior. Nothing *compelled* California to seek
4 more time there over the United States' objection. Nor must it wait until late June to write,
5 revise, and file its brief in the matter pending in the D.C. Circuit.
6

7 This is especially so when California's publicly-declared strategy is to delay *Union*
8 *of Concerned Scientists*. Mary Nichols, Chair of CARB, was quoted in the *Los Angeles*
9 *Times* stating: "Our strategy is to win, but to win in a way that does not precipitate a Supreme
10 Court taking of this case until Mr. Trump is out of office." Exh. 6 to 2d. Brightbill Decl.

11 Further proof that California is perfectly capable of working quickly when it wants
12 to lies in *California v. Wheeler*. In that case, plaintiff California informed the United States
13 on May 7 that it planned to move for a preliminary injunction. *See* Exh. 2 to 2d. Brightbill
14 Decl. at 26. That same day, it asked the United States to stipulate to an enlargement of the
15 default page limits. *Id.* On May 8, the United States agreed but expressed concerns about
16 the default briefing schedule in light of the supersized briefing, and requested forty-five
17 days to respond to the preliminary injunction motion. *Id.* at 25–26. The stipulation to the
18 page limit was filed that day, but California did not agree to the forty-five day proposal or
19 any other extension that would result in the court hearing the matter after June 22. *See* Exh.
20 7 to 2d. Brightbill Decl.; Exh. 2 to 2d. Brightbill Decl. at 18–22. After a couple of
21 exchanges, California requested expedited hearing from the court so that the argument
22 would be held on June 18. *See* Exh. 2 to 2d. Brightbill Decl. The United States opposed
23 the expedited hearing. *See* Exh. 8 to 2d. Brightbill Decl. The motion to shorten the time
24 for the hearing along with their preliminary injunction motion was filed late on Monday,
25 May 18. *See* Exh. 2 to 2d. Brightbill Decl. On May 19, before the United States could
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1 respond, the court granted the motion to have the hearing on June 18. *See* Exh. 9 to 2d.
2 Brightbill Decl.

3 In sum, California is strategically seeking to expedite cases it wants to expedite. It
4 is then pleading an inability to timely handle cases it wants to delay. Relief from deadlines
5 in another court is not good cause from a further continuance of proceedings here.
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7 Dated: May 29, 2020.

8
9 Respectfully submitted,

10 /s/ Paul E. Salamanca
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