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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN BERNARDINO, RANCHO CUCAMONGA

11 CHINO BASIN MUNICIPAL WATER  
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, ET AL.

16 Defendants.  
17

18 AND RELATED CROSS-ACTIONS  
19

CASE No. RCVRS 51010

**MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF CCG  
ONTARIO, LLC'S MOTION FOR LEAVE  
TO SUE THE CHINO BASIN  
WATERMASTER**

**Date: August 30, 2013**

**Time: 1:30 p.m.**

**Dept.: R6**

Action Filed:

Trial Date:

20 Cross-Defendant and Cross-Complainant CCG ONTARIO, LLC ("CCG")  
21 respectfully submits this memorandum of points and authorities in support of its Motion for Leave  
22 to Sue the Chino Basin Watermaster ("Motion").

23 **I.**  
24 **INTRODUCTION**

25 CCG brings the current Motion requesting the court allow CCG to sue the Chino  
26 Basin Watermaster (the "Watermaster") for negligence, negligent misrepresentation, and tort of  
27 another for its failure to prepare, monitor, and maintain accurate and complete records of the  
28 ownership of water rights by CCG and CALIFORNIA STEEL INDUSTRIES, INC. ("CSI").

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CCG ONTARIO, LLC'S MOTION FOR  
LEAVE TO SUE THE CHINO BASIN WATERMASTER

1 Because the Watermaster is an agent of the court, CCG believes that leave of the court may be  
2 required, as set forth below and in CCG's proposed Second Amended Cross-Complaint ("SACC"),  
3 to sue the Watermaster. CCG's SACC is attached as Exhibit "A" to the Declaration of John G.  
4 Michael, filed herewith (the "Michael Decl."). Good cause exists for allowing CCG to bring an  
5 action against the Watermaster based upon the negligent acts of the Watermaster.

6  
7 **II.**  
**FACTUAL BACKGROUND**

8 **A. Historical Background.**

9 **1. Creation of the Watermaster.**

10 In the 1970s, the Chino Basin water users became concerned with increasing water  
11 use, a decreasing water supply and declining water quality in the Chino Basin. By 1975, several  
12 major Chino Basin water users and the State of California initiated studies of groundwater rights  
13 allocation conflicts within the Chino Basin, and began to negotiate a solution. During  
14 negotiations, three pools of Chino Basin water users with similar interests in the allocation of the  
15 Chino Basin emerged: (i) agricultural users, including dairy farmers and the State of California  
16 (the "Agricultural Pool"), (ii) industrial users (the "Non-Agricultural Pool"), and (iii) water  
17 municipalities (the "Appropriative Pool").

18 On January 2, 1975, several Chino Basin water users filed suit in California State  
19 Superior Court for San Bernardino County (the "Court") to settle the problem of allocating water  
20 rights in the Chino Basin. On January 27, 1978, the Court entered a judgment in Case No. 51010<sup>1</sup>,  
21 *Chino Basin Municipal Water District v. City of Chino, et al.*, adjudicating water rights in the  
22 Chino Basin and establishing the Watermaster (the "Judgment"). The Watermaster is a Court  
23 created entity established pursuant to the Judgment and an extension of the court. (Watermaster  
24 Response to Special Referee's Preliminary Comments and Recommendations on Motion for  
25 Approval of Peace II Documents ("Watermaster Response"), attached as Exhibit "B" to the  
26

27 <sup>1</sup> *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino Superior Court, may be  
28 referred to Case No. 51010, RCV 51010, or RCVR5 51010, as the prefix has changed over the years of the case.

Michael Decl.) The Judgment adjudicated all groundwater rights in the Chino Basin and contains a physical solution to meet the requirements of water users having rights in or dependent upon the Chino Basin. The Judgment also appointed the Watermaster to account for and implement the management of the Chino Basin. The Watermaster's website provides:

The Watermaster consists of various entities pumping water from the Basin including cities, water districts, water companies, agricultural, commercial and other private concerns. Chino Basin Watermaster's mission is "To manage the Chino Groundwater Basin in the most beneficial manner and to equitably administer and enforce the provisions of the Chino Basin Watermaster Judgment", Case No. RCV 51010 (formerly Case No. SCV 164327).

(See Chino Basin Watermaster Website, "About Us,"

[http://www.cbwm.org/about\\_us.htm](http://www.cbwm.org/about_us.htm) )

## **2. The Water Rights At Issue.**

The specific annual safe yield water rights and year-end storage rights in question are part of the adjudicated overlying Non-Agricultural Pool. As part of the original judgment, these water rights were held by the Kaiser Steel Corporation. Kaiser Steel Corporation became Kaiser Resources, and thereafter, Kaiser Ventures, Inc. In or about 1991, Kaiser Ventures, Inc. sold portions of its property to CSI and The California Speedway Corporation, which is not a party to this litigation. Kaiser Ventures, Inc.'s remaining property holdings and water rights were sold to CCG on August 16, 2000.

Pursuant to the 1978 Judgment in the above captioned case, Case No. 51010, *Chino Basin Municipal Water District v. City of Chino, et al.*, Kaiser Steel Corporation was entitled to 3,743 acre-feet of total overlying Non-Agricultural Pool rights and 2,930.274 acre-feet of the share of safe yield. In addition to the 1978 Judgment, there have been numerous post-Judgment Orders that are easily found when accessing the files for Case No. 51010. (See Request for Judicial Notice, ¶¶ 1-4, Ex. "A", "B", "C" & "D".)

On December 22, 1995, the Superior Court of San Bernardino County issued a Notice of Order for a Stipulation and Order for Approval of Water Rights Agreement and Stay of Proceedings (Case No. 51010). (Request for Judicial Notice, ¶ 3, Ex. "C".) In the Stipulation, Kaiser Ventures, Inc. (a successor to Kaiser Steel Corporation) ("Kaiser") and CSI stipulate to

1 their "mutual rights to the beneficial use of the Joint Water Rights as defined and provided in the  
2 Water Rights Acknowledgment." (*Ibid.*) The Order further states that Kaiser and CSI have this  
3 mutual right. (*Ibid.*) The attorney for the Chino Basin Watermaster at that time, Frederic Fudacz,  
4 signed the Stipulation. (*Ibid.*) Although the Water Rights Acknowledgment referenced in this  
5 Stipulation and Order was never recorded, the Court approved the Water Rights Agreement and  
6 Water Rights Acknowledgment in its Order.

7           Filed with this Motion is a Request for Judicial Notice of the "Nineteenth Annual  
8 Report Of The Chino Basin Watermaster Fiscal Year 1995-1996" ("19<sup>th</sup> Annual Report") from the  
9 records of the Chino Basin Watermaster and the records of the above-captioned case. (Request for  
10 Judicial Notice, ¶ 1, Ex. "A".) This 19<sup>th</sup> Annual Report was filed with the Court in the above-  
11 captioned case, *Chino Basin Municipal Water District v. City of Chino, et al.*, San Bernardino  
12 Superior Court, Case No. RCVRS 51010, on September 9, 1998. The Water Rights Agreement  
13 and Water Rights Acknowledgement are attached as Appendix L-1 to the 19<sup>th</sup> Annual Report and  
14 are part of both the Watermaster's records and the Court's record. (Request for Judicial Notice, ¶  
15 1, Ex. "A", Appendix L-1.)

16           CCG also filed a Petition in Intervention to the Court in the above-captioned case.  
17 The Petition in Intervention specifically requests the Court to recognize that CCG holds "630.274  
18 acre-feet as tenants in common with California Steel Industries, Inc. ("CSI"), with CSI having the  
19 right of use, with payment to CCG Ontario, LLC, through June 30, 2004, and CCG Ontario, LLC  
20 having the right of first use thereafter." (Emphasis added.) (Request for Judicial Notice, ¶ 2, Ex.  
21 "B".) The Chino Basin Watermaster joined in this Petition in Intervention. (*Ibid.*) On July 19,  
22 2001, the Court issued an "Order Granting Final Approval of Watermaster Rules and Regulations;  
23 Approving Intervention of CCG Ontario, LLC; Continuance of Hearing Re Status Report; Filing  
24 of Motions to Amend Judgment," in which the Court approved CCG's Petition in Intervention and  
25 recognized the tenancy in common water right between CCG and CSI. (Request for Judicial  
26 Notice, ¶ 4, Ex. "D".) This Order also lists CCG's interest in the water rights as a tenancy in  
27 common interest with CSI. (Request for Judicial Notice, ¶ 4, Ex. "D", 3:7-14.)

1           **B.     The Watermaster's and CSI's Representations of CCG's Ownership In**  
2           **630.274 Acre-Feet of Safe-yield.**

3           At some point between 2000 and 2007, the Watermaster began referencing the  
4 water rights transferred to CCG by Kaiser Ventures, Inc. as the right to "safe yield of 630.274  
5 acre-feet" without mention of the tenancy in common interest that California Steel Industries, Inc.  
6 ("CSI") held in such safe yield. CSI was aware of the Watermaster's representation that CCG had  
7 the right to 630.274 acre-feet of safe-yield because it is a holder of rights in the Non-agricultural  
8 Pool. CSI received notifications of all interventions and intended transfers of water rights in the  
9 Non-agricultural pool.

10           In or about March, 2007, the Watermaster sent notification to all of its  
11 "Watermaster interested parties"<sup>2</sup> that "CCG Ontario, LLC ("Transferor") hereby applies to  
12 permanently transfer to Aqua Capital Management LP ("Transferee") the quantity of 630.27 acre-  
13 feet of Corresponding Safe Yield, . . ." (See Correspondence from Watermaster attached as  
14 Exhibit "C" to the Michael Decl.) Additionally, in or about February 2007, CCG asked the  
15 Watermaster numerous questions regarding CCG's rights and interests in the Non-agricultural  
16 pool. The Watermaster responded that, "CCG Ontario's right to Safe Yield is 630.274 acre-feet  
17 per year." (See Watermaster's Notice of Meeting Packet, March 2007, at p. 89 attached as Exhibit  
18 "D" to the Michael Decl.) Moreover, each year in its annual reports the Watermaster erroneously  
19 stated that CCG had 630.274 acre-feet of safe yield. Based upon this information presented by the  
20 Watermaster, CCG sold its interest in 630.274 acre-feet of safe yield to Aqua Capital Management  
21 LP ("Aqua") in December 2008.

22           **C.     Procedural History of Aqua v. CSI, et al.**

23           The dispute into which CCG is moving to have the Watermaster included as a  
24 party, is over the nature and extent of water rights sold by CCG to Aqua in December 2008. On  
25 October 7, 2011, Aqua filed a Complaint against CSI to quiet title to the water rights in San  
26

27           <sup>2</sup> Based upon information received from the Watermaster, "Watermaster interested parties" are those holders  
28 of pool allocation receiving notices of meeting information, including interventions and transfers.

Bernardino County Superior Court, Case Number CIVRS 1108911 ("Aqua's Case") alleging it was unaware of CSI's tenancy in common interest in the 630.274 acre-feet of safe yield. On February 2, 2012, CSI filed a Cross-Complaint against Aqua and CCG. CSI alleges slander of title and fraud and concealment, through the tort of another doctrine, against CCG. Aqua filed a First Amended Cross-Complaint against CCG almost ten months later, at the end of November 2012 ("Aqua's FAC"). Despite the facts that CSI's tenancy in common interest is a matter of public record in both the real property records of San Bernardino County and the Court's own records, Aqua claims it had no knowledge or notice of CSI's tenancy in common interest in the water rights, and has alleged fraud and concealment and negligent misrepresentation against CCG during the sale of the water rights. On January 15, 2013, CCG filed a Cross-Complaint against Aqua for fraud, negligent misrepresentation, breach of contract, and indemnity. On February 6, 2013, CCG filed a First Amended Cross-Complaint. Several motions, including a Motion for Summary Judgment against Aqua, a Motion for Summary Adjudication against CSI, and motions regarding the inadvertent production of privileged documents, are currently pending in Aqua's Case.

Based upon information revealed during the course of the discovery in Aqua's Case, specifically the Watermaster's failure to maintain accurate records and misrepresentation regarding quantity of CCG's water rights and CSI's negligent failure to correct the records or object to the sale from CCG to Aqua, CCG has brought a motion in Aqua's Case for leave to amend its Second Amended Cross-Complaint to bring claims of negligence, negligent misrepresentation, and indemnity against CSI and the Watermaster. That motion is set to be heard on September 17, 2013.

### III. LAW AND ARGUMENT

**A. The Watermaster Is an Agent Of The Court.**

The court has the power to appoint entities or individuals to perform specific duties. Examples of this include, receivers and guardian ad litem. (*McCarthy v. Poulse* (1985) 173 Cal.App.3d 1212, 1219; Code Civ. Proc. § 373.) The Watermaster is also an example of a court appointed entity. (See the Judgment; Watermaster's Response, Exhibit "B" to the Michael

Decl.) The Watermaster was created to oversee the Chino Basin adjudication and work as an extension of the court to ensure the Judgment is enforced. (*Ibid.*) The Watermaster's duties include preparing, monitoring and maintaining records to show the ownership interests of those holding water rights in the Chino Basin. (See Chino Basin Watermaster Rules and Regulations, attached as Exhibit "E" to the Michael Decl.)

These Watermaster's duties of overseeing and allocating the water rights and records of others are most similar to that of the court appointed receiver. A receiver is an officer of the court appointed to accept and possess property on behalf of the court. (*McCarthy, supra*, 173 Cal.App.3d at 1219.) Both receivers and the Watermaster act at the direction of the court, as officers of the court. (See *Ostrowski v. Miller* (1964) 226 Cal.App.2d 79, 83; Judgment; Watermaster's Response, at 2:24-3:10.) Their appointment requires them to oversee property interests. (*Ibid.*) Receivers and the Watermaster are substantially similar in their creation and duties. As such, with regard to potential liability, the Watermaster should be treated similarly to a receiver.

Because a receiver is an officer of the court, he is liable in tort solely in his official capacity. (*Ibid.*) As the court stated in *Cheisur v. Superior Court in and For Los Angeles County* (1946) 76 Cal.App.2d 198, 202-03, where a receiver has been negligent and caused injury to a party, such party shall have the right to have her case tried before a jury and recover against the receiver in his official capacity. Anything less would be a denial of due process. The same is true of the Watermaster. By not allowing suit against the Watermaster in this case, CCG would be unable to pursue its claims for negligence, negligent misrepresentation and indemnity against the Watermaster. Due to their substantial similarities in creation and purpose, the Watermaster should be treated like a receiver.

#### **B. Leave Of Court Is Necessary For Suit Against An Agent Of The Court.**

It is contrary to the established doctrines of the court to permit a receiver to be made a defendant to litigation unless by consent of the court appointing him. (*Ostrowski, supra*, 226 Cal.App.2d at 83, citing *Murray v. Etchepare* (1901) 132 Cal. 286, 287-88.) In *Ostrowski*, following the dissolution of the Defendant P.S.R. & Associates, an action was brought against

several defendants including the receiver. (*Id.* at 83.) The court held that the plaintiff could bring suit against the receiver in an independent proceeding because relief could not be obtained without such independent action. (*Id.* at 85.) "The rule is established for the protection of receivers against unnecessary litigation, and because, in most cases, ample relief can be obtained by application, on motion to the court making the appointment." (*Ibid.*, internal citation omitted.) The same would be true for the Watermaster. Relief cannot be obtained by CCG against the Watermaster unless leave is granted to make the Watermaster a party to the current case.

The court has wide discretion to allow suit against a receiver in an independent action when intervention would not afford the plaintiff the same relief as independent suit. (*Ostrowski, supra*, 226 Cal.App.2d at 83, citing 42 Cal.Jur.2d, Receivers, § 92, p. 387.) Similarly, the court should have wide discretion to allow suit against the Watermaster in an independent action.

**C. Leave Should Be Granted To CCG To Sue The Watermaster.**

CCG wishes to sue the Watermaster in the above-captioned case because intervention in the Judgment would not afford CCG the monetary relief it desires. (See *Ostrowski, supra*, 226 Cal.App.2d at 83-85.) Furthermore, arguably, issue preclusion would prevent CCG from later seeking such relief from the Watermaster. (See *Bernhard v. Bank of America* (1942) 19 Cal.2d 807 [collateral estoppel may be used as defense against any party who has fully and fairly litigated an issue in a previous action].) As evident in CCG's Second Amended Cross-Complaint, CCG's claims rest upon the issue of the Watermaster's negligence and its omission of CSI's tenancy in common interest. (See CCG's Proposed Second Amended Cross-Complaint attached as Exhibit "A" to the Michael Decl.) CCG believes it has valid causes of action for negligence, negligent misrepresentation and tort of another against the Watermaster that must be adjudicated in the above-captioned case. (Michael Decl., ¶ 2.)

As described in CCG's proposed Second Amended Cross-Complaint, it is due to the negligence of the Watermaster that CCG has been forced to defend itself against claims from both CSI and Aqua Capital Management, LP ("Aqua"). (See CCG's Proposed Second Amended Cross-Complaint attached as Exhibit "A" to the Michael Decl.) The Watermaster wrongfully described



1 CCG's interests in certain water rights, specifically 630.274 acre-feet of safe yield in the Non-  
2 agricultural Pool, on several occasions. When asked by CCG what its rights included, the  
3 Watermaster failed to accurately provide this information pursuant to the Judgment by omitting  
4 mention of CSI's tenancy in common interest in the 630.274 acre-feet of safe yield. (See  
5 Watermaster's Notice of Meeting Packet, March 2007, at p. 89, attached as Exhibit "D" to the  
6 Michael Decl.)

7           Following the Watermaster's representation that it had the right to 630.274 acre-feet  
8 of safe yield, CCG sought intervention and approval of the Watermaster for the transfer of this  
9 safe yield to Aqua. In doing so, CCG submitted numerous documents disclosing what it intended  
10 to transfer, how the transfer would work, and the identity of the transferee. (See Watermaster's  
11 Notice of Meeting Packet, November 2008, at p. 43-76, attached as Exhibit "F" to the Michael  
12 Decl.) Assumedly, as part of its duties to manage the allocation of the Chino Basin, the  
13 Watermaster reviewed these documents in detail. The Watermaster also submitted these  
14 documents to its "Watermaster interested parties." (Ibid. at p. 65.) Included in this submission,  
15 was the Watermaster's recommendation that the transfer to Aqua occur. (Ibid.) Then, in or about  
16 November 2008, a meeting took place in which the intervention and transfer were approved for the  
17 sale of the 630.274 acre-feet of safe yield to Aqua. Based upon the Watermaster's assertions and  
18 approval, CCG transferred the 630.274 acre-feet of safe yield to Aqua in exchange for valuable  
19 consideration. CCG has now been sued as a result of that transaction.

20           "[The court] may not properly refuse leave to sue when it cannot afford in  
21 intervention the same relief as the applicant is entitled to in an independent action, . . ."  
22 (*Ostrowski, supra*, 226 Cal.App.2d at 83, citing 42 Cal.Jur.2d, Receivers, § 92, p. 387.) Denial of  
23 approval of suit against the Watermaster would cause substantial prejudice to CCG and force CCG  
24 to bear any and all damages incurred in the above captioned case without proper placement of  
25 fault where it is due. Intervention in the Judgment by CCG would not allow for the monetary  
26 relief CCG requires as damages for the Watermaster's negligence and the defense of Aqua's and  
27 CSI's action against CCG. As such, CCG should be able to pursue its claims against the  
28 Watermaster.

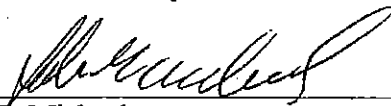
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IV.  
CONCLUSION

Based upon the foregoing, CCG requests that it be granted leave to sue the Watermaster in the above-captioned case.

DATED: July 12, 2013

BAKER MANOCK & JENSEN, PC

By:   
John G. Michael  
Lauren D. Layne  
Diane E. Coderniz  
Attorneys for Petitioner CCG Ontario, LLC

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF FRESNO**

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of Fresno, State of California. My business address is 5260 North Palm Avenue, Fourth Floor, Fresno, CA 93704.

On July 12, 2013, I served true copies of the following document(s) described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CCG ONTARIO, LLC'S MOTION FOR LEAVE TO SUE THE CHINO BASIN WATERMASTER** on the interested parties in this action as follows:

**SEE ATTACHED SERVICE LIST**

**BY MAIL:** I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Baker Manock & Jensen, PC's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 12, 2013, at Fresno, California.

  
Lynda M. Phillips

## SERVICE LIST

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**CHINO BASIN WATERMASTER**  
**Case No. RCV 51010**  
**Chino Basin Municipal Water District v. The City of Chino**

**PROOF OF SERVICE**

I declare that:

I am employed in the County of San Bernardino, California. I am over the age of 18 years and not a party to the within action. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

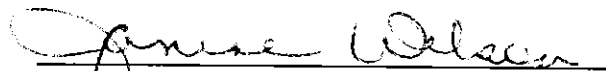
On July 16, 2013 I served the following:

**1. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CCG ONTARIO, LLC'S MOTION FOR LEAVE TO SUE THE CHINO BASIN WATERMASTER**

- ☒ **BY MAIL:** in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:  
**See attached service list:** Mailing List 1
- ☐ **BY PERSONAL SERVICE:** I caused such envelope to be delivered by hand to the addressee.
- ☐ **BY FACSIMILE:** I transmitted said document by fax transmission from (909) 484-3890 to the fax number(s) indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting fax machine.
- ☒ **BY ELECTRONIC MAIL:** I transmitted notice of availability of electronic documents by electronic transmission to the email address indicated. The transmission was reported as complete on the transmission report, which was properly issued by the transmitting electronic mail device.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 16, 2013 in Rancho Cucamonga, California.

  
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Chino Basin Watermaster

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