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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO – RANCHO CUCAMONGA DISTRICT

10

11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

) CASE NUMBER: RCV 51010
()

) [Assigned for All Purposes to the Honorable
()

) Stanford E. Reichert]

13 Plaintiff

**CITY OF CHINO'S REPLY TO CITY OF
POMONA OPPOSITION
TO CITY OF CHINO'S MOTION TO
PERMIT CHINO TO CONDUCT
DISCOVERY**

14 v.

15 CITY OF CHINO, et al.

Date: February 26, 2016

Date: February
Time: 1:30 p.m.

Dept.: R6

(FEE- EXEMPT PURSUANT TO GOVERNMENT
CODE § 6103)

21 The City of Chino (hereafter “Chino”) submits this brief in reply to the Opposing
22 Parties’ Opposition (hereafter “OP Opposition”) to City of Chino’s Motion to Permit Chino to
23 Conduct Discovery (hereafter “Discovery Motion”).

1

INTRODUCTION

26 The City of Pomona, on its own behalf as well as that of six other entities, opposes
27 Chino's Discovery Motion, mainly on the ground that "Chino has not shown cause to reopen
28 discovery as to Opposing Parties." (OP Opposition, page 2, line 12.) Opposing Parties argue

1 further that because a judgment has been entered, no discovery is appropriate. Yet the motion
2 filed by Watermaster has presented this Court with an equitable issue to adjudicate, which is
3 the approval and enforcement of the 2015 Safe Yield Reset Agreement (SYRA) that would
4 change the status quo among the Parties to the Judgment herein. The SYRA would deprive
5 Chino and the Jurupa Community Services District (JCSD) of their water rights under the
6 Judgment for the benefit of the Opposing Parties. That is sufficient basis for this Court to
7 allow Chino to conduct discovery.

The Opposing Parties also argue that they are immune from discovery because the Motion seeking approval of the SYRA has been filed by Watermaster and that all relevant evidence is contained in that Motion. However, the Opposing Parties are beneficiaries and listed Parties to the SYRA. Furthermore, the Opposing Parties have not disclaimed their interest in the benefits under the SYRA.

II.

DISCUSSION

Opposing Parties argue that there is no basis for allowing post-judgment discovery by Chino. They contend that Code of Civil Procedure section 2024.050, subdivision (a) permits the Court to reopen discovery post-judgment only if a new trial has been set. They assert that there is no new trial date here.

19 But *In re Marriage of Boblitt* (2014) 223 Cal.App.4th 1004—cited in both the motion
20 and the opposition—construed section 2024.050 to apply not only when a literal new trial date
21 has been set, but also in other situations where the parties need access to postjudgment
22 discovery on a postjudgment matter. (*Id.*, at p. 1024 [marital dissolution case].) The
23 Opposing Parties do not attempt to argue that *Boblitt* stands for the proposition that a party
24 may seek leave of court to conduct postjudgment discovery. Their only argument is that
25 Chino has not established “good cause” to conduct discovery and they cite to *Associated*
26 *Brewers Distributing Co. v. Superior Ct of Los Angeles County* (1967) 65 Cal.2d 583. In that
27 case, the Supreme Court held that a court must decide “*what specific facts in addition to a*
28 *showing ‘of relevance of the information sought to the subject matter of the action’ should be*

1 required to show ‘good cause.’” (*Id.*, at 587.)

2 This is true, but the Opposing Parties omitted the rest of that paragraph, which is the
3 following: “*The court’s determination necessarily depends on the facts and issues of the*
4 *particular case.*” (*Id.*) This sentence is significant because it shows that each court that is
5 faced with a question about whether a party has made a proper showing to entitle it to conduct
6 discovery must examine “*the facts and issues of the particular case.*”

7 In addition, the Opposing Parties claim that “Chino never identifies in its motion what
8 evidence Opposing Parties may possess that will support” its request for discovery. (OP
9 Opposition, 3:19-20.) In fact, Chino’s motion outlined the specific factual issues underlying
10 the 2015 SYRA motion on which Chino needs discovery. (Motion, 5:14-6:25; Gutierrez decl.
11 in support of motion, paras. 13-15.)

12 The Opposing Parties also argue that they have no data or evidence that is not already
13 available to Chino through Watermaster. (OP Opposition, 4:5-6.) This argument is not
14 supported by any evidence or authority. Furthermore, it is a conclusory statement. The
15 Opposing Parties know the issues for which Chino seeks discovery, but they have not stated
16 that they do not possess information related to those issues. They did not make a denial under
17 penalty of perjury to Chino’s discovery requests. They have not submitted declarations in
18 support of their denials. How can the Court evaluate this assertion of the Opposing Parties?
19 Surely, the Court is not required to accept such a statement at face value!

20 The purpose of conducting discovery is to find out what information a party has that
21 may be relevant to the issues or lead to other relevant information about the issues. If the
22 Opposing Parties have no such information, they can simply say so in response to Chino’s
23 discovery with the appropriate declarations under penalty of perjury.

24 Clearly, the Court has inherent authority to permit discovery—an authority codified in
25 the Civil Discovery Act. (See *Harabedian v. Superior Court* (1961) 195 Cal.App.2d 26, 31
26 [discussing authority to permit physical examination].) That authority should be exercised to
27 permit discovery where due process demands it.

28 ///

As discussed in Chino's Reply to Watermaster's Opposition, due process demands discovery here. That argument is not repeated here in the interest of brevity. However, it is important to remember that the Opposing Parties are Parties to the SYRA and that they have an interest in the SYRA as they will receive benefits under it.

III.

CONCLUSION

7 Watermaster seeks to take away Chino's water rights for the benefit of the Opposing
8 Parties. Fairness entitles Chino to challenge the evidence in support of the SYRA. The only
9 way to allow Chino to do so is to permit it to pursue the discovery on the issues outlined in its
10 motion including the contentions of the Opposing Parties.

11 Chino respectfully asks the Court to permit that discovery.

13 | Dated: February 1, 2016

GUTIERREZ, FIERRO & ERICKSON, APC

By:

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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 February 1, 2016 I served the following:

1. CITY OF CHINO'S REPLY TO CITY OF POMONA OPPOSITION TO CITY OF CHINO'S MOTION TO PERMIT CHINO TO CONDUCT DISCOVERY
- / 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 February 1, 2016 in Rancho Cucamonga, California.


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