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10 (AGRICULTURAL) POOL

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN BERNARDINO

13 CHINO BASIN MUNICIPAL WATER
14 DISTRICT,

15 Plaintiff,

16 v.

17 CITY OF CHINO et al.,

18 Defendants.

Case No. RCVRS 51010

Assigned for All Purposes to the
Honorable Stanford E. Reichert

**NOTICE OF MOTION AND MOTION TO
STRIKE CITY OF CHINO'S "REPLY" TO
AGRICULTURAL POOL'S OPPOSITION**

Date: June 26, 2020
Time: 1:30 p.m.
Dept. S-35

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NOTICE

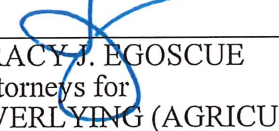
**TO EACH PARTY TO THIS ACTION AND TO THE COUNSEL OF RECORD
FOR EACH PARTY:**

YOU ARE HEREBY NOTIFIED THAT on June 26, 2020 at 1:30 p.m., in Department S35 of this Court, located at 247 West 3rd Street, San Bernardino, California 92415, the Chino Basin Watermaster Overlying (Agricultural) Pool (Agricultural Pool) will and hereby does move by ex parte application, pursuant California Code of Civil Procedure § 435, subdivision (b), this Court to strike out the whole of the City of Chino's "Reply to Agricultural Pool's Opposition to Watermaster's Motion Regarding 2020 Safe Yield Reset, Amendment of Restated Judgment, Paragraph 6."

This ex parte application Motion to Strike will be based upon this notice, the attached memorandum in support, the pleadings, records and files herein, matters the Court judicially notices, and on such oral argument as may be presented at the hearing on the motion.

Dated: June 23, 2020

EGOSCUE LAW GROUP, INC.

By: 

TRACY J. EGOSCUE
Attorneys for
OVERLYING (AGRICULTURAL) POOL

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1 nothing for Chino to “reply” to. Chino has failed to participate in motion practice in conformity
2 with the statutes of the State. Chino’s Reply is an unauthorized submission of new and differing
3 theories from a non-moving party that unreasonably frustrates the Agricultural Pool’s ability to
4 equitably participate in motion practice. The Agricultural Pool, therefore, requests the Court
5 strike the whole of Chino’s “Reply” to Agricultural Pool’s Opposition.

6 STANDARD FOR MOTIONS TO STRIKE

7 Pursuant to Code of Civil Procedure section 435, the Agricultural Pool moves to strike the
8 whole of the Chino Reply. Any party may serve and file a notice of motion to strike the whole
9 pleading. (Code Civ. Proc., § 435, subd. (b)(1).) The Court may, upon a motion made pursuant to
10 Section 435 or at any time in its discretion, strike out all or any part of any pleading not filed in
11 conformity with the laws of the state, a court rule, or an order of the Court.¹ (Code Civ. Proc., §
12 436, subd. (b).)

13 ARGUMENT

14 I. CHINO’S “REPLY” SHOULD BE STRUCK IN ITS ENTIRETY BECAUSE IT 15 WAS NOT FILED IN CONFORMITY WITH THE LAWS OF THE STATE

16 Code of Civil Procedure section 1005, subdivision (b) (Section 1005(b)) prescribes the
17 time for filing a motion, the responding party’s opposition and the moving party’s reply to the
18 opposition. Section 1005, subdivision (b) states that “[u]nless otherwise ordered or specifically
19 provided by law, all moving and supporting papers shall be served and filed at least 16 court days
20 before the hearing...and all reply papers at least five court days before the hearing.” The Code of
21 Civil Procedure prescribes this time to provide parties with adequate notice of the arguments of
22 the moving party in support of its motion and for the moving party to respond to arguments made
23 in opposition.

24 A party may join another party’s motion by filing a timely notice of joinder. The joinder
25 must be timely made, establish the necessary factual foundation to support the motion, and
26 request affirmative relief on behalf of the joining party. (See, e.g., *Barak v. Quisenberry Law*

27 ¹ The meet and confer requirement of Code Civil Procedure section 435.5, subdivision (a) does
28 not apply to this motion strike because it is brought less than 30 days before trial. (Code Civ.
Proc., § 435.5, subd. (d)(4).)

1 *Firm* (2006) 135 Cal.App.4th 654, 661; *Commonwealth Energy Corp. v. Investor Data Exch.*,
2 *Inc.* (2003) 110 Cal.App.4th 26, 31 n.3; *Frazee v. Seely* (2002) 95 Cal.App.4th 627, 636–37. The
3 joinder should present a showing that the joining party’s interests are identical to those of the
4 moving party so that, in granting the joinder, the Court may make a finding that the shared
5 interests provide for conservation of the resources of the parties. Consistent with that practice, the
6 Code of Civil Procedure does not anticipate the presentation of new arguments made only five
7 court days in advance of the hearing from non-moving parties and in response to opposition to the
8 motion.

9 The Watermaster Motion was filed on May 27, 2020 with notice of a June 26, 2020
10 hearing on the motion. Pursuant to Section 1005, the Agricultural Pool timely filed its
11 Agricultural Pool Opposition on June 15, 2020. In that 19-day period Chino made no attempt to
12 join the Watermaster Motion. In fact, Chino instead *filed an opposition* to the Watermaster
13 Motion on June 15, 2020. Nevertheless, on June 19, 2020—the deadline imposed for “all reply
14 papers”—Chino, *a non-moving and opposing party*, filed a so-called “reply” to the Agricultural
15 Pool’s Opposition to the Watermaster Motion. Such a reply is not appropriate as Chino is not the
16 moving party, has not joined the Watermaster Motion and is in fact also in opposition to the
17 Watermaster Motion. Chino did not join the Watermaster Motion and actively opposes it.
18 Accordingly, Chino has nothing to reply to and cannot now use the time and procedure provided
19 to the moving party to file reply papers to initiate new arguments.

20 CONCLUSION

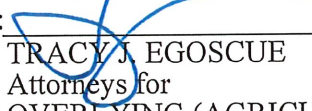
21 Code of Civil Procedure section 1005, subdivision (b) requires all reply papers of the
22 moving party be filed with the court at least five court days before the hearing; and the Court may
23 strike out any pleading pursuant to Code of Civil Procedure section 436. Chino has failed to
24 participate in motion practice in conformity with the statute of the State, and therefore, may be
25 stricken by the Court.

26 Good cause exists for the Court to grant this motion in order to ensure equity is preserved
27 in the Court’s proceedings by providing the Agricultural Pool with a fair opportunity to review
28

1 and respond to the moving party's reply to its opposition in conformity with applicable statutes
2 free from interference of improper submissions of new and differing theories from *non-moving*
3 *parties and those opposing the motion*. Accordingly, the Agricultural Pool respectfully requests
4 that the Court grant the Agricultural Pool's Motion to Strike the whole of the Chino Reply.

5 Dated: June 23, 2020

EGOSCUE LAW GROUP, INC.

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8 By: 
9 TRACY J. EGOSCUE
10 Attorneys for
11 OVERLYING (AGRICULTURAL) POOL
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CHINO BASIN WATERMASTER
Case No. RCVRS 51010
Chino Basin Municipal Water District v. City of Chino, et al.

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 June 23, 2020 I served the following:

1. NOTICE OF MOTION AND MOTION TO STRIKE CITY OF CHINO'S "REPLY" TO AGRICULTURAL POOL'S OPPOSITION

/ X / 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.

/ X / 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 June 23, 2020 in Rancho Cucamonga, California.



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Chino Basin Watermaster

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