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FEE EXEMPT PER GOV. CODE § 6103

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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**
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11 CHINO BASIN MUNICIPAL WATER
12 DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.
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CASE NUMBER: RCV 51010

*[Assigned for All Purposes to Honorable
Stanford E. Reichert, Dept. S35]*

**CITY OF CHINO EX PARTE
APPLICATION FOR AN ORDER TO
EXTEND TIME UNDER JUDGMENT,
PARAGRAPH 31(c) TO CHALLENGE
WATERMASTER ACTION/DECISION
ON AUGUST 25, 2020 TO ISSUE
INVOICES TO PAY AG POOL LEGAL
EXPENSES TO APPROPRIATORS
INCLUDING THE CITY OF CHINO**

Date: October 16, 2020

Time: 1:30 p.m.

Dept.: S35

22 **TO: WATERMASTER AND ITS COUNSEL OF RECORD:**

23 **PLEASE TAKE NOTICE THAT** on October 16, 2020 at 1:30 p.m. in Dept 35S of the
24 above entitled Court, the City of Chino (hereafter "Chino") will make an Ex Parte Application
25 for an order to extend the time under Paragraph 31(c) of the Judgement, from 60 to 120 days,
26 for Chino to challenge the Watermaster Board action/decision on August 25, 2020 to order the

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28 CHINO EX PARTE APPLICATION FOR ORDER TO EXTEND TIME UNDER JUDGMENT PARAGRAPH
31(c) TO CHALLENGE WATERMASTER DECISION/ACTION ON AUGUST 25, 2020 TO ISSUE
INVOICES TO PAY AG POOL LEGAL EXPENSES TO APPROPRIATORS INCLUDING CHINO

1 issuance of invoices to the appropriators to pay the sum \$165,694.75 for Ag Pool initiated legal
2 expenses including Watermaster Invoice No. 2020-02-SPE to Chino in the sum of \$29,835.46.

3 This Application is made for the following purposes: (a) to preserve the time in which
4 the City of Chino may file a motion to challenge the Watermaster Board action/decision for the
5 issuance of invoices to members of the Appropriative Pool to pay Ag Pool initiated legal
6 expenses, (b) to allow the Court to hear and rule on the current motion filed by members of the
7 Appropriative Pool on September 17, 2020 currently set for October 23, 2020 in Dept 35S (the
8 "AP Motion"), (c) to attempt to deter Watermaster from initiating legal action against the City
9 of Chino to collect the amount of Invoice No. 2020-02-SPE plus penalties and attorneys' fees
10 under Paragraph 55(c) of the Judgment, (d) to avoid the filing of a motion by the City of Chino
11 that may substantially overlap the AP Motion, which may be dispositive of the issues that the
12 City of Chino may raise in its motion and (e) to avoid the necessity of Watermaster to expend
13 time, effort and expense to respond to the motion of the City of Chino.

14 This Application is further based upon the Declaration of Jimmy L. Gutierrez, including
15 attachments, filed concurrently herewith and the attached memorandum of Points and
16 Authorities.

17 MEMORANDUM OF POINTS AND AUTHORITIES

18 I. INTRODUCTION

19 The immediate purpose of this Ex Parte Application is to preserve the time in which
20 Chino may file a motion to challenge the Watermaster Board action/decision for the issuance
21 of invoices to members of the Appropriative Pool to pay Ag Pool initiated legal expenses. But,
22 the granting of this Ex Parte Application would lead to other salutary benefits.

23 On August 25, 2020, the Watermaster Board ordered the issuance of invoices to the
24 member of the Appropriative Pool to pay for the legal expenses initiated by the Agricultural
25 Pool in the sum of \$165,694.75.

1 On August 25, 2020, Watermaster staff issued Special Invoice No. 2020-02-SPE to
2 Chino requiring the payment of \$29,835.46, as its portion of said Ag Pool initiated legal
3 expenses pursuant to the order of the Watermaster Board on the same date.

4 Currently, the underlying obligation of the appropriators, if any, to pay Ag Pool initiated
5 legal expenses is the subject of a motion of several members of the Appropriative Pool filed on
6 September 17, 2020, joined by the City of Chino, scheduled for a hearing before the Court on
7 October 23, 2020 (hereafter "AP Motion").

8 Nevertheless, on September 30, 2020, Watermaster General Manager, Peter Kavounas,
9 sent a letter to the City of Chino stating that Watermaster had not received payment from the
10 City of Chino in the sum of \$29,835.46 and intimating that Watermaster would impose
11 penalties and pursue "show-cause proceedings" under Paragraph 55(c) of the Judgment against
12 the City of Chino.

13 On October 8, 2020, Chino sent a letter to Mr. Kavounas, Watermaster General
14 Manager, advising that it had neither decided to pay nor not to pay Watermaster's invoice; but,
15 instead, that Chino had chosen to await Judge Reichert's ruling on the AP Motion. Given the
16 pendency of the AP Motion, Chino proposed to Watermaster that it too await the outcome of
17 the Court's ruling on the motion and "agree to a mutual stay of our respective remedies under
18 the Judgment" about the issues related to the Watermaster invoices to members of the
19 Appropriative Pool including the one to the City of Chino.

20 On October 9, 2020, Watermaster General Manager, Peter Kavounas, sent an email
21 response to Chino in which he advised that a determination about Chino's proposal was beyond
22 his discretion, that the determination will be made by the Watermaster Board and that Chino
23 was welcome to address the Watermaster Board at its October 22, 2020 meeting.

24 Meanwhile, a few of the members of the Appropriative Pool have paid the invoices,
25 many of the members have paid the invoiced amounts into an escrow fund, which Watermaster
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1 regards as non-payment, and a few like Chino have not paid the invoices - pending the outcome
2 of the AP Motion.

3 Under Paragraph 31(c) of the Judgement, a party to the Judgment seeking to challenge
4 a budget action/decision of the Watermaster Board has 60 days in which to file a motion to
5 challenge said action/decision. Since the Watermaster Board ordered the issue of invoices to
6 the members of the Appropriative Pool in the sum of \$165,694.75 including the Invoice No.
7 2020-02-SPE to Chino, the 60-day period by which Chino must file its motion to challenge
8 said Watermaster Board action/decision falls on October 24, 2020.

9 Chino has several grounds to challenge to the propriety of the action/decision of the
10 Watermaster Board to order the issuance of the invoices to the members of the Appropriative
11 Pool. Some of those grounds include the failure of Watermaster to ascertain the nature and
12 purpose of the Ag Pool initiated expenses, the timeliness of said expenses and whether said
13 expenses are payable by members of the Appropriative Pool under the Peace Agreement, and
14 other grounds as well.

15 16 **II. THE CITY OF CHINO MAY SEEK EX PARTE RELIEF**

17 Paragraph 15 of the Judgment reserves jurisdiction to the Court on all matters contained
18 in the Judgments with certain exceptions not here applicable. Paragraph 15 provides, in
19 pertinent part, as follows:

20 ***“Full jurisdiction, power and authority are retained and reserved to the Court***
21 ***as to all matters contained in this judgment, except . . . “***

22 Thus, the Court is vested with jurisdiction to extend the time periods in which a party
23 may seek judicial review of any Watermaster action, decision or rule set forth in Paragraph 31
24 of the Judgment. As to review of Watermaster actions, decisions or rules pertaining to budget
25 actions, Paragraph 31(c) provides the following time period:

“Notice of motion to review any Watermaster action, decision or rule shall be served and filed within ninety (90) days after such Watermaster action, decision or rule, except for budget actions, in which event said notice period shall be sixty (60) days.”

In addition, the procedures for Ex Parte relief are set forth in Rules 3.1200-3.1207 of the California Rules of Court.

Because the Watermaster Board ordered the issuance of invoices to the members of the Appropriative Pool in the sum of \$165,694.75 for Ag Pool initiated legal fees and the Watermaster staff mailed those invoices to the members of the Appropriative Pool on August 25, 2020, the date upon which to file a motion to review and challenge that action/decision of the Watermaster Board falls on October 24, 2020.

In addition, the AP Motion is set for hearing on October 23, 2020 that may well be dispositive of this billing dispute, because the underlying issue in the AP Motion is the obligation of the members of Appropriative Pool to pay Ag Pool initiated legal expenses under the Peace Agreement.

Finally, the Watermaster's meeting in which it may consider an agreement to stay all remedies under the Judgment pertaining to these invoices set for October 22, 2020.

III. CONCLUSION

If the extension of the time to file a challenge to the above Watermaster Board action/decision is not extended from 60 to 120 days, the City of Chino will be burdened with the expense and effort of filing a motion within the next ten (10) days while this underlying billing dispute between Watermaster and the members of the Appropriative Pool is embedded in the AP Motion. Given Mr. Kavounas's stated inability to agree to a mutual stay of remedies under the Judgment, it is dangerous for the City of Chino to wait until October 22, 2020 for a Watermaster determination on a mutual stay of remedies under the Judgment, because the 60-

1 day period in which to file a motion to challenge the invoices falls on October 24, 2020.
2 Furthermore, granting the extension of time Ex Parte imposes no harm on Watermaster and the
3 Court's ruling on the AP Motion may be dispositive of the billing dispute.

4 The Court has jurisdiction to grant Chino's request.

5 Chino requests the Court to grant the order.

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7 Dated: October 14, 2020

JIMMY L. GUTIERREZ LAW CORPORATION

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9 By: _____
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11 Attorney for City of Chino
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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 October 15, 2020 I served the following:

1. CITY OF CHINO EX PARTE APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON AUGUST 25, 2020 TO ISSUE INVOICES TO PAY AG POOL LEGAL EXPENSES TO APPROPRIATIONS INCLUDING THE CITY OF CHINO

/ 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 October 15, 2020 in Rancho Cucamonga, California.


By: Vanessa Aldaz
Chino Basin Watermaster

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