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6 FONTANA WATER COMPANY and  
7 CUCAMONGA VALLEY WATER DISTRICT

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN BERNARDINO

10 CHINO BASIN MUNICIPAL WATER  
11 DISTRICT,

12 Plaintiff,

13 v.

14 CITY OF CHINO, et al.

15 Defendants.

Case No.: RCVRS51010

Assigned for All Purposes to the  
Honorable Gilbert Ochoa

**FONTANA WATER COMPANY AND  
CUCAMONGA VALLEY WATER  
DISTRICT'S OBJECTION TO ONTARIO'S  
COMBINED REPLY TO OPPOSITIONS TO  
ITS APPLICATION FOR AN ORDER TO  
EXTEND TIME UNDER JUDGMENT,  
PARAGRAPH 31(c) TO CHALLENGE  
WATERMASTER ACTION/ DECISION ON  
NOVEMBER 18, 2021 TO APPROVE THE  
FY 2021/2022 ASSESSMENT PACKAGE**

16  
17  
18 *Filed concurrently herewith:*

- 19 • Declaration of Thomas S. Bunn III
- 20 • Objections to Ontario's Evidence

21 Date: June 17, 2022  
22 Time: 1:30 p.m.  
23 Dept: S35

1           **1. Introduction**

2           Defendants Fontana Water Company and Cucamonga Valley Water District (Agencies) object  
3 to the reply filed by the city of Ontario, on grounds that the reply contains substantial amounts of new  
4 argument and new evidence, not contained in the original motion. As a general rule, new argument and  
5 new evidence are not permitted in a reply unless good cause is shown for the failure to present them  
6 before. (*St. Mary v. Superior Ct.*, (2014) 223 Cal. App. 4th 762, 783 (argument); *Jay v. Mahaffey*,  
7 (2013) 218 Cal. App. 4th 1522, 1536–38 (evidence)).

8           Ontario has shown no good cause. Rather, it argues that “[a]t the [April 8] hearing, the Court  
9 granted Ontario’s ex parte application to exceed page limit so that Ontario could fully brief the  
10 substantive matters at issue in this Challenge.” (City of Ontario’s Combined Reply to Oppositions  
11 (Reply) at 36:1–3). That is incorrect. The Court granted the page limit extension, but directed Ontario  
12 to stick with the issues in its original motion. (See Declaration of Thomas S. Bunn III ¶ 3 (Bunn Decl.)  
13 and Ex. B, page 53 line 13 – page 54 line 17.)

14           Allowing Ontario to expand its motion to encompass new arguments and new evidence would  
15 be tantamount to granting its application for an extension of time to challenge the FY 2021/2022  
16 assessment package. But as explained in the Agencies’ opposition, Ontario has not shown good cause  
17 for that extension. It had notice of the issue for months before the deadline, and ample opportunity to  
18 prepare a challenge.

19           Ontario blames the Watermaster and the Opposing Parties for the fact that Ontario did not put a  
20 complete record before the court. (See Reply at 7:19–25, 8:13–16 (“[A]ny objections or allegations of  
21 prejudice raised by Watermaster and Opposing Parties ... to the scope of legal arguments raised in this  
22 Reply, are of Watermaster’s and Opposing Parties’ own making and should be disregarded.”), 37:5–7,  
23 44:8–12, 45:7–8.) But Watermaster and Opposing Parties had nothing to do with it. Ontario simply  
24 failed to meet the deadline set forth in the Judgment for objection to a Watermaster decision.

25           **2. Procedural Background**

26           On February 17, 2022, Ontario filed its application to extend time for a motion to challenge the  
27 FY 2021/2022 assessment. The application stated that the last day for filing the challenge was the same  
28 day, February 17. Ontario sought an extension for an additional 90 days. The application stated, “[I]n

1 the event an extension of time is denied, Ontario’s arguments in favor of its challenge are stated in the  
2 correspondence attached as exhibits to the Declaration of Christopher Quach filed concurrently  
3 herewith, and thus this Application shall act as Ontario’s challenge to the Watermaster Board’s  
4 action/decision.” (Application at 5:5–9.)

5 The grounds for the application to extend time were that Ontario had been attempting to negotiate  
6 a settlement. Contrary to statements in the Reply, neither the application nor the accompanying  
7 declaration made any mention of a need to obtain new counsel. (Reply at 36:7–11, 7:21–22.)

8 The Agencies filed an opposition, both to the application to extend time and to the challenge on  
9 the merits. Other parties filed oppositions as well. The hearing on the application was originally set for  
10 April 8, 2022, but was continued by stipulation to April 22. On April 6, Ontario gave notice that it  
11 would file an ex parte application to extend the page limit for reply, to be heard on April 8. On April 7,  
12 counsel for the Agencies responded that he did not oppose the ex parte application, if the Court  
13 imposed a condition that the reply be limited to arguments raised in the various oppositions and did not  
14 raise any new issues or arguments. (Bunn Decl., ¶ 2 and Ex. A.) At the hearing, the Court imposed a  
15 condition that the reply be limited to the issues in the original challenge, and granted the application to  
16 extend the page limit. (Bunn Decl., ¶ 3 and Ex. B, page 53 line 13 – page 54 line 17.)

17 **4. The Court should enforce its earlier condition and strike the new matter.**

18 Despite the condition imposed by this Court, the Reply contains substantial amounts of new  
19 arguments and evidence. The original motion was limited to the arguments raised in the two letters  
20 attached to the Declaration of Christopher Quach. The only evidence submitted was that declaration  
21 and those two letters.

22 The arguments in the original motion may be summarized as follows:

- 23 • The 2019 letter agreement fundamentally changed the recovery aspect of the Dry Year  
24 Yield Program.
- 25 • The 2019 letter agreement was not consistent with the 2004 court-approved agreements  
26 establishing the program
- 27 • As an amendment to the program, the 2019 letter agreement was required to go through  
28 a formal Watermaster approval process, but it did not.

- 1 • The 2019 letter agreement was not accompanied by corresponding changes to the Local
- 2 Agency Agreements.
- 3 • Withdrawal of water from the Dry Year Yield Program constitutes “production,” which
- 4 must be assessed unless there is a court order to the contrary.

5 The following sections of the Reply contain new arguments and should be disregarded by the  
6 Court:<sup>1</sup>

7	Section II (A)	The Basin Adjudication and the Court’s Continuing Jurisdiction
8	Section II (B)	The Watermaster Approval Process
9	Section II (C)(1)	The 2003 Funding Agreement and Court Order Approving the
10		2003 Funding Agreement
11	Section II (C)(2)	Local Agency Agreements, the Storage and Recovery Application,
12		and the Court’s 2004 Approval of the Storage Agreement
13	Section II (C)(3)	Amendments to the 2003 Funding Agreement
14	Section III	STANDARD OF REVIEW
15	Section IV (A)	The Court Has Exercised its Jurisdiction to Overturn
16		Watermaster’s Actions When Watermaster Exceeds its Authority
17	Section IV (B)(1)	Watermaster Failed to Provide the Required Notice of
18		Watermaster’s Decision to Approve the 2019 Letter Agreement
19	Section IV (B)(2)	Watermaster’s General Reference That It Might Execute the 2019
20		Letter Agreement Did Not Constitute Sufficient Notice
21	Section IV (C)	No Material Injury Analysis Was Performed Prior to the 2019
22		Letter Agreement
23	Section V (A)	Precedent Exists for Granting Extension Requests

24 All the documents for which Ontario has requested judicial notice constitute new evidence, as  
25 does the declaration of Courtney Jones and its associated exhibits.

26 Ontario contends that arguments contained within the Reply respond directly to the opposition  
27 briefs, and as such may be raised for the first time in the Reply. It cites *Golden Door Properties, LLC*

28 <sup>1</sup> This list is not exhaustive. Should the Court find other new arguments in Ontario’s Reply, it should disregard those as well.

1 v. *Superior Ct. of San Diego Cnty* ((2020) 53 Cal.App.5th 733) to support its contention. But that case  
2 is distinguishable. In *Golden Door*, the plaintiffs contended that the county was systematically  
3 destroying documents that were part of the administrative record in a CEQA case. In its opposition to a  
4 motion to compel, the county raised the defense of exhaustion of administrative remedies. In its reply,  
5 the plaintiffs showed that they had timely delivered to the county a letter raising the document  
6 destruction issue. The discovery referee refused to consider this evidence, because it was offered for  
7 the first time on reply. Plaintiffs explained that they didn't know the county was going to raise the issue  
8 of exhaustion of remedies. The court of appeal pointed out that exhaustion of remedies was a defense,  
9 and that the plaintiffs did not need to anticipate and negate the defense in its moving papers. Under  
10 those circumstances, the court held that the referee erred in excluding the evidence. (53 Cal.App.5th at  
11 pp. 774–775.) Here, Ontario has not cited any opposition argument that constituted a defense that it  
12 was not required to anticipate, and *Golden Door* does not apply. All the new material should have been  
13 contained in the original motion.

#### 14 **5. Conclusion**

15 If the Court denies the application for extension of time to challenge the Watermaster  
16 assessment, but allows the new arguments and evidence presented in the Reply, it is effectively  
17 granting the application. Ontario should not be allowed to avoid the consequences of its failure to  
18 submit a timely motion.

19 If, however, the Court allows the new arguments and evidence, it should allow the Agencies  
20 and the other Opposing Parties the opportunity to respond. As Ontario has acknowledged, if the Court  
21 considers new issues and evidence in a reply, it must provide the parties opposing the motion an  
22 opportunity to respond to the new material. (See *Jacobs v. Coldwell Banker Residential Brokerage Co.*  
23 (2017) 14 Cal.App.5th 438.)

24  
25  
26 Dated: June 3, 2022

LAGERLOF, LLP

By: Thomas S. Bunn III

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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 3, 2022 I served the following:

1. FONTANA WATER COMPANY AND CUCAMONGA VALLEY WATER DISTRICT'S OBJECTION TO ONTARIO'S COMBINED REPLY TO OPPOSITIONS TO ITS APPLICATION FOR AN ORDER TO EXTEND TIME UNDER JUDGMENT, PARAGRAPH 31(C) TO CHALLENGE WATERMASTER ACTION/DECISION ON NOVEMBER 18, 2021 TO APPROVE THE FY 2021/2022 ASSESSMENT PACKAGE

/ 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:** Master Email Distribution List

/ \_\_\_ / 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 3, 2022 in Rancho Cucamonga, California.

  
By: Janine Wilson  
Chino Basin Watermaster

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