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

CHINO BASIN MUNICIPAL WATER
DISTRICT,

Plaintiffs,

v.

CITY OF CHINO, et al.,

Defendants.

CASE NO.: RCVRS 51010

Assigned for All Purposes to Hon. Gilbert G. Ochoa

**INLAND EMPIRE UTILITIES AGENCY’S
OBJECTION TO CITY OF ONTARIO’S REPLY
AND SUPPORTING EVIDENCE RE:
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
WATERMASTER ASSESSMENT PACKAGE**

DATE: June 17, 2022
TIME: 1:30 p.m.
DEPT: S24

INTRODUCTION

Respondent Inland Empire Utilities Agency (“IEUA”) respectfully requests the Court to strike all new arguments and evidence contained in Ontario’s reply brief, supporting declarations, and request for judicial notice (collectively “Reply”). IEUA, and other opposing parties, should not be denied the opportunity to respond to Ontario’s new material.

1 The purpose of a reply brief is to address arguments made in the opposition; it may not be used
2 raise new arguments, present new authorities, or introduce new evidence. Generally, points raised in a
3 reply brief for the first time will not be considered, unless good reason is shown for failure to present them
4 before. (Neighbours v. Buzz Oates Enterprises 217 Cal.App.3d 325, 335, fn. 8, (1990)). Here, Ontario has
5 made no showing of good cause to introduce additional evidence and argument in its reply and as such, all
6 evidence and argument raised for the first time in Ontario’s reply and supporting documents should not be
7 considered.

8 **BACKGROUND**

9 Any challenge to an act of Watermaster is due filed within 90 days of said act. Here, Watermaster
10 approved the 2021/2022 assessment package on November 18, 2021. On February 12, 2022, the final day
11 of the limitations period, Ontario filed an application seeking a 90-day extension (from 90 to 180 days) to
12 challenge Watermaster’s act, citing the need to continue settlement negotiations with Fontana Water
13 Company (“FWC”) and Cucamonga Valley Water District (“CVWD”). (Application, p. 2, Ins. 9-12). In
14 their opposition to Ontario’s application, FWC and CVWD dispute Ontario’s contention, stating instead
15 that settlement discussions are not ongoing and that settlement is likely not possible. (FWC and CVWD
16 Opposition, p. 4, Ins. 18-22). Conveniently, for the first time in Reply, Ontario now contends the purpose
17 of its Application is to obtain new water counsel. (Ontario Reply, p. 7, Ins. 21-22). Ontario’s Application
18 does not contain any discussion of a need to obtain new water counsel and this novel argument is
19 improperly brought for the first time in Reply.

20 Additionally, Ontario’s Reply improperly seeks to incorporate over 2,400 pages of legal argument
21 and described evidence previously not included in its application to which opposing parties have had no
22 opportunity to respond. All documents included in Ontario’s request for judicial notice accompanying its
23 reply brief were in existence and could easily have been incorporated into its initial Application. However,
24 these documents were not included in the initial Application and thus constitute new evidence submitted
25 in support of Ontario’s Reply, which is improper. With no good cause set forth supporting the inclusion of
26 the documents Ontario has requested for judicial notice, these documents are improper on reply, irrelevant
27 to the application before the Court, and should not be considered. (See San Diego Watercrafts, Inc. v. Wells
28 Fargo Bank, N.A. 102 Cal.App.4th 308, 316 (2002) (due process requires a party be fully advised of the

1 issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail).

2 Several parties filed oppositions to Ontario's application, stating, among other things, that Ontario's
3 application to extend time should be denied as Ontario had plenty of time and opportunity to develop its
4 challenge and had simply waited too long.

5 **CONCLUSION**

6 IEUA respectfully requests the Court to strike all new arguments and evidence contained in the
7 Reply for exceeding the scope of Ontario's Application in contravention of case law, as well as the Court's
8 explicit instructions. IEUA, and other opposing parties, should not be denied the opportunity to respond to
9 Ontario's new material.

10
11 **I. OBJECTIONS TO ONTARIO'S REQUEST FOR JUDICIAL NOTICE**

Items Subject to Objection:	General Objections:
Paragraphs 1 – 61 (entire Request)	This entire evidentiary record relied upon by Ontario should have been submitted with Ontario's initial application. These items greatly increase the scope of Ontario's application in violation of the Court's instructions. These items are thus irrelevant to the matter before the Court (Evid. Code section 210). Admission of these items in support of Ontario's reply would deprive opposing parties of an opportunity to respond as required by due process. (See <i>San Diego Watercrafts, Inc. v. Wells Fargo Bank, N.A.</i> 102 Cal.App.4th 308, 316 (2002) (due process requires a party be fully advised of the issues to be addressed and be given adequate notice of what facts it must rebut in order to prevail); <i>American Drug Stores, Inc. v. Stroh</i> 10 Cal.App.4th 1446, 1453 (1992) ("[p]oints raised for the first time in a

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	<p>reply brief will ordinarily not be considered, because such consideration would deprive the respondent of an opportunity to counter the argument"); <i>Neighbours v. Buzz Oates Enterprises</i> 217 Cal.App.3d 325, 335, fn. 8 (1990) ("the rule is that points raised in the reply brief for the first time will not be considered, unless good reason is shown for failure to present them before.")</p> <p>Sustained: _____ Overruled: _____</p>
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II. OBJECTIONS TO THE DECLARATION OF COURTNEY JONES

Declaration Testimony:	General Objections:
Paragraphs 1 – 67 (entire declaration)	<p>The issue presented is whether Ontario should be granted relief from Watermaster’s decision not to extend Ontario’s time to challenge the 2021/2022 assessment package. Nothing in the declaration addresses the issue before the court therefore the declaration, in its entirety, is comprised of irrelevant testimony (Evid. Code section 210).</p> <p>Sustained: _____ Overruled: _____</p>
Declaration Testimony:	Grounds for Specific Objection:
Paragraph 4, p.2, lines 15-17.	Calls for a legal conclusion (Evid. Code 310); no foundation, declarant cannot opine on the legal

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	effect of a document (Evid. Code section 702, 803). Sustained:_____ Overruled:_____
Paragraph 5, P. 2, lines 18 -22	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702); irrelevant (Evid. Code section 210). Sustained:_____ Overruled:_____
Paragraph 6, P. 3, lines 1-13	No foundation (Evid. Code section 702); irrelevant (Evid. Code section 210).
Paragraph 7, P. 3, lines 14- 26	No foundation (Evid. Code section 702); the declarant has not established a foundation of firsthand knowledge regarding documents dated before 2021; calls for hearsay (Evid. Code section 1200). The declarant testifies from watermaster staff reports and is therefore based upon hearsay. Sustained:_____ Overruled:_____
Paragraph 11, P. 5, lines 2 - 7	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702). Sustained:_____ Overruled:_____
Paragraph 12, P. 5, lines 8 - 14	Calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document and therefore the testimony is based upon hearsay; no foundation for the documents referred to (Evid. Code section 702).

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	Sustained: _____ Overruled: _____
Paragraph 13, P. 5, lines 26 – 27	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).
	Sustained: _____ Overruled: _____
Paragraphs 14, 15, 16, 17, and 18	Calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document and therefore the testimony is based upon hearsay; no foundation for the documents referred to (Evid. Code section 702).
	Sustained: _____ Overruled: _____
Paragraphs 20, 21, 22 and 23, p. 6-7, lines 25-18	Calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document, therefore the testimony is based upon hearsay; no foundation for the documents referred to (Evid. Code section 702).
	Sustained: _____ Overruled: _____
Paragraph 24, P. 7, lines 19 – 21	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).
	Sustained: _____ Overruled: _____
Declaration Testimony:	Grounds for Specific Objection:
Paragraph 31, P. 9, lines 14 – 17	Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).
	Sustained: _____ Overruled: _____

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<p>Paragraphs 32, 33, 34 and 35, P. 9 – 10, lines 21 – 20</p>	<p>No foundation (Evid. Code section 702) the declarant has not established a foundation of firsthand knowledge regarding documents dated before 2021; calls for hearsay (Evid. Code section 1200). The declarant testifies from a hearsay document and therefore the testimony is based upon hearsay.</p> <p>Sustained:_____ Overruled:_____</p>
<p>Paragraph 39, P. 11, lines 21 – 23</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).</p> <p>Sustained:_____ Overruled:_____</p>
<p>Paragraph 45, P. 12, lines 18 – 22</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).</p> <p>Sustained:_____ Overruled:_____</p>
<p>Paragraph 48, P. 13, lines 17 – 19</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702).</p> <p>Sustained:_____ Overruled:_____</p>

III. OBJECTIONS TO THE DECLARATION OF SCOTT BURTON

Declaration Testimony:	Objections:
<p>Paragraph 4, P. 2, lines 18 – 22 “Under the 1978 Chino Basin Judgment (“Judgment”), this production should have been assessed.</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702)</p>

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<p>The Watermaster waived assessments for 2 Parties of the Chino Groundwater Basin, the Cucamonga Valley Water District (“CV WD”) and the Fontana Water Company (“FWC”), inconsistent with the judgment.”</p>	<p>Sustained: _____ Overruled: _____</p>
<p>Paragraph 8, P. 3, lines 9 to 13</p>	<p>No foundation (Evid. Code section 702; calls for hearsay (Evid. Code section 1200). The declarant is testifying on behalf of “Ontario” with no indication of the declarant’s involvement or personal knowledge of the matter stated.</p> <p>Sustained: _____ Overruled: _____</p>
<p>Paragraph 15, P. 4, lines 19 -21</p>	<p>Calls for a legal conclusion (Evid. Code section 310); no foundation (Evid. Code section 702); irrelevant (Evid. Code section 210).</p> <p>Sustained: _____ Overruled: _____</p>
<p>Paragraphs 16, 17,18, 19, 20 and 21 P. 5, lines 3-16</p>	<p>Irrelevant (Evid. Code section 210). This testimony exceeds the scope of the original motion filed by Ontario herein. The declarant’s efforts to secure counsel are not relevant to the subject challenge to Watermaster’s discretionary action.</p> <p>Sustained: _____ Overruled: _____</p>


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DATED: June 3, 2022

JC LAW FIRM

By: 
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Attorneys for Defendant
INLAND EMPIRE UTILITIES AGENCY

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. INLAND EMPIRE UTILITIES AGENCY'S OBJECTION TO CITY OF ONTARIO'S REPLY AND SUPPORTING EVIDENCE RE: 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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