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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **COUNTY OF SAN BERNARDINO**

11
12 CHINO BASIN MUNICIPAL WATER
DISTRICT,

13 Plaintiff,

14 v.

15 CITY OF CHINO, et al.,

16 Defendants.
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Case No. RCV RS 51010

[Assigned for All Purposes to the
Hon. Gilbert G. Ochoa]

**WATERMASTER'S OBJECTION TO
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF CITY OF ONTARIO'S
COMBINED REPLY 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. IF SUCH
REQUEST IS DENIED, THIS IS THE
CHALLENGE.**

Date: June 17, 2022

Time: 1:30 p.m.

Dept.: S24

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1 COMES NOW, Chino Basin Watermaster (“Watermaster”) and submits this objection to
2 the Request for Judicial Notice in Support of City of Ontario’s Combined Reply (“Reply”) Re:
3 Application for an Order to Extend Time Under Judgment, Paragraph 31(c) to Challenge
4 Watermaster Action/Decision on November 18, 2021 to Approve the FY 2021/2022 Assessment
5 Package. If Such Request is Denied, This Filing is the Challenge (“RJN”). Watermaster does not
6 disagree the documents included in the RJN are properly subject to judicial notice. Watermaster
7 objects, however, to the RJN generally in that it is an impermissible attempt to offer new
8 evidence in connection with reply papers. (See *Jay v. Mahaffey* (2013) 218 CA4th 1522, 1537-
9 1538 [under general rule of motion practice, new evidence not permitted with reply papers and is
10 only allowed in exceptional cases]; *Balboa Ins. Co. v. Aguirre* (1983) 149 CA3d 1002, 1010,
11 [stating rule in context of appellate briefs]; *Jacobs v. Coldwell Banker Residential Brokerage Co.*
12 (2017) 14 CA5th 438, 449-450, 221 CR3d 701, 710 [failure to object or seek permission to file
13 surreply may waive objection to new matter (evidence or argument) raised in reply].)

14 **I. THE RJN SEEKS DOCUMENTS BEYOND THE PROPER SCOPE OF REPLY**

15 On May 27, 2022, Ontario filed its Reply, requesting the Court invalidate a letter
16 agreement that Watermaster had signed in 2019 (“2019 Letter Agreement”) and in the alternative
17 grant an extension of the time provided to it under Restated Judgment Paragraph 31(c) to
18 challenge Watermaster Board’s November 18, 2021 adoption of the Fiscal Year 2021/22
19 Assessment Package.

20 As Watermaster argues in its Objection to City of Ontario Combined Reply to
21 Oppositions of Watermaster, Fontana Water Company and Cucamonga Valley Water District,
22 and Inland Empire Utilities Agency to Application for an Order to Extend Time Under Judgment,
23 Paragraph 31(c) to Challenge Watermaster Action/Decision on November 18, 2021 to Approve
24 the FY 2021/2022 Assessment Package or Alternatively, City of Ontario’s Challenge (“Objection
25 to Reply”), filed concurrently herewith, the Reply significantly expands beyond the permissible
26 scope by including arguments relating to the validity of 2019 Letter Agreement, among others,
27 for the first time on reply. Therefore, Watermaster objects to the Court’s consideration of the
28 documents included in the RJN and respectfully requests the Court disregard these documents as

1 beyond the permissible scope of the Reply and thus not relevant to consideration of the
2 Application. (See *Meridian Fin. Servs., Inc. v. Phan* (2021) 67 Cal. App. 5th 657, 687 fn. 10,
3 *review denied* (Nov. 10, 2021) [“They delayed seeking judicial notice until the time their reply
4 brief was due, depriving [respondent] of the opportunity to address the new matters . . .”];
5 *Mireskandari v. Gallagher* (2020) 59 Cal. App. 5th 346, 359, fn. 11, *as modified on denial of*
6 *reh'g* (Jan. 21, 2021), *review denied* (Mar. 30, 2021) n.11 [“. . . a precondition to the taking of
7 judicial notice in either its mandatory or permissive form is that any matter to be judicially
8 noticed must be relevant to a material issue.”] [internal quotations omitted].)

9
10 Dated: June 3, 2022

BROWNSTEIN HYATT FARBER
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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. WATERMASTER'S OBJECTION TO REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CITY OF ONTARIO'S COMBINED REPLY 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. IF SUCH REQUEST IS DENIED, THIS IS THE CHALLENGE

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

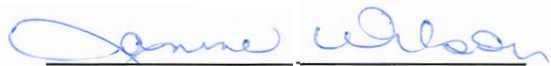
BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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.

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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