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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF SAN BERNARDINO

12 CHINO BASIN MUNICIPAL WATER
13 DISTRICT,

14 Plaintiff,

15 v.

16 CITY OF CHINO, et al.,

17 Defendants.

CASE NO. RCVRS 51010

ASSIGNED FOR ALL PURPOSES TO
HONORABLE GILBERT G. OCHOA

RESPONSE TO OBJECTIONS OF CHINO
BASIN WATERMASTER, FONTANA
WATER COMPANY AND
CUCAMONGA VALLEY WATER
DISTRICT TO CITY OF ONTARIO'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF COMBINED REPLY

Hearing:

Date: August 31, 2022
Time: 1:30 p.m.
Dept. S24

1 RESPONSE

2 The City of Ontario (“Ontario”) hereby responds to the Chino Basin Watermaster’s and
3 Fontana Water Company (“FWC”) and Cucamonga Valley Water District’s (“CVWD”) Objections
4 to the Ontario’s Request for Judicial Notice (“RJN”) in Support of Combined Reply as follows:

5 As more fully explained in Ontario’s Combined Response to Objections to its Combined
6 Reply, the Court may properly accept and consider the evidence introduced in Ontario’s RJN filed
7 concurrently with its Combined Reply. A court has discretion on whether to accept new evidence
8 filed with a reply. (*Alliant Ins. Services, Inc. v. Gaddy* (2008) 159 Cal.App.4th 1292, 1307-1308
9 (“*Alliant*”).) There are also several exceptions to the general rule that permits a court to consider
10 new evidence filed with a reply brief including, as pertinent here, evidence that responds to
11 arguments made for the first time in an opposition brief and when good cause exists for why the
12 moving party was unable to raise the arguments prior to the reply brief. (*Jacobs v. Coldwell Banker*
13 *Residential Brokerage Co.* (2017) 14 Cal.App.5th 438, 449; *Neighbours v. Buzz Oats Enterprises*
14 (1990) 217 Cal.App.3d 325, 335.)

15 The policy behind the general rule of not accepting new evidence with a reply brief is that
16 such consideration may deprive the respondent of an opportunity to counter the argument. (*Jay v.*
17 *Mahaffey* (2013) 218 Cal.App.4th 1522, 1538.)

18 Both Watermaster and FWC and CVWD rely on the case *Jay v. Mahaffey* (2013) 218
19 Cal.App.4th 1522 in their objections to Ontario’s RJN. In *Jay v. Mahaffey*, however, the appellate
20 court held that defendants had a right to file reply evidence to fill in gaps in the evidence created
21 by the opposition briefs. (*Jay v. Mahaffey, supra*, 218 Cal.App.4th at p. 1538.) That is precisely
22 what Ontario did in its Combined Reply and supporting materials filed concurrently therewith. The
23 volume of Ontario’s Reply and RJN is proportionate to the Oppositions filed by Watermaster, FWC
24 and CVWD, and Inland Empire Utilities Agency in this case, which total over 35 pages of briefing
25 and 300 pages of declarations and exhibits.

26 Moreover, Ontario’s RJN consists entirely of previous court orders or pleadings filed with
27 the Court or appellate court or Watermaster’s own documents. Of the 61 documents contained in
28 Ontario’s RJN, 16 are pleadings and orders previously filed with the Court or appellate court and

1 the 45 remaining documents are Watermaster documents, including assessment packages, agendas,
2 staff reports and presentations, agreements, or rules and regulations. These documents do not
3 constitute new evidence or new subject matter but rather are documents already in the Court's
4 record in the adjudication or in Watermaster's records that were provided via RJN for the Court's
5 convenience.

6 Finally, Watermaster, FWC, and CVWD had the opportunity to agree to a stipulated
7 supplemental briefing schedule, which would have provided all parties with the opportunity to fully
8 raise and counter arguments. By rejecting Ontario's proposal for supplemental briefing,
9 Watermaster, FWC, and CVWD effectively waived their objections to evidence raised in Ontario's
10 reply and should be estopped from arguing to the contrary.

11 For the foregoing reasons, the Court is well within its discretion to consider the documents
12 attached to Ontario's RJN and should accordingly deny Watermaster, FWC, and CVWD's
13 objections thereto.

14
15 Dated: July 1, 2022

STOEL RIVES LLP

16
17 By: 

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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 July 1, 2022 I served the following:

1. RESPONSE TO OBJECTIONS OF CHINO BASIN WATERMASTER, FONTANA WATER COMPANY AND CUCAMONGA VALLEY WATER DISTRICT TO CITY OF ONTARIO'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF COMBINED REPLY

/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

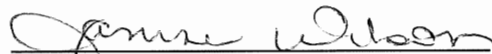
/___/ BY PERSONAL SERVICE: I caused such envelope to be delivered by hand to the addressee.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 1, 2022 in Rancho Cucamonga, California.



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