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

15 Plaintiff,

16 vs.

17 CITY OF CHINO, ET AL.,

18 Defendants.
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Case No: RCVRS 51010

*Assigned for All Purposes to:
Honorable Gilbert G. Ochoa*

**ONTARIO'S OBJECTION TO NEW
ARGUMENT PRESENTED IN
APPROPRIATIVE POOL'S
SUPPLEMENTAL REPLY RE: MOTION
FOR AWARD OF EXPENSES,
INCLUDING ATTORNEY FEES PER
CONTRACT AND CIVIL CODE
SECTION 1717**

Date: April 4, 2025

Time: 10:00 a.m.

Place: Dept. R17

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ONTARIO'S OBJECTION TO NEW ARGUMENT PRESENTED IN APPROPRIATIVE POOL'S
SUPPLEMENTAL REPLY

1 The City of Ontario (“Ontario”) hereby objects to a new legal argument raised for the first
2 time in the Appropriative Pool’s (“AP’s”) Supplemental Reply, filed March 28, 2025, regarding its
3 Motion for Award of Expenses, Including Attorney Fees Per Contract and Civil Code Section 1717
4 (“Motion”).

5 The AP has attempted to ambush Ontario via the untimely presentation of new arguments in
6 its Supplemental Reply brief. The AP has known Ontario’s arguments opposing the AP’s
7 unprecedented request for attorney-fee-shifting in Watermaster Court since August 1, 2024, when
8 Ontario and other parties filed their Opposition to the Motion. The Opposition explained that certain
9 Judgment provisions including the AP Pooling Plan (Judgment Exhibit H), govern the allocation of
10 AP costs including legal fees within the Pool. These Judgment provisions are controlling and
11 disallow fee-shifting. The AP Reply brief, filed two weeks later on August 16, did not respond to
12 this argument, effectively conceding it.

13 Now, nine months after filing their Motion and seven months after filing their Reply, the AP
14 for the first time advances a new argument that the Judgment is not dispositive because Section
15 9.2(d) of the Peace Agreement somehow supplements the Judgment -- without the need for a
16 Judgment amendment -- and thereby controls the costs at issue. The AP presents this new argument
17 at Section I.D (4:12-5:3) of its Supplemental Reply, as follows: “The Peace Agreement *supplements*
18 the Judgment by addressing certain extraordinary expenses the Judgment does not address”
19 (Emphasis in original.)

20 The AP’s belated presentation of this new argument violates California law in a manner
21 calculated to deprive Ontario of a fair opportunity respond, in violation of Ontario’s due process
22 rights. (*Jay v. Mahaffey* (2013) 218 Cal.App.4th 1522, 1537-1538 [“[p]oints raised for the first time
23 in a reply brief will ordinarily not be considered”]; *Varjabedian v. City of Madera* (1977) 20 Cal.3d
24 285, 295 n.11 [“Obvious reasons of fairness militate against consideration of an issue raised initially
25 in the reply brief. . . .”]; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794 n.3 [“Points raised in
26 the reply brief for the first time will not be considered, unless good reason is shown for failure to
27 present them before.”].) The Court may ignore or strike the new argument. (*Ibid.*) In presenting
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1 this objection, Ontario is mindful of the Court’s admonition to the parties at the hearing conducted
2 on November 18, 2022 to refrain from filing substantive briefing post-reply.

3 Ontario has many responses to the AP’s novel argument and stands ready to present them at
4 oral argument, if necessary. Among other problems, however, is a foundational issue of jurisdiction.
5 This Court’s continuing jurisdiction under Section 15 of the Judgment is restricted to “matters
6 contained in this judgment” Thus, the question arises that if the Judgment is not dispositive of
7 the costs at issue, and solely the Peace Agreement controls, does this Court have jurisdiction over
8 the issue? Whether or not this Court has continuing jurisdiction to hear disputes that may arise
9 under or are governed by separate agreements and not the Judgment is an important issue that
10 deserves focused briefing, not just cursory, one-sided written presentation and oral discussion.

11 For the reasons set forth above, Ontario respectfully requests that this Court ignore and not
12 consider the AP’s new argument, or, alternatively, continue the hearing and set a supplemental
13 briefing schedule solely to address the new argument and the important jurisdictional question it
14 raises.

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16 Dated: April 2, 2025

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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 action within. My business address is Chino Basin Watermaster, 9641 San Bernardino Road, Rancho Cucamonga, California 91730; telephone (909) 484-3888.

On April 2, 2025 I served the following:

1. ONTARIO'S OBJECTION TO NEW ARGUMENT PRESENTED IN APPROPRIATIVE POOL'S SUPPLEMENTAL REPLY RE: MOTION FOR AWARD OF EXPENSES, INCLUDING ATTORNEY FEES PER CONTRACT AND CIVIL CODE SECTION 1717

BY MAIL: in said cause, by placing a true copy thereof enclosed with postage thereon fully prepaid, for delivery by the United States Postal Service mail at Rancho Cucamonga, California, addresses as follows:
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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 April 2, 2025 in Rancho Cucamonga, California.



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