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8 SHADOW MOUNTAIN RANCH, LLC

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF RIVERSIDE

12 Coordination Proceeding Special Title
13 (Cal. Rules Of Court, rule 3.550)

JCCP5265
CIV208568 (LEAD CASE NUMBER)

14 MOJAVE BASIN WATER CASES

Dept. 1, Riverside Superior Court
Hon. Harold W. Hopp, Judge Presiding

15
16 THE MOJAVE WATER AGENCY, AS THE
MOJAVE BASIN AREA WATERMASTER,

Case No. CIVSB 2218461

17 Plaintiff,

**NOTICE OF EX PARTE APPLICATION
AND APPLICATION FOR DISMISSAL
OF PLAINTIFF'S COMPLAINT
FOLLOWING FAILURE TO TIMELY
AMEND AND REQUEST FOR ENTRY
OF JUDGMENT; MEMORANDUM OF
POINTS AND AUTHORITIES;
DECLARATION OF CHRISTOPHER
PISANO IN SUPPORT THEREOF**

18 v.

19 All persons who are not presently parties to the
20 comprehensive groundwater adjudication in
City of Barstow, et al., v. City of Adelanto, et
21 al., Riverside Superior Court Case No.
CIV208568, and are either producing more
22 than 10 acre-feet of Basin groundwater
annually, or using Basin groundwater for
23 unlawful purposes, and Does 1 through 2,000,

Filed Concurrently with:
1. [Proposed] Order Granting the Ex Parte
Application and for a Judgment of Dismissal

24 Defendants.

Date: December 9, 2024
Time: 8:30 a.m.
Dept: 1
Action Filed: May 30, 1990

1 TO ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on December 9, 2024, at 8:30 a.m., in Department 1 of the
3 above-mentioned Superior Court for the County of Riverside, Defendant Shadow Mountain
4 Ranch (“SMR”) will and hereby does move *ex parte* for an order dismissing the First Amended
5 Complaint (“FAC”) of Plaintiff Mojave Water Agency (“MWA” or “Plaintiff”) as against SMR,
6 with prejudice, based on MWA’s failure to timely amend the FAC following the Court’s Order
7 sustaining SMR’s Demurrer with leave to amend. In its Order sustaining the demurrer to the
8 FAC, the Court afforded Plaintiff 20 days’ leave to amend. While the Court seemingly gave
9 notice of its ruling, on November 13, 2024, SMR likewise filed and served a notice of ruling on
10 all parties, including SMR. At the latest Plaintiff had up to and including December 3, 2024 to
11 file a Second Amended Complaint. As of the date of this *ex parte* application, Plaintiff has not
12 filed and served an amended Complaint on SMR. Therefore, SMR specifically moves for a
13 judgment of dismissal of the FAC as against it based on the following grounds:

14 1. On June 4, 2024, this Court granted MWA’s request for leave to file its FAC,
15 which MWA lodged—unchanged—on June 11, 2024. In the FAC, MWA asserts a single cause
16 of action against SMR, and others, for a Comprehensive Adjudication and Physical Solution.
17 There are no other causes of action stated in the FAC.

18 2. On July 9, 2024, SMR filed a Demurrer to the FAC in its entirety as against SMR.
19 SMR’s Demurrer was based on multiple independent legal grounds, anyone of which would
20 support sustaining the Demurrer without leave to amend. These grounds included, but were not
21 limited to, that the FAC failed to allege that neither SMR nor its predecessor was a party to the
22 Judgment in *City of Barstow v. Mojave Water Agency et al.* (2000) 23 Cal.4th 1224 (“*City of*
23 *Barstow*”), and that because MWA made no allegation that SMR’s use of groundwater in the
24 Mojave Basin was not lawful, reasonable and beneficial, MWA did not assert a cause of action
25 against SMR for an adjudication of its groundwater rights without such an allegation.

26 3. On August 9, 2024, the Court heard argument on SMR’s Demurrer and took the
27 matter under submission, and on November 6, 2024, the Court sustained the Demurrer as to the
28 issue of whether the FAC fails to allege that SMR acted unlawfully by using groundwater in a

1 manner that is not lawful, reasonable and beneficial. In its Order the Court granted leave to
2 amend the FAC, and gave MWA 20 days' leave to do so. On November 6th the Court mailed a
3 copy of this Order to all parties, including MWA. Even if extra time is afforded for mail service,
4 the deadline for MWA to amend expired as of December 2, 2024.

5 4. On November 13, 2024, out of an abundance of caution, SMR filed and served a
6 notice of the ruling on all parties, including MWA, which was provided to MWA via email, and
7 which MWA then posted for all parties in its role as Watermaster. As of the date of this
8 application, which is after the expiration of the time in which the Court allowed MWA to amend,
9 MWA has not filed a Second Amended Complaint in which it attempts to address the deficiencies
10 in the FAC as stated by the Court.

11 SMR submits this ex parte application pursuant to Code of Civil Procedure section
12 581(f)(2), and California Rules of Court rule 3.1320(h). SMR requests that the Court dismiss
13 MWA's FAC in its entirety, as against SMR, with prejudice. SMR also requests any entry of a
14 Judgment of Dismissal against Plaintiff MWA and in favor of Defendant SMR.


15 This Application is supported by the attached Memorandum of Points and authorities, the
16 Declaration of Christopher Pisano, the concurrently filed Proposed Order of Dismissal, all
17 pleadings, papers and records on file in this action, and on such oral argument as may be
18 presented at any scheduled *ex parte* hearing.

19 Dated: December 5, 2024

BEST BEST & KRIEGER LLP

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21

By: 
ERIC L. GARNER
CHRISTOPHER M. PISANO
ALISON K. TOIVOLA
ATTORNEYS' FOR DEFENDANT
SHADOW MOUNTAIN RANCH, LLC

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 **I. BACKGROUND AND PROCEDURAL HISTORY**

3 The FAC alleges that MWA “has statutory authority to ‘do any and every act necessary’”
4 to ensure “sufficient water may be available . . . within the MWA by any reasonable means.”
5 (FAC, ¶ 1.) MWA purports to bring this action “under and pursuant to the powers granted it by
6 the Mojave Water Agency Act” and “pursuant to provisions of the Judgment.” (*Id.*, ¶ 2.) MWA
7 alleges that the available water supply in the Mojave groundwater basin area (“Basin”) “affects or
8 is affected by production and use thereof by defendants herein, **and by other persons who are**
9 **parties to the related *City of Barstow* adjudication.**” (*Id.*, ¶ 6 [emphasis added].)

10 Specifically, MWA alleges that without determining and limiting rights, “the available
11 supply will become endangered” and “additional overdrafting of the groundwater in the Mojave
12 Basin Area, and great and irreparable injury to the rights of the parties to the Judgment” will
13 result. (*Id.*, ¶¶ 11, 31.) Accordingly: “**The MWA desires a judicial determination of the water**
14 **rights of the defendants named and identified herein, and as referenced in the Judgment**
15 **entered in *City of Barstow*, to assure an adequate supply of water which is used or may be used**
16 **or may be useful for any reasonable and beneficial purpose within the Mojave Basin Area, as**
17 **defined in the Judgment entered in *City of Barstow*.”** (*Id.*, ¶ 12 [emphasis added].)

18 In the FAC, MWA identifies SMR as one of the “persons who are not presently parties to
19 the groundwater adjudication in *City of Barstow*, but own or use real properties within the
20 boundaries of the adjudicated Mojave Basin Area and are producing, or allowing others to
21 produce on such real properties more than 10 acre-feet of groundwater annually.” (FAC, ¶¶ 20,
22 34, subd. (as).) While MWA concedes that SMR is not a party to the Judgment in the *City of*
23 *Barstow* case (and thus cannot be subject to any of the terms of the Judgment that curtails a
24 party’s use of water), MWA does not allege, and in fact has never alleged, that SMR’s use of
25 groundwater on its own property is not lawful, reasonable or beneficial. As this Court observed,
26 MWA fails to alleged this, and thus the Court found that MWA has not stated a cause of action
27 for a comprehensive adjudication against SMR in the FAC.

28 The Court sustained the Demurrer and granted MWA 20 days’ leave to amend to cure this

1 deficiency, i.e. to allege that SMR’s use of water is not lawful, reasonable or beneficial. The 20-
2 day period granted by the Court has now lapsed, and MWA has not filed a Second Amended
3 Complaint.

4 **II. LEGAL ARGUMENT**

5 The Code of Civil Procedure and the California Rules of Court authorize a party to seek
6 dismissal of a case where the Plaintiff failed to amend the complaint in a timely manner following
7 a court sustaining a Demurrer.

8 Code of Civil Procedure section 581(f)(2) states, in relevant part: “The court may dismiss
9 the complaint as to that defendant when . . . Except where Section 597 applies, after a demurrer to
10 the complaint is sustained with leave to amend, the plaintiff fails to amend it within the time
11 allowed by the court and either party moves for dismissal.” (Code Civ. Proc. § 581(f)(2).) Code
12 of Civil Procedure Section 597 relates to trials of special defenses that do not go to the merits of a
13 cause of action. (Code Civ. Proc. § 597.) It does not apply here.

14 California Rules of Court, Rule 3.1320(h) states, in its entirety: “A motion to dismiss the
15 entire action and for entry of judgment after expiration of the time to amend following the
16 sustaining of a demurrer may be made by ex parte application to the court under Code of Civil
17 Procedure section 581(f)(2).” (Cal. Rule of Ct. 3.1320(h).)

18 Based on the Code of Civil Procedure and Rule of Court, this Court may grant this *ex*
19 *parte* application seeking dismissal of MWA’s FAC as against SMR, and for the entry of
20 Judgment against MWA and in favor of SMR. This Court stated unequivocally that SMR’s
21 Demurer to the FAC was sustained with leave to amend. The Court only sustained the Demurrer
22 as to one of the four independent grounds, but the Demurrer was sustained nonetheless. This
23 necessarily put the onus on MWA to file a Second Amended Complaint, or face a dismissal of
24 SMR from this action. The Court gave MWA 20 days’ leave to amend, and mailed notice of its
25 order on November 6, 2024. Out of an abundance of caution, SMR gave notice of this ruling on
26 November 13, 2024 by sending an email to MWA for posting and by giving email notice.
27 However, the Court Clerk’s mailing of the Court’s Order constitutes service, and started the clock
28 on the 20 days to amend. (*See Robins v. Los Angeles Unified School Dist.* (1992) 3 Cal.App.4th


1 313, 318.) Even if extra time is given for mail service, the deadline for MWA to file a Second
2 Amended Complaint was December 2, 2024. As of this date, MWA has not filed a Second
3 Amended Complaint. As such, the Court can, and should, grant this application, and sign the
4 proposed order for a Judgment of Dismissal, with prejudice, in favor of SMR.

5 **III. CONCLUSION**

6 Based upon the foregoing, Defendant SMR respectfully requests that the Court grant the
7 instant *ex parte* application, dismiss MWA's FAC in its entirety as to SMR, with prejudice, and
8 enter Judgment of Dismissal in favor of the SMR and against Plaintiff.

9
10 Dated: December 5, 2024

BEST BEST & KRIEGER LLP

11
12 By: 
13 _____
14 ERIC L. GARNER
15 CHRISTOPHER M. PISANO
16 ALISON K. TOIVOLA
17 ATTORNEYS FOR DEFENDANT
18 SHADOW MOUNTAIN RANCH, LLC
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DECLARATION OF CHRISTOPHER PISANO

I, Christopher Pisano, hereby declare as follows:

1. I am an attorney with Best Best & Krieger LLP, attorneys of record for Defendant Shadow Mountain Ranch, LLC in the above-entitled action. I make this declaration of my own personal knowledge, and if called to testify, could and would competently testify to the contents herein.

2. On November 6, 2024, the Court sustained the Demurrer as to the issue of whether the FAC fails to allege that SMR acted unlawfully by using groundwater in a manner that is not lawful, reasonable and beneficial. In its Order the Court granted leave to amend the FAC, and gave MWA 20 days’ leave to do so. On November 6th the Court mailed a copy of this Order to all parties, including MWA, and my office received a copy of the Order shortly thereafter.

3. On November 13, 2024, my office filed and served a notice of ruling of the Court’s November 6th Order by emailing a copy to MWA, which then posted the notice on its website as the Watermaster. My office emailed courtesy copies to all parties on our service list.

4. To date, MWA has not filed and served a Second Amended Complaint.

5. On December 5, 2024, at approximately 4:00 p.m., my office gave notice of this application to all parties by emailing to MWA to post on its website, and also served it on all parties on our service list a courtesy copy.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 5th day of December, 2024, at Los Angeles, California.



Christopher Pisano

PROOF OF SERVICE

I, Monica Quinones declare:

I am a citizen of the United States and employed in San Bernardino County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 2855 E. Guasti Road, Suite 400, Ontario, California 91761. On December 5, 2024, I served a copy of the within document(s):

NOTICE OF EX PARTE APPLICATION AND APPLICATION FOR
DISMISSAL OF PLAINTIFF'S COMPLAINT FOLLOWING FAILURE
TO TIMELY AMEND AND REQUEST FOR ENTRY OF JUDGMENT;
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION
OF CHRISTOPHER PISANO IN SUPPORT THEREOF

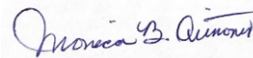
- by placing the document(s) listed above in a sealed _____ envelope and affixing a pre-paid air bill, and causing the envelope to be delivered to a _____ agent for delivery.
- by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- by transmitting via e-mail or electronic transmission the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

Please see attached Service List.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

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

Executed on December 5, 2024, at Ontario, California.



Monica Quinones

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Service List
In re City of Barstow, et al v. City of Adelanto, et al
Riverside Superior Court Case No. CIV208568

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28

PROOF OF SERVICE

STATE OF CALIFORNIA }
COUNTY OF SAN BERNARDINO}

I am employed in the County of the San Bernardino, State of California. I am over the age of 18 and not a party to the within action; my business address is 13846 Conference Center Drive, Apple Valley, California 92307.

On December 10, 2024, the document(s) described below were served pursuant to the Mojave Basin Area Watermaster's Rules and Regulations paragraph 8.B.2 which provides for service by electronic mail upon election by the Party or paragraph 10.D, which provides that Watermaster shall mail a postcard describing each document being served, to each Party or its designee according to the official service list, a copy of which is attached hereto, and which shall be maintained by the Mojave Basin Area Watermaster pursuant to Paragraph 37 of the Judgment. Served documents will be posted to and maintained on the Mojave Water Agency's internet website for printing and/or download by Parties wishing to do so.

Document(s) filed with the court and served herein are described as follows:

NOTICE OF EX PARTE APPLICATION AND APPLICATION FOR DISMISSAL OF PLAINTIFF'S COMPLAINT FOLLOWING FAILURE TO TIMELY AMEND AND REQUEST FOR ENTRY OF JUDGMENT; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF CHRISTOPHER PISANO IN SUPPORT THEREOF

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

Executed on December 10, 2024 at Apple Valley, California.



Jeffrey D. Ruesch

Mojave Basin Area Watermaster Service List as of December 10, 2024

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Mojave Basin Area Watermaster Service List as of December 10, 2024

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4775 Bird Farm Road
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CDFW - Mojave Narrows Regional Park
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Attn: Nancy Ryman
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Mojave Basin Area Watermaster Service List as of December 10, 2024

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Mojave Basin Area Watermaster Service List as of December 10, 2024

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Mojave Basin Area Watermaster Service List as of December 10, 2024

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Mojave Basin Area Watermaster Service List as of December 10, 2024

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