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BAKER COMMODITIES, INC.

BEFORE THE HEARING BOARD OF THE

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT

In The Matter Of:

BAKER COMMODITIES, INC.,
[Facility ID No. 800016]

Petitioner,

v.

SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT,

Respondent.

Case No. 6223-2

BAKER COMMODITIES, INC.'S OPPOSITION TO SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S (1) MOTION TO STRIKE PORTIONS OF BAKER'S PERMIT APPEAL and (2) MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATED TO THE ORDER FOR ABATEMENT

Date: February 26, 2025
Time: 9:30 a.m.
Place: Hearing Board
South Coast Air Quality Management District
21865 Copley Drive
Diamond Bar, CA 91765

I. INTRODUCTION

The District misuses the narrow legal tools of motions in limine and to strike[1], trying to usurp the Hearing Board's authority to weigh facts and arguments itself and trying to dictate how Baker presents its permit appeal case. The result is the District's absurd position that this Hearing Board is not capable of considering and evaluating *its own prior statements and actions*, and those of the District, about the very facility and processes at issue on this appeal. Obviously, the District does not like what it and the Hearing Board has previously said and done—it contradicts the District's erroneous position on Rule 415's applicability to Baker's current operations. But that is not a reason to exclude items "in limine," i.e., before the proceeding even begins, or to strike them from Baker's briefing entirely. Just like any other citation to precedential material by one party (Baker), the other party (the District) may argue in its case on the merits that the material is inapposite or inapplicable for some reason. The trier of fact (the Hearing Board) can then evaluate the arguments for itself.

The material at issue here is plainly relevant and applicable. But to evaluate the District's motions, let us assume it is not—the District argues that exposing this Hearing Board to *its own prior deliberations and orders*, or to brief statements about the value of Baker's services, is so highly prejudicial that the Hearing Board must strike that material from Baker's brief and prohibit Baker from ever mentioning it. Or, the District argues, exposing the Hearing Board to these succinct materials would waste so much time that the District had to force the parties to prepare, and the Hearing Board to evaluate, four or five additional briefs and hold an entire separate hearing—collectively, hundreds of people hours—on motions to exclude it.

Both of these arguments are not just meritless, they are farcical. There is no jury here—the District's improper motions only highlight to the Hearing Board the very material they claim the Hearing Board must not consider, lest they be "prejudiced" by hearing about their own statements and proceedings. And the District's improper motions, by the time they are argued, will have wasted far more time and resources than simply evaluating the "offending" material at the merits hearing

[1] The Motions basically duplicate each other and this Opposition addresses them together, distinguishing where appropriate.

ever could have. These motions were not brought as serious attempts to exclude prejudicial and wasteful material. They were brought to improperly hamstring Baker's sound arguments and to argue the merits of this matter before the District's Opposition is due. The Hearing Board should deny both improper motions summarily.

II. RELEVANT BACKGROUND

Baker is no longer a rendering facility. This has been established repeatedly in prior hearings, and Baker will establish it once again in the hearing of its permit appeal. The District apparently disagrees and, improperly arguing the merits of this case on its "motion in limine" and "motion to strike," the District repeatedly misrepresents this fact to justify its improper permitting decision to regulate the Facility under Rule 415. These improper arguments should be ignored, as motions in limine and to strike are not the proper place to make them. The only question is whether the challenged material is *so* irrelevant and time-consuming or *so* dangerously prejudicial that it must be stricken. Because the District's motions force the issue, the following brief factual summary supports Baker's basic demonstration of the relevance and lack of prejudice in the material at issue:

- **September 30, 2022**: The Hearing Board issued the Original Order requiring Baker to cease rendering, trap grease processing, and related wastewater operations until Baker installed PTE or a closed system around these functions. Baker disputed the NOVs underlying the Original Order.
- **April 18–19, 2023**: The Hearing Board approved Baker's petition to modify the Original Order to resume trap grease and wastewater processing while rendering had ceased. The District's own engineer, Azar Dabiri, testified that Rule 415 did not apply without rendering, and the Hearing Board agreed:
    - **Alene Taber (Baker counsel):** "So if Baker gave up its rendering permit, all right, then Baker would be able to run its trap grease operation and it would not be subject to Rule 415; is that correct?" **Azar Dabiri, District Engineer:** "That is correct."[2]
    - **Member Pearman:** "The whole point is that if they somehow aren't doing rendering and have that portion modified and activated whatever term you use, then the mere trap

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[2] *Id.* (attached as Exhibit 1) at 207:19-23.

grease operations are not subject to Rule 415. I think that's pretty clear in the rules."[3]

- **Member Balagopan:** "What they're asking for is to conduct trap grease operation, wastewater operation and cooking grease. . . they have conditions . . which will reinforce the fact that they will not conduct rendering because the lines – the gas lines to the cookers will be turned off and so that – they will be – essentially without that, you cannot do any rendering."[4]
- Unanimous vote to approve motion to modify Abatement Order.[5]

- **July 22, 2024:** Following several days of hearing testimony and evidence, the Hearing Board issued the Second Modified Order authorizing collections to commence, in addition to the existing trap and restaurant grease and associated wastewater operations. The Order reflected agreed operational and housekeeping conditions without reference to Rule 415. Baker also agreed to deactivate its rendering permits and submit applications to construct three enclosures on non-rendering equipment that the District requested to mitigate odors.

- **December 10, 2024 and January 15, 2025:** The District issued the final permits to construct the three enclosures and expand the Main Plant PTE, inserting requirements to comply with Rule 415, justified by calling Baker's collections, grease trap, and wastewater processing operations "rendering" contrary to all evidence of what occurs at the Facility.

- **January 9 and 28, 2025**: Baker filed its permit appeal. The key question on Baker's appeal is simple—"*Does Rule 415 apply to Baker's facility, despite Baker conducting no rendering of any sort?"* Baker's citations to the Hearing Board's prior statements and actions on this precise question provide context and, Baker argues, precedent. If the District disagrees, it can explain and distinguish this material, as any advocate would do in any legal proceeding.

III. ARGUMENT

District Rule 511(c) dictates that "any relevant evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs…"

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[3] *Id.* at 297:2-6.
[4] *Id.* at 312:11-19.
[5] *Id.* at 359:5-360:4.

In court proceedings, both motions in limine and motions to strike are disfavored and granted only when they pass a rigorous standard of review.

Motions in limine require consideration of whether the nonmoving party (Baker) has had a "full and fair opportunity to present all the facts in its favor," with all inferences and conflicts in the evidence resolved in favor of that nonmoving party (Baker). *Kinda v. Carpenter*, (2016) 247 Cal. App. 4th 1268, 1282. And in non-jury "bench" trials (akin to the Hearing Board's proceedings), motions in limine are even more disfavored. "Because the judge rules on this evidentiary motion… a threshold ruling is generally superfluous. It would be, in effect, 'coals to Newcastle,' asking the judge to rule in advance on prejudicial evidence so that the judge would not hear the evidence." *U.S. v. Heller*, (9th Cir. 2009) 551 F.3d 1108, 1112.

A Motion to Strike is improper unless the challenged material is unquestionably irrelevant and has no possible bearing on the subject matter of the litigation. *Neveau v. City of Fresno*, (E.D. Cal. 2005) 392 F. Supp. 2d 1159, 1170. Courts do not strike the context a party provides based solely on another party's view of its "irrelevance," and may not strike a party's narrative statement as irrelevant unless the "narrative statement is wholly insufficient, a sham, and a fraud." *See, e.g.*, *Stevens v. Superior Court of S.F.*, (1958) 160 Cal. App. 2d 264, 207.

Neither District motion has any basis in law, nor does the District cite to any authority for many of its positions. Neither motion carries the District's burdens as the moving party. Both mischaracterize the circumstances of the prior proceedings. On top of their lack of merit, the Motions are a waste of the Hearing Board's and the parties' time and resources, belying the District's purported concerns about promoting efficiency. For all these reasons, the Hearing Board should deny the Motions in their entirety.[6]

A. Evidence of the Hearing Board and District's Interpretations of Rule 415 Applicability Is Relevant.

The District argues that evidence of the Hearing Board's own views of Rule 415's applicability to Baker's Facility is irrelevant. An odd argument, to say the least, where the *main*

[6] Baker does not oppose the District's ministerial request to change "Petitioner" and "Respondent," and would have agreed without wasting party resources had the District given Baker a chance prior to filing, but it did not.

thing Baker's appeal now asks for is the Hearing Board's ruling on Rule 415's applicability to its Facility.[7] Essentially, the District wishes to exclude prior Hearing Board statements and actions when they do not suit the District's weak arguments on the merits. That is not a good reason to exclude them. The material from the abatement proceedings the District wishes to exclude demonstrates how the District and Hearing Board interpret the applicability of Rule 415 at the Facility, and what conditions are needed to mitigate odors from Baker's operations. Such evidence *must* be admitted. *See* District Rule 511(c) ("Any relevant evidence *shall* be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs . . .") (emphasis added); Hearing Board Rule 9(b)(3) (same).

The District argues that the Hearing Board's prior proceedings are irrelevant in part because the District's Executive Officer and permitting staff did not consider them when issuing the final permits.[8] That is decidedly *not* the standard of admissibility. The Executive Officer and permitting staff ignoring the Hearing Board's views on the applicability of SCAQMD Rules is unfortunate, but very relevant to the Hearing Board's evaluation of whether the District's permitting actions were arbitrary and capricious. And the issue extends beyond the Hearing Board. It is a relevant indictment of the District's process if engineering staff decided (or were directed) to ignore their own prior public, sworn testimony from District engineer Azar Dabiri that Rule 415 does not apply to the Facility's trap grease and wastewater operations.

The fact that the District ignored both the Hearing Board and its own staff on Rule 415's applicability certainly is no reason to exclude evidence on this point. No authority supports the District's sweeping, conclusory assertions, including that "Baker is foreclosed from quoting hearing board statements that were not part of the permitting decision."[9] That argument would simply give the District license to flout the law and insulate its decisions from review by ignoring evidence and findings it dislikes. As the District itself puts it, the power to issue a permit imposes a "duty to

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[7] Interestingly, the District conveniently drops this argument when it seeks official notice of the Hearing Board's Order because, among other reasons, "it has the decision of the Hearing Board related to that other [prior] factual scenario." The District finds the Order relevant to the Board's understanding of how these proceedings compare to the outcome of prior proceedings. Naturally, Baker does not oppose that request for notice. Request for Official Notice re. District's Motion to Strike, Case No, 6223-2 (Feb. 12, 2025) at 4:8-9.

[8] *See e.g.,* Motion to Strike at 9:16–19, 10:28–11:3 *See* Motion in Limine at 7:27–28.

[9] Motion to Strike at 6:24–25.

evaluate the permit application and where appropriate add permit conditions '[t]o assure compliance with all applicable regulations.'" [10] Yet the District wishes to strike and exclude evidence on the point that Rule 415 is not an "applicable regulation," which the Hearing Board made clear in the conditions to the Order and multiple times in uncontradicted statements on the record.

The challenged evidence is highly relevant to the legality of the District's permit conditions. Because the Hearing Board's rules *require* that relevant evidence be admitted, the Motions must be denied.

B. Evidence of the Abatement Order's Stipulated Conditions Is Relevant.

The District also argues that the Motions are necessary to avoid "lead[ing] this Hearing Board down a path where stipulated conditions in an abatement order must be inserted into a related permit application and the absence of such conditions is inherently problematic." [11] This blatantly misconstrues Baker's clear argument: *in addition to the legal inapplicability of Rule 415,* the Order's terms (and Baker's successful implementation of them) demonstrate that applying the Rule is unnecessary, problematic, and provides no tangible benefit, as relevant housekeeping and operational conditions in the Order are enough. As Baker's brief clearly states: "*in addition to* the correctness of Baker's legal position, the Hearing Board should grant Baker's petition because the District will suffer no prejudice, the District's substantive demands will be met, and all involved could return to the useful courses of their work."[12] Further, this evidence supports Baker's estoppel argument, i.e., that "the District is equitably estopped from taking a position with respect to the Permit conditions that is contrary to the position it took in the context of modifying the Order—a position on which Baker has already relied."[13]

If the District does not agree with Baker's position, it can obviously argue against it in its upcoming Opposition brief. But that is a *substantive* argument on the merits about the import and effect of relevant evidence, i.e., the Order and its terms.

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[10] *Id.* at 5:27–28.
[11] *Id.* at 8:13–15.
[12] Baker Appeal, 14:17-19.
[13] *Id.* at 14:21-25, *et seq.*

The District's reliance on *Valero* misses the mark. First, that case turns on a specific rule from the Bay Area Air Quality Management District, which has different rules from the District. *Valero Ref. Co.—California v. Bay Area Air Quality Mgmt. Dist. Hearing Bd.*, (2020) 49 Cal. App. 5th 618, 627 ("The dispute in this case turned on the meaning of [BAAQMD] regulation 2-2-605.1"). Moreover, *Valero* supports Baker's position because it emphasizes that the Hearing Board must exercise its independent judgment when reviewing the District's determination. *Id.* at 638 ("We start with the general principle that the hearing board was required to exercise its independent judgment in deciding Valero's appeal").

C. The Differences Between an Abatement Proceeding and a Permitting Decision Are Immaterial to Whether Rule 415 Applies to the Facility.

The District argues that differences between the Hearing Board proceedings and District permitting process warrant excluding relevant evidence and findings, or that they somehow make such evidence and findings irrelevant. Incorrect. The issue is whether Rule 415 applies to Baker's Facility. The answer to that legal question *must* be the same, regardless of whether the Hearing Board answers it in an abatement proceeding, or the District answers it in a permit issuance. If the District believes different facts now change the answer, once again, the District may argue that on the merits—it may not prevent Baker from making the opposite argument in its appeal.

Making that argument on a motion in limine is improper, but the District does it anyway and demonstrates how weak its argument is. The District argues that "Board Member Pearman's statement during an Order for Abatement Modification Hearing on April 19, 2023 concerned a factual situation different than what District permitting staff considered for their permitting decision. *At that juncture of the hearing, Baker had not even submitted permit applications*."[14] Of course, whether a permit application has been submitted has nothing whatsoever to do with whether Rule 415 applies to particular operations, and certainly does not make the Hearing Board's understanding on that question "irrelevant." Likewise, the District argues that "[a]ny statements regarding those trap grease operations are not relevant, particularly, because Baker has added collection activity to

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[14] Motion to Strike, at 9:16–19 (emphasis supplied).

its facility."[15] But Baker continues its trap grease operations and the District now wrongly claims that those are "rendering" operations subject to Rule 415. *Of course* prior positions on that precise issue are relevant. Again, the District never connects the dots to support the relief its Motions seek.

The District then leaps to suggest that considering Hearing Board member views would "impeach" the Hearing Board's decision in issuing the abatement orders, citing to *Key v. Tyler* and *Valero Refining, supra*.[16] This view misunderstands the situation and the law. First, individual Board Members' statements are what they are, and the other Board Members either agree or do not. But statements about the applicability of Rule 415 are on the record and uncontradicted. Unlike in *Key v. Tyler*, the abatement proceedings *support* (not impeach) the written orders, which allowed grease trap and wastewater processing to resume without Rule 415. Baker does not seek to "impeach" the Hearing Board's final decision but to require the District to act consistently with that decision. The Hearing Board statements and their reflection in the Order are indicative of the Hearing Board's understanding of applicable Rules—an understanding the Hearing Board will either affirm again or not in deciding the permit appeal.

The distinctions the District attempts to draw between abatement proceedings and permit issuance provide no basis to grant the District's Motions, let alone to dispute the merits of Baker's appeal, which the District argues prematurely. No such difference alters the answer to the question whether Rule 415 applies to the Facility, and the Hearing Board should deny the Motions accordingly.

D. Evidence and Findings from the Abatement Proceedings Do Not Unfairly Prejudice the District, and Baker Does Not Seek to Relitigate Issues.

The District's argument that Baker's reliance on relevant evidence and findings "prejudices" the District and will result in "relitigating" previously resolved issues is unavailing. If by "prejudice" the District means "demonstrate why the District's conduct is arbitrary, capricious, and wrong," then the District must simply endure such "prejudice." *People v. Cortez,* (2016) 63 Cal. 4th 101, 128 ("'[P]rejudice' does not mean damage to a party's case that flows from relevant, probative

[15] *Id.* at 9:27–10:2.
[16] *Id.* at 10:7–18 citing *Key v. Tyler* (2019) 34 Cal.App.5th 505, 539 n. 16 as modified on denial of reh'g (May 7, 2019).

evidence."); *see also Vorse v. Sarasy,* (1997) 53 Cal. App. 4th 998, 1008 ("Evidence is not prejudicial… merely because it undermines the opponent's position or shores up that of the proponent.").

The District's argument also fails in that "including arguments from prior abatement proceedings that [Baker] has identified as benefitting their Permit Appeal… is prejudicial to the District without allowing an examination of those prior proceedings that allows for the identification of prior inconsistent statements and other evidence introduced by Baker."[17] The District never appealed the prior proceedings for relying on wrong or untested evidence (nor could it), and nothing prevents the District, through its arguments on the merits, from introducing whatever elements it thinks necessary to complete the context and rebut Baker's burden—indeed, that is the very purpose of its Opposition. The District complains that admitting relevant evidence is unfairly prejudicial because it hurts the District's case and forces the District to try to rebut it. That complaint lacks any merit.

The District also asserts that Baker is trying to "relitigate" issues that were previously resolved.[18] It is not. All parties, including the Hearing Board, actively participated in those proceedings, and Baker has successfully implemented the Order that resulted. Arguing that Baker is "taking a second bite at the apple" badly misunderstands that metaphor.[19] Baker does not want a second bite of any apple. It just wants the Hearing Board to have the ability to consider what has already been said and done. If the District does not like that evidence, it can explain why in its Opposition brief.

Similarly, the District suggests Baker has "cherry picked" from the record because it referred only to the portions of the prior record relevant to the permit appeal.[20] Of course, *any* citation to the record in *any* evidentiary proceeding would only cite to relevant portions. If a party feels other portions are relevant, it can cite to them itself. That is standard practice and obviously not a basis to

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[17] *See* Motion in Limine, Case No, 6223-2 (Feb. 12, 2025) at 4:22-25.
[18] Motion to Strike, at 11:19–21; *see e.g.,* Motion in Limine, at 5:8–13.
[19] Motion to Strike, at 11:19–21; Motion in Limine, at 7:3–5.
[20] Motion to Strike at 3:5–7; 6:21–22; Motion in Limine, at 5:21–6:1.

exclude the record wholesale. The District cannot use evidentiary motions to try to shape Baker's presentation of its own case.

E. The Short Background on the Importance of Baker's Facility to California Provides Value, is not Inaccurate, and the District Wastes Resources and Time by Moving to Strike or Exclude It.

Motions to strike are disfavored, and courts will not generally strike the context a party provides based solely on another party's view of its "irrelevance." This particularly applies to allegations about the nature and benefits of Baker's services. Baker is entitled to provide context to aid the Board in understanding how the circumstances culminated in the appeal, and the District is not entitled to strike that context. Moreover, the District never argues that such detail is wrong. Courts may not strike a party's narrative statement as irrelevant unless the "narrative statement is wholly insufficient, a sham, and a fraud." *Stevens* 160 Cal. App. 2d at 269. The District never approaches this threshold, and the material *is* relevant to Baker's petition. Baker has no intent to call witnesses or engage in "extensive discussion" at the merits hearing on the value of the services Baker provides (and if Baker did, the Hearing Board could easily cut it off then). The motions on this point are a complete waste of time and resources.

F. The District's Concern About Delayed Process and Efficiency are Disingenuous – Granting Its Motions Would Lead to An Incomplete Record.

The District argues that Baker's citations to the prior record makes for inefficient proceeding. Other than explaining that there is a lengthy history, the District has presented no argument or evidence to show *how* including select, relevant portions of the record, something both parties have opportunity to do, requires excessive effort in briefing or undue hearing time. Instead, the District's Motions themselves have wasted hundreds of people hours and significant resources, belying its supposed concerns.

Further, granting the Motions would risk further proceedings because it would prevent the Hearing Board from deciding the case on its merits and render any ultimate decision vulnerable for insufficiency of the record supporting it. On an administrative writ of mandamus, a reviewing court must consider all relevant evidence, including evidence detracting from the decision, a task that involves some weighing to fairly estimate the worth of the evidence. *Horwitz v. City of L.A.*, (2004)

124 Cal. App. 4th 1344, 1354, (affirming that the City abused its discretion in issuing permits to enlarge a property, as the decision lacked support from administrative findings or substantial evidence); *The Util. Reform Network v. Pub. Utils. Com.*, (2014) 223 Cal. App. 4th 945 (holding that the PUC's finding of need was unsupported by substantial evidence because it relied on uncorroborated hearsay materials and the remaining evidence failed to support the PUC's finding of need). If Baker cannot assemble a full and proper record here, the outcome of these proceedings could be set aside for insufficiency of the evidence in the administrative record, leading, at a minimum, to a remand. *Voices of the Wetlands v. State Water Res. Control Bd.*, (2011) 52 Cal. 4th 499, 531. Increasing the risk of judicial proceedings for procedural error does not promote efficient administrative proceedings.

If the District's worry about efficiency were sincere, it would not have pursued two unnecessary motions. They lack merit, legal support, and compound the parties' efforts in the runup to the merits hearing. At a minimum, they could have been argued as a single motion. Instead, the District forced lawyers to submit multiple extraneous briefs and argue those in an upcoming hearing date, and forced the Hearing Board to parse and decide these issues even before it reaches the merits.

IV. CONCLUSION

The District's arbitrary and capricious conduct in crafting Baker's permit conditions is the sole reasons this appeal is occurring. The District is now multiplying these proceedings with frivolous and wasteful motion practice. Yet the District would have the Hearing Board believe that filing two patently spurious motions is somehow in the interests of an efficient and orderly merits determination. The Motions are unsupported by the law, the facts, and common sense. They are a waste of time and resources and part of the District's apparently unending crusade against Baker. The Hearing Board should deny them.

Dated: February 18, 2025

DLA PIPER LLP (US)

By: _____

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BAKER COMMODITIES, INC.

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper, LLP (US), 555 Mission Street, Suite 2400, San Francisco, California 94105. I am employed in the City and County of San Francisco, in the office of a member of the bar of this court at whose direction the following was made.

On February 18, 2025, I served the following document(s):

- **BAKER COMMODITIES, INC.'S OPPOSITION TO SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT'S (1) MOTION TO STRIKE PORTIONS OF BAKER'S PERMIT APPEAL AND (2) MOTION IN LIMINE TO EXCLUDE EVIDENCE RELATED TO THE ORDER FOR ABATEMENT**

on the interested parties, addressed as follows:

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☒ **(BY ELECTRONIC MAIL)** Based on the court order or agreement of the parties to accept service by e-mail or electronic transmission, I caused the documents to be sent to the persons identified above. I did not receive, within reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct of my own knowledge, and that I executed this document on February 18, 2025, in San Francisco, California.

Michele Leyva