

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

FAZZINO INVESTMENTS, LP §
for itself and all others similarly situated, §
PLAINTIFFS §

V. §

CASE NO. 6:25-cv -00001-ADA-DTG

BRAZOS VALLEY GROUNDWATER §
CONSERVATION DISTRICT, §
BVGCD §

**PLAINTIFF'S [OPPOSED] MOTION TO STAY DEADLINE TO RESPOND TO
DEFENDANT'S SECOND MOTION FOR SUMMARY JUDGMENT**

TO THE HONORABLE UNITED STATES DISTRICT COURT:

Plaintiff respectfully moves to stay the deadline¹ to respond to Defendant Brazos Valley Groundwater Conservation District's (BVGCD) Second Motion for Summary Judgment (Dkt. #78) until the Court rules on Plaintiff's Motion to Strike Defendant's Second Motion for Summary Judgment (Dkt. #79). As set forth in its motion, Plaintiff moves to strike BVGCD's Second Motion for Summary Judgment because it is not a genuine independent dispositive motion, but rather, functions as an unauthorized surreply to Plaintiff's Motion for Summary Judgment, in violation of Local Rule CV-7(e) and the Local Rule CV-7 briefing page limits.

¹ BVGCD's Second Motion for Summary Judgment (Dkt. #78) was filed on May 19, 2026. Per Local Rule CV-7(d)(2), Plaintiff's deadline to respond to BVGCD's Second Motion for Summary Judgment would otherwise be June 2, 2026. Plaintiff absolutely opposes BVGCD's Second Motion for Summary Judgment for the same reasons it opposes BVGCD's virtually duplicative First Motion for Summary Judgment (DKT. #50). Notwithstanding the efficiencies gained by staying the briefing on BVGCD's Second Motion for Summary Judgment until after the Court decides Plaintiff's Motion to Strike, BVGCD opposes Plaintiff's request.

BACKGROUND

On May 8, 2026, and after requesting and receiving leave to exceed the page limits (Dkt. #75), BVGCD filed its response to Plaintiff's Motion for Summary Judgment (Dkt. #76). On May 15, 2026, Plaintiff filed its reply in support of its summary judgment motion (DKT. #77). A scant four days later, and without leave of Court, BVGCD, on May 19, 2026, filed its Second Motion for Summary Judgment (Dkt. #78). Plaintiff has moved to strike (Dkt. #79) BVGCD's Second Motion for Summary Judgment on multiple grounds, principally asserting that BVGCD's Second Motion for Summary Judgment is an unauthorized and duplicative surreply that revisits the same merits issues already briefed in BVGCD's summary judgment briefing—even to the point, for example, of expressly incorporating its previous summary judgment briefing into its Second Motion for Summary Judgment. *See, e.g.*, Dkt. #78 at 1 n.1.

Plaintiff's pending Motion to Strike asserts that Plaintiff should not be required to respond to BVGCD's Second Motion for Summary Judgment at all. Should the Court agree, a merits response will be unnecessary.

ARGUMENT

I. A brief stay until the Court determines Plaintiff's Motion to Strike will promote efficiency and avoid unnecessary motion practice.

Plaintiff's Motion to Strike squarely presents the threshold question of whether BVGCD's Second Motion for Summary Judgment is a proper motion requiring a merits response, or instead, as Plaintiff asserts, constitutes an unauthorized surreply not adhering to the Local Rule CV-7 briefing page limits filed without leave of Court. Requiring Plaintiff to prepare and file a full merits response to BVGCD's Second Motion for Summary Judgment before this threshold issue is decided risks needless duplication of effort and unnecessary expense, particularly because Plaintiff's Motion to Strike asserts that BVGCD's Second Motion for Summary

Judgment merely repackages arguments BVGCD has already made and/or could have made in Defendant's First Motion for Summary Judgment and extended response to Plaintiff's Motion for Summary Judgment.

A short stay also will conserve judicial resources. If the Court grants Plaintiff's Motion to Strike, the Court will avoid the necessity of determining a motion that no longer exists. Plaintiff does not seek to avoid responding to BVGCD's Second Motion for Summary Judgment. Rather, Plaintiff seeks to postpone drafting and filing a response until the Court determines whether BVGCD's Second Motion for Summary Judgment is properly before it.

II. Plaintiff's requested stay is narrow.

Plaintiff seeks only a limited stay of the response deadline pending determination of its Motion to Strike. Plaintiff's request does not seek to delay the case indefinitely, reopen discovery, reopen summary judgment briefing, or postpone any hearing setting. Plaintiff simply asks the Court to decide first whether BVGCD's Second Motion for Summary Judgment is a proper dispositive motion or an unauthorized surreply before requiring Plaintiff to spend the time and resources necessary to respond to it.

Plaintiff promptly challenged BVGCD's Second Motion for Summary Judgment via the pending Motion to Strike. A brief stay while the Court resolves this threshold procedural dispute is more efficient than simultaneously litigating whether BVGCD's Second Motion for Summary Judgment should be stricken while, at the same time, requiring Plaintiff to respond to it.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court to stay Plaintiff's June 2, 2026 deadline to respond to BVGCD's Second Motion for Summary Judgment (Dkt. #78), until the Court rules on Plaintiff's Motion to Strike (Dkt. #79). Should the Court deny Plaintiff's

Motion to Strike, Plaintiff further requests the Court to set Plaintiff's deadline to respond to BVGCD's Second Motion for Summary Judgment fourteen (14) days after the date the Court enters its order denying the Motion to Strike. In all things, Plaintiff requests the Court to award such other and further relief to which Plaintiff is justly entitled.

Date: June 2, 2026

Respectfully submitted,

/s/ Marvin W. Jones

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Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

Pursuant to Local Rule CV-7(g), on June 2, 2026, I conferred with counsel for Defendant BVGCD in a good-faith attempt to resolve this motion, by agreement, before filing it. Defendant's counsel stated that BVGCD opposes Plaintiff's motion to stay. As such, I hereby certify that no such agreement could be made with Defendant's counsel.

/s/ Marvin W. Jones

Marvin W. Jones

CERTIFICATE OF SERVICE

I hereby certify that on June 2, 2026, I served a true and correct copy of Plaintiff's [Opposed] Motion to Stay Deadline to Respond to Defendant's Second Motion for Summary Judgment on Defendant's counsel via email and the Court's electronic filing system.

/s/ Marvin W. Jones

Marvin W. Jones