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E-FILED
10/24/2017
FRESNO COUNTY SUPERIOR COURT
By: M. Sanchez, Deputy

6 Attorneys for Pinedale County Water District

7 NO FILING FEE REQUIRED GOVERNMENT CODE §6103

8 **SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF FRESNO**

10 CITY OF FRESNO,

11 Plaintiff,

12 v.

13 PINEDALE COUNTY WATER
DISTRICT,

14 Defendant.
15

) CASE NO. 17 CECG 02055
)
)

) **RESPONDENT'S MEMORANDUM OF**
) **POINTS AND AUTHORITIES IN REPLY**
) **TO THE MEMORANDUM OF POINTS**
) **AND AUTHORITIES FILED BY**
) **PETITIONER, CITY OF FRESNO**

) Date: November 08, 2017

) Time: 8:30 a.m.

) Dept.: 404

) Judge : Honorable Mark Cullers

16
17 **INTRODUCTION**

18 The City of Fresno (Petitioner) concedes that the case required by virtue of CCP
19 §394 either to be assigned to a disinterested judge from a neutral county or to be
20 transferred to a neutral county. (City's Brief at p. 2:10-20). City suggests and Respondent,
21 Pinedale County Water District (Pinedale) agrees that it is most appropriate for the court
22 to exercise the option of requesting the assignment of a disinterested judge from a neutral
23 county to hear this case in the Fresno County Superior Court, simply by virtue of the fact
24 of the proximity of the attorneys and the parties to this court.

25 **ARGUMENT**

26 A. IF TRANSFERRED THE CASE MUST BE TRANSFERRED TO A COUNTY
27 OTHER THAN MADERA.

28 City suggests, and Pinedale disagrees that if the preferred option of assigning a
RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO THE MOPA FILED BY PETITIONER

1 disinterested judge from a neutral county is not pursued by the court, that the court can
2 transfer the case to Madera County which the City characterizes as the "closest neutral
3 county". Transfer to the Madera Court is not an option. The Madera Court is of course,
4 the court that entered the judgment the City of Fresno is attempting to enforce and is
5 obviously not neutral. "Section 394 does not provide that a plaintiff", in this case Petitioner
6 - the City of Fresno, "may commence the action in a neutral county or that Plaintiff may
7 select its own forum". (*Skidmore v. Solano County* (1954) 128 Cal.App.2d 391, 394). The
8 statute exists for the sole benefit of a defendant, or in this case, a respondent. It is the
9 defendant that is entitled to have venue changed. Fresno could have filed this action in
10 Madera County, if it wished, and Pinedale would not be able to rely on CCP §394.
11 Allowing Fresno to select which county is neutral is simply contrary to the statute which
12 vests that right in a defendant which has been sued in the public entity's county of
13 residence. (*Fitzpatrick v. Sonoma County* (1929) 97 Cal.App.588, 596).

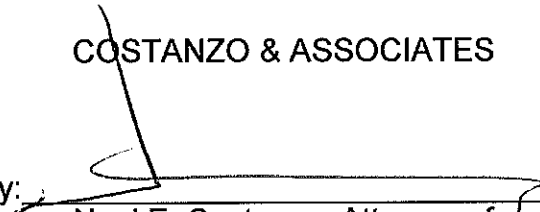
14 CONCLUSION

15 It is the neutrality of the disinterested judge or county that is the important factor
16 in determining where the case should be assigned or transferred to. If the court declines
17 to request assignment of a disinterested judge according to the preferences of both parties,
18 Madera County is not neutral. Madera County is were the order that is sought to be
19 enforced emanated and the mandate of §394 cannot be so easily avoided by the City of
20 Fresno which clearly knew Pinedale would file this motion requiring the mandatory transfer
21 under when it filed in Fresno County.

22 //

23 Dated: October 24, 2017

COSTANZO & ASSOCIATES

24
25 By: 
26 Neal E. Costanzo, Attorneys for
27 Petitioner/Defendant
28

1 PROOF OF SERVICE

2 The undersigned declares:

3 I, Julia Sellers, the undersigned, declare that:

4 I am employed in the County of Fresno, State of California. I am over the age of
5 eighteen years, and am not a party to the within action. My business address is 575 E.
6 Locust Avenue, Suite 115, Fresno California 93720.

7 I am familiar with the regular mail collection and processing practice of said
8 business, and in the ordinary course of business the mail is deposited with the United
9 States Postal Service that same day.

10 On October 24, 2017, I served the foregoing document described as:

11 **RESPONDENT'S MEMORANDUM OF POINTS AND AUTHORITIES IN REPLY TO**
12 **THE MEMORANDUM OF POINTS AND AUTHORITIES FILED BY PETITIONER,**
13 **CITY OF FRESNO**

14 on all parties to this action by causing a true copy thereof to be:

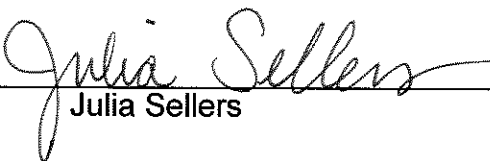
- 15 (X) Telecopied Via Facsimile
16 (X) Placed in a sealed envelope with postage thereon fully prepaid in the
17 designated area for outgoing mail
18 () Delivered by Hand
19 () Sent Via Overnight Delivery (see below)

20 as addressed below:

21 James B. Betts
22 Joseph D. Rubin
23 Betts & Rubin
24 907 Santa Fe Avenue, Suite 201
25 Fresno, CA 93721
26 Fax: (559) 438-6959

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

Date: October 24, 2017


Julia Sellers