

1 Neal E. Costanzo SBN 122352
Michael G. Slater SBN 247302
2 Costanzo & Associates
A Professional Corporation
3 575 E. Locust Avenue, Suite 115
Fresno CA 93720
4 Telephone: (559) 261-0163
Facsimile: (559) 261-0706
5

E-FILED
8/9/2018 12:01 PM
FRESNO COUNTY SUPERIOR COURT
By: M. Douangkham, 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 PINEDALE COUNTY WATER)
DISTRICT, a County Water District,)

18CECG02957

11 Plaintiff,)

**COMPLAINT FOR RESCISSION OF
CONTRACT, DECLARATORY RELIEF**

12 v.)

13 CITY OF FRESNO, a Municipal)
14 Corporation, and DOES 1 through 5)
inclusive,)

15 Defendants.)
16

17 Plaintiff, Pinedale County Water District, a County Water District organized and
18 existing under the County Water District law of the State of California alleges:
19

20 **PARTIES**

21 1. Plaintiff is a County Water District and a Public Entity organized and existing
under California law.

22 2. Defendant, City of Fresno, is a Charter City organized and existing under the
23 laws of the State of California.

24 **BACKGROUND ALLEGATIONS**

25 3. On June 16, 2017, Defendant, City of Fresno, filed a Petition for Writ of
26 Mandate to compel Respondent to pay judgment in the Fresno County Superior Court
27 Case No. 17 CECG 02055. The proceeding was subsequently transferred to the Kings
28

1 County Superior Court pursuant to Code of Civil Procedure §394 and is pending in that
2 court as Case No. 18C-0051.

3 4. On June 3, 2008, Defendant, City of Fresno filed an action naming Pinedale
4 County Water District as Defendant in Fresno County Superior Court Case No. 08 CECG
5 01899 which was subsequently transferred to the Madera County Superior Court as Case
6 No. MCV04341.

7 5. The action filed by the City of Fresno as Madera County Superior Court Case
8 No. MCV043413 sought specific performance consisting of an order that the City be
9 allowed to conduct an investigation and audit of the District's internal financial controls and
10 operations, including, but not limited to, all records pertaining to the sewage collection
11 system of Pinedale County Water District and the Pinedale County Water District's
12 obligations under a written agreement relating to the transportation treatment and disposal
13 of sewage.

14 6. In Madera County Case No. MCV043413, a Judgment was entered granting the
15 request for specific performance and stating that Plaintiff, City of Fresno, shall be allowed
16 to conduct an investigation and audit of the District's internal financial controls and
17 operations including, but not limited to, all records pertaining to the sewage collection
18 system and the District's obligations under the agreement relating to transportation
19 treatment and disposal of sewage on October 4, 2011. Since October 4, 2011, Defendant,
20 City of Fresno has never sought to conduct any investigation or audit of the District internal
21 financial controls or operations or of any records pertaining to the aforementioned
22 agreement.

23 7. Following entry of the aforementioned October 4, 2011 Judgment, Defendant,
24 City of Fresno secured a Judgment on January 23, 2012 awarding it Attorney's fees in the
25 amount of \$85,235.00 and costs in the amount of \$1,423.53 and on February 7, 2014,
26 Defendant secured a Judgment awarding \$39,919.00 for Attorney's fees on subsequent
27 appeals pursuant to a provision of the agreement for transportation treatment and disposal
28 of sewage.

1 8. On May 13, 2014, Defendant, City of Fresno, caused to be recorded in the
2 Fresno County Recorder's Office an Abstract of Judgment and on June 2, 2014, filed a
3 different Abstract of Judgment with the Madera County Recorder. The Defendant thereby
4 created, pursuant to CCP §697.310(a) a lien on all of the real property owned by Pinedale
5 County Water District in the Counties of Fresno and Madera. (CCP §697.340). Recording
6 of the Abstracts of Judgment transformed the City of Fresno, Defendant, into a Secured
7 Creditor and the security for payment of the amounts owed under the Judgements, if any,
8 was against real property. As a secured creditor, Fresno was required to pursue all of the
9 real property security first in any attempt to enforce the underlying debt through judicial
10 process in one form of action authorized by CCP §726.

11 9. On January 15, 2015, Defendant, City of Fresno, recorded a release of both
12 Abstracts of Judgment.

13 10. The Agreement for Transportation and Treatment of Pinedale County Water
14 District Sewage, a copy of which is attached and incorporated by reference as Exhibit 1 to
15 this complaint is between Plaintiff, a "Public Entity created by and under the laws of the
16 State of California," and the Defendant, City a "Municipal Corporation". In or about 1976,
17 Plaintiff, Pinedale County Water District, operated its own sewage collection and
18 wastewater treatment works and in or about that year, the District's collection system was
19 connected to the City interceptor line causing all sewage generated within the boundaries
20 of Pinedale County Water District to be transported to the wastewater treatment facility
21 owned and operated by the City. The Plaintiff, retains ownership of its existing and since,
22 expanded, sewage collection system and the sewage collected by virtue of its connection
23 to the interceptor line, transports all sewage collected to the wastewater treatment facility
24 owned and operated by the City of Fresno. The Agreement, Exhibit 1 at Section 4,
25 requires the Plaintiff to adopt the same rates for sewer charges as set forth in any
26 Ordinance or regulation of the City of Fresno as it now exists or as thereafter modified, and
27 provides for a specified percentage of the amount billed and collected as required by that
28 Section 4 of the Agreement to be paid to the City. (Exhibit 1. at page 2-3, Section 4). At

1 Section 7, the Agreement requires the District to "adopt and enforce" a regulation
2 prohibiting discharges as City imposes on discharges within the City of Fresno pursuant
3 to" a specified City Ordinance "as it now reads or it may hereafter be amended". Section
4 15 of the Agreement, Exhibit 1 to the Petition, provides that it is "perpetual and may not
5 be cancelled or terminated except by mutual written consent of the Parties thereto".

6 **FIRST CAUSE OF ACTION**
7 **(RESCISSION OF CONTRACT)**

8 11. Plaintiff, Pinedale County Water District, incorporates by reference each and
9 every allegation made and contained in paragraphs 1 through 10, of this Complaint as
10 though fully set forth at this point.

11 12. Plaintiff, District has the statutory authority to set rates for all services provided
12 by the County Water District and is further authorized to provide sewer services. (Water
13 Code §31100, 31101). In setting rates for services, the District is subject to numerous
14 statutory and constitutional requirements, including but not limited to the Fee Mitigation Act,
15 which generally requires the setting of rates for sewer service to be commensurate with the
16 cost of providing that service where it is provided by a public entity (Government Code
17 §60000 et seq) and what is commonly known as Proposition 218 (California Constitution
18 Articles XIII C and XIII D) requiring that any change or increase in sewer rates charged by
19 the District be set only after the conduct of a public hearing and observance of protest
20 procedures and the District is constitutionally prohibited from changing rates for sewer
21 service in the event the District receives a majority protest.

22 13. The Agreement, Exhibit 1 to the Petition is illegal, invalid and void in that the
23 District has no authority to contract away its statutory and constitutional authority to set
24 rates for sewer service and is precluded by law from delegating to any other person or
25 entity, or public entity, its statutory power and obligation to set sewer rates in accordance
26 with applicable provisions of statute. The Agreement, Exhibit 1, is an improper, perpetual
27 agreement that cannot be terminated and therefore requires the District and its governing
28 board in advance and forever, to refrain from exercising their judgment and authority with

1 respect to sewer collection services and rates and requires that the District exercise a
2 legislative power granted to it by statute, the power to set rates for sewage service in a
3 manner that is contrary to statutes and Constitution of the State of California and other
4 provisions of law that govern its exercise so that the Agreement is invalid, illegal and
5 contrary to the public policy of the State of California.

6 14. In 2007 and continually thereafter, the District has sought City's agreement to
7 termination of the Agreement, Ex. 1, because it is an illegal, invalid and void contract and
8 City has refused all proposed changes to the contract.

9 15. Because the perpetual contract unlawfully surrenders discretionary and
10 mandatory governmental powers and requires the District to act in a manner that is
11 contrary to law the District is entitled to rescind the Agreement, Ex. 1 to the Petition, and
12 recover from Defendant, City of Fresno, the consideration paid under the Agreement
13 together with interest at the legal rate. Plaintiff, Pinedale County Water District has not
14 received any benefit from the Agreement that it has not already paid for.

15 16. Plaintiff has notified Defendant that the Agreement, Exhibit 1, is in fact,
16 unlawful and subject to rescission; Plaintiff has given formal notice of its exercise of its right
17 to rescind the Agreement by the filing of a cross-complaint in Kings County Superior Court
18 Case No. 18C-0051. Further pursuant to the provisions of Civil Code §1691 the service of
19 this Complaint in this action shall be deemed to be such notice and an offer to restore to
20 Defendant, if anything, everything of value that has been received by the Plaintiff, District,
21 under the contract.

22 **SECOND CAUSE OF ACTION**

23 **(DECLARATORY RELIEF)**

24 17. Plaintiff refers to and incorporates by reference each and every allegation
25 made and contained in paragraphs 1 through 16 of this Complaint as though fully set forth
26 at this point.

27 18. Although Defendant, City of Fresno, knows, or should know, that the only
28 means by which a monetary judgment may be collected from a public entity is by Petition

1 for Writ of Mandate, the City recorded the aforementioned Abstracts of Judgment in Fresno
2 and Madera County expressly in an effort to enforce the monetary judgment referred to
3 above on May 13 and June 2, 2014.

4 19. Pursuant to CCP §697.310(a) and 697.340, recordation of the Abstracts of
5 Judgment transformed Defendant, Fresno, into a secured creditor and the security was,
6 pursuant to the terms of the Abstracts of Judgment, real property. Pursuant to the
7 provisions of CCP §726(a), by virtue of Defendant voluntarily recording the release of the
8 Abstracts of Judgment previously recorded, Defendant is relieved entirely, of any and all
9 liability for the judgment that is the subject of the Petition.

10 20. An actual controversy has arisen and now exists between Plaintiff and
11 Defendant regarding their respective rights and duties under the Judgments that are the
12 subject of the Petition. Plaintiff maintains that by recording the release of abstracts
13 following a recordation, Plaintiff, Pinedale County Water District, is discharged from any
14 underlying debt represented by the Judgments entered in Madera Case No. MCV043413;
15 whereas, Defendant contends that it may and, in fact, did record the Abstracts of Judgment
16 making itself a secured creditor and then release, unilaterally and voluntarily, the abstracts
17 of judgment without regard to the provisions of CCP §726(a) by attempting to obtain
18 payment on the debt alleged in the Petition on file and pending in Kings County Court Case
19 No. 18C-0051 or to reach unpledged assets before exhausting the real property security
20 it created by the recording of the abstracts.

21 21. Defendant desires a judicial determination of its rights and duties and a
22 declaration that the recording of the release of the abstracts, pursuant to the provisions of
23 CCP §726(a), released and discharged the Plaintiff from any obligation under the
24 judgments that are the subject of the Petition on file and pending in Kings County Superior
25 Court Case No. 18C-0051.

26 22. A judicial declaration is necessary and appropriate at this time under all the
27 circumstances so that Defendant may determine its rights and duties under the judgments.

28 Wherefore Plaintiff demands judgment as follows:

CROSS-COMPLAINT

- 1 1. Rescinding the Agreement, Exhibit 1 to this complaint;
- 2 2. Awarding Plaintiff the sum of \$150,000, the amount paid to Defendant as
- 3 consideration for the Agreement, Exhibit 1 to this Complaint;
- 4 3. A declaration of the court that Defendant is released and discharged from the
- 5 obligation, if any, created by the Judgments that are the subject of the Petition in Kings
- 6 County Superior Court Case No. 18C-0051;
- 7 4. For attorney's fees and costs, as allowed by contract or statute;
- 8 5. For such other and further relief as the court deems just and proper.

9 //

10 //

11 Dated: August 1, 2018

By: _____

Neal E. Costanzo,
Attorney for Plaintiff, Pinedale
County Water District