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9/21/2018 1:24 PM
FRESNO COUNTY SUPERIOR COURT
By: K. Daves, Deputy

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8 Attorneys for Defendant City of Fresno
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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF FRESNO

13 PINEDALE COUNTY WATER DISTRICT,)
14 a County Water District,)
15 Plaintiff)
16 v.)
17)
18 CITY OF FRESNO, a Municipal)
Corporation, and DOES 1 through 5)
19 inclusive,)
20 Defendant.)

Case No. 18CECG02957

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
DEFENDANT'S DEMURRER TO
COMPLAINT

Date: October 24, 2018
Time: 3:30 p.m.
Courtroom: 502

21 Defendant City of Fresno, by and through its attorneys of record, respectfully
22 submits the following Memorandum of Points and Authorities in support of Demurrer.
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1 **I. PRELIMINARY STATEMENT**

2 On April 6, 2015, the Madera County Superior Court entered its Second Amended
3 Judgment in favor of the City of Fresno and against the Pinedale County Water District in
4 the amount of \$ 127,515. 84. Request for Judicial Notice ("RJN") Exhibit A.

5 On June 16, 2017, the City of Fresno filed a Writ of Mandate in this Court ("RJN"
6 Exhibit B) seeking collection on the Second Amended Judgement. In response, Pinedale
7 moved to transfer venue, and the City's writ was transferred to Kings County Superior
8 Court.

9 On April 3, 2018, Pinedale filed a cross-complaint in the writ proceeding. (RJN
10 Exhibit C). That cross-complaint was, and is, identical to the complaint Pinedale filed in
11 this proceeding. However, the Kings County Superior Court sustained the City's demurrer
12 to that cross-complaint in its entirety without leave to amend. (RJN Exhibits D and E).

13 In the instant case, Pinedale's complaint asserts as a second cause of action a
14 claim for declaratory relief which is identical to a claim previously dismissed in the writ
15 proceeding. However, in dismissing that cause of action, the Court acknowledged that
16 Pinedale's affirmative defenses (i.e. application of the one form of action rule) could be
17 asserted in the writ proceeding; (See RJN Exhibit E, p. 5) As such, Pinedale's declaratory
18 relief claim, which asks this Court to rule that it is discharged from any underlying debt on
19 the Amended Judgement, is already at issue in the writ proceeding which is now pending
20 in Kings County. (See RJN Exhibit B)

21 Thus, this Court lacks jurisdiction to entertain Pinedale's second cause of action,
22 for declaratory relief. Specifically:

- 23 • Pinedale's declaratory relief cause of action asks this Court to rule on an
24 issue that is already at issue as an affirmative defense in the writ proceeding
25 pending in Kings County Superior Court Case No. 18C-0051;
- 26 • This Court lacks jurisdiction to hear Pinedale's declaratory relief claim (i.e.
27 to intervene in the writ proceeding presently pending in Kings County
28 Superior Court).

1 **II. THIS COURT LACKS JURISDICTION**

2 In a most fundamental or strict sense, lack of jurisdiction means an entire absence
3 of power to hear or determine the case, i.e. in absence of authority over the subject matter
4 or the parties. People v. National Automobile & Casualty Co (2000) 82 Cal.App. 4th 120,
5 125. A jurisdictional defense appearing on the face of the complaint, or based upon
6 judicially noticed facts, is appropriately addressed on demurrer. Satten v. Webb (2001) 99
7 Cal.App. 4th 365, 374.

8 In the instant case, the subject matter of Pinedale's second cause of action for
9 declaratory relief relates to the enforceability of the City's second amended judgment.
10 However, that issue is currently pending before the Kings County Superior Court in the
11 City's pending Writ. In fact, the Writ proceeding is pending in Kings County precisely
12 because that is where Pinedale requested that this court transfer that action. (The City,
13 on the other hand, consented to the transfer of the action, but argued that it should be
14 transferred to Madera County Superior Court, where the second amended judgement was
15 issued).

16 In short, the City's Writ proceeding now pending in Kings County was filed to the
17 enforce of the second amended judgement. Although Pinedale's attempt to file a cross-
18 complaint in the Writ proceeding proved unsuccessful, Pinedale still maintains an
19 affirmative defense in that action relating to the one form of action rule. That is precisely
20 the theory sought to be litigated in the declaratory relief cause of action set forth as the
21 second cause of action in the instant proceeding. (See RJN Ex. E, p.5)

22 Because the Writ proceeding is pending in another Court between these same
23 Parties and involves the exact same subject matter as that addressed by Plaintiff second
24 cause of action in the instant litigation, said claim should be dismissed with prejudice.

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1 **III. CONCLUSION**

2 For the forgoing reasons, this Court should sustain the City's demurrer to Pinedale's
3 second cause of action, for declaratory relief.

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6 Dated: September 21, 2018

BETTS & RUBIN

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8 By 

James B. Betts

Attorneys for Defendant City of Fresno
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PROOF OF SERVICE

I am a citizen of the United States of America, a resident of Fresno County, California, over the age of 18 years and not a party to the within-entitled cause or matter. My business address is 907 Santa Fe Avenue, Suite. 201, Fresno, CA. On September 21, 2018, I served **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANT'S DEMURRER TO COMPLAINT** on the parties in this action by placing an original/a true copy in an envelope and delivering it as follows:

____ (By Overnight Courier) I caused such envelope with postage fully prepaid, to be sent by _____.

____ (By Mail) I deposited the envelope, with postage fully prepaid, with the United States Postal Service at Fresno, Fresno County, California.

X (By Mail) I placed the envelope for collection and processing for mailing following this business' ordinary practice with which I am readily familiar. On the same day correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service with postage fully prepaid.

X (By Electronic Mail) I caused each document to be sent electronically to the address below.

Each envelope was addressed as follows:

Neal E. Costanzo Esq.
Michael G. Slater Esq.
Costanzo & Associates
A Professional Corporation
575 E. Locust Avenue, Suite 115
Fresno, CA 93720
Email: ncostanzo@costanzolaw.com

Attorneys for:
PINEDALE COUNTY WATER DISTRICT

____ (By E-Mail) I caused each document to be sent by e-mail.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 21, 2018, at Fresno, California.


Adriana Garcia