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FRESNO COUNTY SUPERIOR COURT
By: K. Daves, Deputy

James B. Betts (State Bar #110222)
Joseph D. Rubin (State Bar #149920)
Attorneys for Defendant City of Fresno

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF FRESNO

PINEDALE COUNTY WATER DISTRICT,)
a County Water District,)
Plaintiff)
v.)
CITY OF FRESNO, a Municipal)
Corporation, and DOES 1 through 5)
inclusive,)
Defendant.)

Case No. 18CECG02957

MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION TO STRIKE

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

Defendant City of Fresno, by and through its attorneys of record respectfully
submits the following Memorandum of Points and Authorities in support of Motion to
Strike.

1 **I. BACKGROUND FACTS**

2 By the instant action, Plaintiff Pinedale seeks to rescind a Sewage Transfer
3 Agreement entered into with the City of Fresno.

4 As a component of its Complaint, Pinedale asserts a number of factual allegations
5 which are irrelevant to the subject matter of this dispute. Those allegations relate to the
6 City's efforts to enforce a judgment against Pinedale in another action. Such allegations
7 are completely irrelevant to Pinedale's claim for rescission of the Parties' contract.
8 Moreover, although the subject allegations may be germane to Pinedale's second cause
9 of action for declaratory relief, such claim is subject to the City's concurrently filed
10 demurrer.

11 By the instant motion to strike, the City of Fresno seeks an order striking those
12 irrelevant and improper allegations.

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14 **II. PLAINTIFFS IRRELEVANT ALLEGATIONS SHOULD BE STRICKEN**

15 The gravamen of Plaintiffs' Complaint seeks rescission of the Parties' Sewage
16 Transfer Agreement.

17 Plaintiff's Complaint also asserts a claim for declaratory relief, by which Plaintiff
18 seeks a judicial declaration regarding its duties and responsibilities under a pre-existing
19 judgment obtained by the City against Pinedale. However, the enforcement of the City's
20 judgment is the subject of the City's petition for writ of mandate to compel payment of such
21 judgment, which is currently pending in Kings County Superior Court. As a result, the City
22 has filed a concurrent demurrer to Plaintiff's declaratory relief cause of action.

23 Code of Civil Procedure § 436(a) provides specific statutory authority for this Court
24 to strike out any irrelevant or improper matter inserted in pleading. In the instant case,
25 Plaintiff's complaint contains multiple allegations regarding the Parties' prior litigation of a
26 matter in Madera County Superior Court, which gave rise to the City's current judgement.
27 Those allegations are completely irrelevant to Plaintiff's claim for rescission of the Parties'
28 contract, and should be stricken.

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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 MOTION TO STRIKE** 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
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____ (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